



## EDWARD M. KENNEDY ORAL HISTORY PROJECT

### **Interviewer's Briefing Materials** **Marcia Greenberger Interview, 02/21/2007**

Robert A. Martin, Research Director

#### **Miller Center Documents<sup>1</sup>**

- EMK Civil Rights Legislative Highlights.
- EMK's Involvement with Issues of Special Concern to Women.
- Civil Rights Act of 1991 Overview Memo.

#### **Secondary Source Materials**

- Marcia Greenberger bio, [www.nwlc.org](http://www.nwlc.org).
- Adam Clymer, *Edward M. Kennedy: A Biography* (New York: William Morrow, 1999) pp. 410-412, 521-523.
- Michael Pertschuk and Wendy Schaetzel, *The People Rising: The Campaign Against the Bork Nomination* (NY: Thunder's Mouth Press, 1989) pp. 41-44, 48-67, 81-82, 126-130, 160-162, 216-225, 232-233, 286-287.
- Mark Gitenstein, *Matters of Principle: An Insider's Account of America's Rejection of Robert Bork's Nomination to the Supreme Court* (NY: Simon & Schuster, 1992) pp. 62-63, 172-176, 239-241.

#### **Oral History Interviews**

- John Danforth interview, Kennedy Oral History Project, Miller Center, University of Virginia, 10/25/2005.

---

<sup>1</sup> These are original documents created by Miller Center researchers for the Edward M. Kennedy Oral History Project. Please acknowledge credit for any use of these materials.

## EMK'S CIVIL RIGHTS LEGISLATIVE HIGHLIGHTS

*Prepared by Rob Martin, Anne Mariel Peters, and Emily Jane Charnock  
Miller Center, University of Virginia, 02/11/2007*

---

**(Successful legislation in bold)**

<i>1963 Civil Rights Bill</i>	JFK's attempt to broadly improve civil rights protections for African-Americans. Little progress before his death.
<b>1964 Civil Rights Act</b>	Landmark legislation introduced by Mansfield to prohibit discrimination in public places, employment, and at the polls. It allows the AG to sue to force school desegregation. EMK votes in favor, only hours before his plane crash.
<b>1965 Voting Rights Act</b>	Sent to Congress by LBJ; outlaws literacy tests & allows DOJ to oversee voter registration. In his first legislative initiative, EMK tries unsuccessfully to add a poll-tax ban to the bill. The Supreme Court rules the poll tax unconstitutional in '66.
<i>1966 Civil Rights Bill</i>	Unsuccessful LBJ-requested legislation to strengthen protection of civil rights; includes controversial fair housing legislation.
<i>1967 Civil Rights Bill</i>	LBJ's follow up on '66 legislation also unsuccessful; EMK fights to keep controversial fair housing provisions in bill.
<b>1968 Civil Rights Act</b>	Landmark fair housing legislation, co-sponsored by EMK.
<b>1969 Philadelphia Plan</b>	EMK-supported bill requiring govt. contractors to hire minority workers according to quotas; bill passes.
<b>1970 VRA Extension</b>	EMK calls for legislation lowering voting age to 18 to be legislation as an amendment with EMK and Magnuson as cosponsors; the bill easily passes. Supreme Court rules it constitutional only in federal elections; Congress passes it as 26 <sup>th</sup> Amendment in '71.
<i>1970 Indian Education Bill</i>	Legislation from Sen. Interior & Insular Affairs Com. to allow Dept. of Interior to improve classrooms in Native American schools, place students in local public schools rather than boarding schools, & specify equal standards; EMK supports the bill, but it fails.

**1970 Mental Retardation & Developmental Disabilities Act**

EMK-sponsored legislation to improve federal programs to help the developmentally disabled; the bill passes 69-0 and the conference report is adopted by voice vote.

**1971 Indian Education Act**

EMK & others introduce bill to improve education for Native Americans, particularly in non-reservation schools; gives Native Americans greater role in setting their own education policy; the bill passes the Senate & is eventually incorporated into the 1972 Education Amendments.

*1972 Equal Rights Amendment*

Bayh proposes Senate version of legislation to prevent discrimination on account of sex. EMK switches his position to support it; the amendment passes 84-8 in Senate, but fails to gain ratification in 3/4 of US states.

**Title IX of 1972 Education Amendments**

Bayh proposes an amendment to the aid-to-education bill, prohibiting sex discrimination in most education programs receiving federal funds. EMK votes against the education bill itself because strong anti-busing provisions have been added in conference.

1970s Anti-busing Amendments

After federal courts rule in the early 70s that busing can be used to integrate public schools, EMK fights a series of anti-busing amendments in '72, '74 & '75 aimed at limiting the ability of courts and HEW to order busing. EMK successfully fights some of the stronger anti-busing amendments, but is unable to stop compromise legislation in '74 & '75 that placed limits on the ability of the courts and HEW to force busing. EMK had first proposed a bill in 1966 to provide federal aid for busing and to withhold funds from segregated schools, but the bill wasn't reported.

**1973 Rehabilitation Act**

EMK co-sponsors legislation to extend aid to the handicapped and prohibit discrimination in federal programs or those receiving federal funds.

**1975 Voting Rights Act Ext.**

EMK supports successful legislation to extend the VRA, and to bring language minorities under its protection.

**1975 Older Americans Act Ext.**

EMK supports successful legislation from the House to extend and strengthen the 1965 Older Americans Act.

**1975 Age Discrimination Act**  
[Title III of Older Americans Act]

EMK supports successful legislation prohibiting age discrimination in programs receiving federal aid.

**1980 Protection of Rights of Institutionalized Individuals**

Bayh and Kastenmaier legislation allowing the federal govt. to file suits against states to protect prisoners, mental patients, etc. EMK is a co-sponsor on the Senate measure, announces for the bill, but does not vote; the bill passes.

**1980 Mental Health Systems Act**

EMK-sponsored legislation to expand and restructure federal aid for mental health services; EMK & Javits are unable to include a patients' "bill of rights" and EMK does not vote on the final bill.

*1980 Fair Housing Bill*

EMK and Byrd unsuccessfully attempt to pass a bill to strengthen the enforcement mechanisms of the 1968 Fair Housing Act by making it easier for the fed. govt. to sue. EMK is cosponsor and floor manager of the Senate version.

**1982 VRA Extension**

EMK helps draft compromise legislation (forged by Dole) to extend the VRA for 25 years and establish a "results" test; making it easier to find that election laws are discriminatory. Previously, proof was required that the "intent" behind the election laws was discriminatory. The 1982 Act follows stronger but unsuccessful legislation that EMK and a group of other senators had introduced in '81.

**1983 MLK Holiday**

EMK and Mathias lead the Senate fight to make King's birthday a national holiday (EMK is a cosponsor, though the House version passes); EMK and Helms enter a bitter and personal debate; the legislation passes.

**1983 Civil Rights Commission Reauthorization**

An EMK-supported bill to extend mandate of the Civil Rights Commission for 6 years; delayed by Hatch's attempts to secure Reagan nominees; a compromise passes but, reportedly, it is not fully honored.

*1983 Equal Rights Amendment*

O'Neill unsuccessfully tries to resurrect the ERA, which has failed to gain ratification by the required 3/4 of states. EMK co-sponsors a companion Senate measure, but the attempt fails in the House.

*1984 Civil Rights (Restoration) Act*

EMK-sponsored proposal to overturn *Grove City* – a Supreme Court decision which hampers the fed govt's ability to restrict educational aid eligibility on the grounds of discrimination. Byrd tries to attach it to the FY 1985 appropriations bill, but the amendment is tabled.

<i>1985 Anti-Apartheid Legislation</i>	EMK sponsors a resolution condemning Apartheid in South Africa, which passes 89-4 but does not make it to the House floor. EMK also sponsors a sanctions bill, but a weaker bill is supported in committee, passing the Senate 80-12. Amid parliamentary maneuvering, the conference report is “lost,” preventing further action.
<b>1986 Anti-Apartheid Act and Veto Override</b>	EMK-supported bill imposing sanctions on S. Africa; it passes 84-14, is vetoed by Reagan, but overridden 78-21.
<b>1988 Civil Rights Restoration Act and Veto Override</b>	EMK-sponsored bill prohibiting discrimination by organizations receiving fed assistance (with an amendment exempting medical organizations from being required to carry out abortions). Bill passes (75-14) and is vetoed by Reagan, but then overturned 73-24.
<b>1988 Fair Housing Amendments Act</b>	EMK-supported bill to strengthen fed law against housing discrimination and increase housing options for the disabled (wider doors, lower light switches in new units). EMK sponsors the Senate version and recruits Muhammad Ali to persuade Hatch; Reagan signs the bill.
<b>1990 Amer. w/ Disabilities Act</b>	After a similar bill fails in '89, a measure sponsored by Harkin (and co-sponsored by EMK, among others) passes. It gives broad protection to the disabled against bias in public accommodations and housing.
<b>1991 Civil Rights Act</b>	Danforth legislation making it easier for victims of discrimination or sexual harassment to sue their employers for damages; Bush had vetoed a similar bill, sponsored by EMK, in '90 (for including employment quotas). Quotas are dropped, EMK votes in favor, and Bush signs into law.
<i>1991 Crime Bill</i>	Authorizes the death penalty for more than fifty federal crimes, restricts habeas corpus petitions by those already convicted, and imposes a 5-day waiting period on handgun purchases; the bill fails, due in part to an EMK-sponsored provision to allow defendants to challenge death penalty sentences on grounds of racial discrimination.
<b>1992 VRA Extension</b>	Extends and expands the bilingual assistance provision of the VRA, which was first extended to language minorities in '75; EMK supports the bill (co-sponsoring the Senate version, though the House version is substituted).

**1993 Family & Medical Leave Act** Allows an employee to take unpaid leave to care for a sick family member or a newborn child without losing employee benefits; the act was drafted by the National Women's Defense Fund and supported by EMK; Dodd had been leading the fight for the bill in the Senate since 1983.

**1996 Defense of Marriage Act** Allows states to refuse to recognize gay marriages. EMK opposes the bill and threatens to add an amendment to extend employment discrimination protection under '64 CRA to sexual preference, but is persuaded to offer it as a separate bill. EMK's bill is defeated 49-50, while the Defense of Marriage Act is passed 85-14. EMK votes nay.

*2000 Hate Crimes Bill* EMK sponsors an amendment to the defense authorization bill to expand federal hate crimes laws to include sexual orientation, gender and disability, but the bill is dropped in conference.

**2006 VRA Extension** EMK co-sponsors the Senate bill to extend the VRA for 25 years, following House action. The bill maintains the requirement for certain states to obtain DOJ approval before changing precinct boundaries, polling places, legislative districts, ballot formats and other voting procedures. It is approved 98-0 and becomes law in July.

## EMK'S INVOLVEMENT WITH ISSUES OF SPECIAL CONCERN TO WOMEN

Prepared by Mark D. Nevin

Miller Center, University of Virginia, 10/27/2006

---

### 1962

*March* EMK announces that he is running for President John F. Kennedy's unexpired Senate seat. His wife Joan Kennedy plays a central role in the campaign, driving around the state with EMK's cousin, Sally Fitzgerald. Rose Kennedy speaks frequently to women's groups to help EMK court the women's vote. (Adam Clymer, *Edward M. Kennedy: A Biography*, New York: William Morrow and Co., 1999, p. 35-39)

**1967** Rumors linking EMK and other women are reported in the press for the first time. Press reports of EMK's extra marital affairs surface periodically throughout his career. (Clymer, pp. 95-96)

### 1969

*July* A car driven by EMK goes off a bridge and into a salt water pond on Chappaquiddick Island causing the death of passenger Mary Jo Kopechne.

After pleading guilty to leaving the scene of an accident at Chappaquiddick, EMK delivers a national television address on the 25<sup>th</sup> in which he accepts responsibility for his role in the accident and asks the people of Massachusetts whether they still have confidence in his ability to serve in the Senate. On the 30<sup>th</sup>, EMK announces that he will remain in the Senate and will not run for president in 1972. (Clymer, pp. 149-50, 155-56; *The New York Times*, 07/26/1969)

### 1970

*August* The House passes the Equal Rights Amendment (H J Res 264) on a roll-call vote (352-15) after a successful discharge petition moves the bill out of the Judiciary Committee, which had refused to act on it. The constitutional amendment guarantees equal rights for women. This marks the first time the House passes the amendment. (*1970 Congressional Quarterly Almanac*, p. 706)

*Summer* In a campaign speech, EMK tells the audience that he favors equal rights for women but opposes the ERA in the form passed by the House because it would cause confusion about the application of many laws, including the draft. At the time, EMK has no women on his staff in policy positions. (Clymer, p. 170; *The Washington Post*, 09/20/1970)

*Fall* In another campaign speech, EMK voices his opposition to abortion. He fears abortion on demand could lead to a pernicious form of social control. "I don't

believe in abortion on demand....The day we can solve the world's population problem, the problem of browns in Central America, the problem of blacks in the ghetto, by aborting them, that's unacceptable to me. How about kids in mental hospitals: they're parasites on the environment. How about the old people institutions: they're cluttering up the landscape. Do you want to exterminate them too?" (Clymer, p. 170)

The Senate considers a companion ERA bill (S J Res 61), adding two amendments to it. The first exempts women from the draft and the second restores the right to participate in non-denominational prayers in public schools. The passage of the amendments is "tantamount to defeat of the bill," and it is not voted on by the Senate in 1970. (*1970 Congressional Quarterly Almanac*, pp. 706-08)

## 1971

*October* The Houses passes the ERA (H J Res 208) 354 to 12. The bill is identical to the one it passed in 1970. The Senate postpones action on a similar proposal until 1972. (*1971 Congressional Quarterly Almanac*, pp. 656-57)

*November* Congress passes a bill (HR 8630-PL 92-158) extending and expanding federal programs to train nurses. The bill authorizes \$855.5 million over the next three years for various programs to increase the number of nurses in the U.S. EMK, who manages the Senate version of the bill, says: "There is an estimated shortage of nurses amounting to 150,000 at the present time—a shortage which will grow to 300,000 by 1975, if we are unable to increase the rate at which we train nurses." (*1971 Congressional Quarterly Almanac*, pp. 534-35)

## 1972

*March* EMK announces he has changed his mind and now supports the ERA because efforts to guarantee women's equality through other routes, such as the Supreme Court and the Equal Employment Opportunity Commission (EEOC), have been "blind alleys." He argues that the ERA is needed because "sex discrimination remains the general rule in most states. It continues to force women into roles below their intellectual and physical capabilities." The following day the Senate votes overwhelmingly (84-8) to approve the ERA and send it to the states for ratification. According to Clymer, EMK "played no part" in the ERA movement. (Clymer, p. 185)

*Spring* Congress passes the 1972 Education Amendments (S 659 —PL 92-31), including the landmark Title IX prohibition against sex discrimination in almost all education programs receiving federal funds. The sex discrimination ban is not part of the education bill the Senate Labor committee unanimously reports. Senator Birch Bayh (D-IN) introduces the amendment on the Senate floor. The Senate adopts the final conference report for the bill (63-15), with EMK voting against it.



Many of the Democrats who vote against the bill oppose its anti-busing provisions. (*1972 Congressional Quarterly Almanac*, pp. 385-93, 397)

## 1973

*January* In the landmark abortion case *Roe v. Wade* the Supreme Court strikes down a Texas abortion law and upholds a women's right to an abortion.

## 1975

*April-May* EMK leads the opposition to a provision banning federal funding for abortions from being attached to a bill to promote nurse training and the establishment of various health programs, although he admits he personally opposes abortion. Daniel A. Cronin, the Roman Catholic Bishop of Fall River, criticizes EMK's pro-abortion stand and says it amounts to a "weakening of [his] personal convictions." According to *Congressional Quarterly*, EMK's defense of federal funding for abortions "came as a surprise to abortion supporters" as he "generally had not taken a highly visible position during abortion debates." (Clymer, p. 238; *1975 Congressional Quarterly Almanac*, p. 594)

## 1976

*Summer-Fall* After the House had voted to ban federal funding of abortion for any reason as part of an appropriation bill for the Department of Labor and Health, Education, and Welfare (HEW), the Senate votes (57-28) to delete the amendment from the bill. EMK votes for it. After several weeks of debate, House-Senate conferees agree on compromise language that would bar the use of federal funds to pay for abortions except to protect the life of the mother. The Senate approves the amendment (47-21), with EMK voting for it. (*1976 Congressional Quarterly Almanac*, pp. 790, 801-03)

## 1977

*December* EMK votes against an amendment to remove all prohibitions on abortion contained in the Labor and HEW annual appropriations bill. The amendment fails 42 to 56. EMK had voted for it the previous year. (*1977 Congressional Quarterly Almanac*, p. 308)

## 1979

*May* The Senate passes a \$103 million nurses training aid bill (S 230) by voice vote, which President Carter subsequently signs. Carter wants to abolish most federal aid to nursing schools, but EMK and Senator Jacob Javits (R-NY) are successful in protecting most of the funding after agreeing to cut \$22 million from the bill. (*1979 Congressional Quarterly Almanac*, pp. 506-07)

**1979-1980** EMK makes an unsuccessful bid to wrestle the Democratic nomination for president from President Jimmy Carter. During his campaign, feminists are “of two minds about Kennedy.” They praise his policy positions, but are reluctant to support him because his “womanizing is widely known.” According to Clymer, however, the campaign transforms EMK into “a champion of women and of gays and lesbians.” “As Kennedy met with women’s groups around the country, his support for women’s issues changed from abstraction into serious concern. He called it an ‘intense experience’ to hear from women about their lives and see their opportunities and barriers.” Clymer credits campaign staffer Susan Estrich with helping to open EMK’s eyes to the substantive contributions women could make to politics. (Clymer, pp. 297-98, 321)

## **1980**

*May* EMK becomes the first presidential candidate to hold a fundraising event with Los Angeles’ gay and lesbian community. In his speech, EMK says: “I want to state very clearly that I stand for the rights of gays and lesbians as a Senator and will do so as President of the United States.” EMK also promises to issue an executive order barring bias against homosexuals in federal hiring. (Clymer, p. 307)

## **1981**

*January* EMK and Joan Kennedy announce on the 21<sup>st</sup> that they are getting divorced. EMK and Joan Kennedy’s divorce settlement is reached the following year. (Clymer, pp. 325, 354, 578)

*July* During a House-Senate conference over the omnibus budget reconciliation bill (HR 3982 — PL 97-35), EMK helps to defeat a proposal to turn over to the states the Women’s Educational Equity Act (WWEA) program as part an education block grant. The program, which targets gender discrimination in education, is maintained as a separate categorical authorization of \$6 million a year. (*1981 Congressional Quarterly Almanac*, p. 502)

## **1982**

*March* The Judiciary Committee approves (10-7) a constitutional amendment authorizing Congress and the states to restrict or ban abortion (S J Res 110), with EMK voting against it. It is the first time since *Roe* that any committee of Congress passes an anti-abortion bill, but it is not considered by the full Senate in 1982. In September, the Senate (46-47) defeats an anti-abortion amendment (attached to an unrelated bill) sponsored by Senator Jesse Helms (R-NC) that would prohibit abortion by federal statute. EMK votes against the amendment. (*1982 Congressional Quarterly Almanac*, pp. 403, 58-S)

## 1983

*June* The Senate (49-50) defeats a proposed constitutional amendment (S J Res 3) that would declare that abortion was not a constitutional right and would leave abortion up to the states. EMK votes against the amendment, asserting that the bill would “put government into people’s bedrooms.” He criticizes supporters of the bill who “have voted consistently against the help and support that can mean fewer abortions . . . . In the name of less government, they turn their backs on proven alternatives to abortion, and then seek to resolve the problem by the most intrusive kind of government of all.” (*1983 Congressional Quarterly Almanac*, pp. 306-311)

## 1984

*June* In a speech at the Democratic Party conference, EMK promises to enact the ERA, which dies three days later three states short of the thirty-eight needed to ratify it. He says: “We do not worry at the fading of three more days. We are ready to spend three more years or three more decades or three more generations. As we said with equal rights: We shall overcome one day.” (Clymer, p. 339)

## 1984-85

After the Supreme Court in *Grove City College v. Bell* narrows the ban on sex discrimination in federally funded schools and colleges under Title IX of the 1972 Education Amendments, EMK sponsors legislation (S 2568) to overturn the decision. The Court had ruled that Title IX anti-discrimination provisions applied only to the programs or activities that received federal aid, but not to entire institutions. The Civil Rights Restoration Act would require that entire institutions must not discriminate if they received any federal aid. In October 1984, the Senate votes (53-45) to table the measure. The measure does not even reach the floor in 1985. (Clymer, pp. 374-75; *1984 Congressional Quarterly Almanac*, pp. 239-40)

## 1987

*March* EMK opens hearings on a bill (S 557) to overturn the *Grove City* decision. After two months of acrimonious debate and Republican sponsored procedural delays, the Senate Labor Committee finally votes on the bill. It approves the bill 12 to 4. The Robert Bork confirmation hearings delay action on the bill, and it is not voted on by the full Senate until 1988. (Clymer, pp. 410-11; *1987 Congressional Quarterly Almanac*, p. 281)

*July* President Ronald W. Reagan nominates Judge Robert Bork of the United States Court of Appeals for the District of Columbia to the Supreme Court to replace retiring Justice Lewis Powell, Jr. EMK leads the fight against Bork. Less than an hour after the nomination is announced, EMK declares on the Senate floor that:

“Robert Bork’s America is a land in which women would be forced into back alley abortions, blacks would sit at segregated lunch counters, rogue police could break down citizens’ doors in midnight raids . . . and the doors of the Federal courts would be shut on the fingers of millions of citizens for whom the judiciary is often the only protector of the individual rights that are at the heart of our democracy.” According to Clymer, EMK’s speech was the “most important and controversial floor speech of his career.” EMK subsequently mobilizes anti-Bork forces, presses Bork during his confirmation hearings before the Judiciary Committee, and votes against the nomination. The Senate eventually rejects the nomination 42 to 58. (*1987 Congressional Quarterly Almanac*, p. 271; Clymer, pp. 417-27)

*Fall* Reagan issues new regulations prohibiting organizations that receive federal funds for family planning programs under Title X of the Public Service Act from making abortion referrals, mentioning abortion as an option, or using non-federal money for abortions or abortion-related services. Since its inception in 1970, Title X had barred grantees from using federal funds to perform abortions. EMK leads a group of thirty-three Senators who oppose the new regulations. He says: “The administration seeks to accomplish by executive fiat what it has failed to achieve through the legislative process.” In November, the Labor Committee approves family-planning reauthorization (S 1366) sponsored by EMK which does not contain any anti-abortion provisions. The bill is not voted on by the Senate in 1988. (*1988 Congressional Quarterly Almanac*, p. 539)

## 1988

*January* EMK manages the Civil Rights Restoration Act (S 557) on the Senate floor and opens debate on it by saying that the Supreme Court decision “placed at risk” gains made by women and other disadvantaged groups. The Senate passes the bill 73 to 14 (with only Republicans opposing it) but only after the insertion of highly controversial provision, sponsored by Senator John C. Danforth (R-MO), that permits organizations that receive federal aid from treating health insurance, leave policy, and other services related to abortion differently from services offered for pregnancy and childbirth. EMK says the bill “closes a major loophole in our civil rights law.” After the House passes the bill, Reagan vetoes it, but Congress subsequently overrides the veto. (Clymer, pp. 432-33; *1988 Congressional Quarterly Almanac*, p. 63)

*February* The Labor Committee approves EMK-sponsored legislation (S 1265) that would require all employers to provide health insurance for their workers. Among other things, the bill would require health plans to cover fully prenatal and “well baby” care. The Senate does not vote on the bill in 1988. (*1988 Congressional Quarterly Almanac*, pp. 313-16)

## 1989

- June* The Labor Committee approves legislation (S 110 – S Rept 101-95) authorizing \$547.7 million over three years for the family-planning programs under Title X, but the bill is not voted on by the Senate. Like every year since its last authorization expired in 1985, Congress appropriates partial funding for the program for one year. (*1989 Congressional Quarterly Almanac*, p. 180)
- October* President George H. W. Bush nominates Clarence Thomas, chairman of the Equal Employment Opportunity Commission (EEOC), to the U.S. Court of Appeals for the District of Columbia. Various members of Congress and interest groups oppose the nomination. They criticize his weak enforcement of discrimination laws at EEOC and question his commitment to equal rights. The Senate does not consider the nomination until the following year. (*1989 Congressional Quarterly Almanac*, pp. 288-89)

## 1990

- February* The Judiciary Committee votes 13 to 1 to approve the Thomas nomination to the U.S. Court of Appeals, with only Senator Howard Metzenbaum (D-OH) opposing the nomination. EMK questions Thomas about his views on minorities but is satisfied with his answers. EMK says: “I don’t think anyone can ask for better assurances.” Clymer calls EMK’s examination of Thomas “perfunctory.” Metzenbaum later says of the Thomas nomination: “A black person has a certain advantage with liberal Democrats.” In March, Thomas wins approval from the full Senate. Only Metzenbaum and Senator David Pryor (D-AK) vote against the nomination. (*1990 Congressional Quarterly Almanac*, pp. 518-519; Clymer, pp. 481-82)
- EMK, along with thirty-three other Senators and 123 House members, introduces legislation to undo a series of recent Supreme Court decisions making it harder for workers claiming job discrimination to sue and to allow victims of sexual harassment on the job to collect damages. The Senate Labor Committee approves the bill (S 2104) 11 to 5 in April. In response to Republican claims that the bill would force employers to adopt hiring quotas, EMK and Danforth draft a provision intended to eliminate the risk. EMK initially negotiates with the White House on the bill but bipartisanship eventually breaks down, and Bush vetoes the legislation after Congress approves it. Congress fails to override the veto. (*1990 Congressional Quarterly Almanac*, p. 462; Clymer, pp. 461-62)
- August* The Senate Labor and Human Resources Committee approves a bill (S 2857) to authorize funding for various National Institutes of Health (NIH) programs. Senator Barbara Mikulski (D-MD), who a few days earlier had unveiled the Senate version of the Women’s Health Equity Act, which was sponsored by the Congressional Caucus for Women’s Issues, wins funding for several NIH

programs specifically designed to improve research into women's health issues. Among other things, the bill creates an Office of Women's Health Research and Development within NIH; establishes an NIH research program in gynecology; requires the NIH to use women and minorities in clinical trials; and requires the NIH director to make an annual report to Congress on research on women's health issues. According to Mikulski, "The NIH has let [women] down and we're asking for a new prescription." S 2857 also includes provisions sponsored by Senator Tom Harkin (D-IA) authorizing funding for new research centers to study contraception and infertility. The NIH issues new guidelines for the inclusion of women and minorities in clinical studies and creates an office to study women's health issues. (*1990 Congressional Quarterly Almanac*, pp. 600- 603)

*September* EMK removes a bill (S 110) to reauthorize Title X family funding programs from the Senate floor after supporters fail to obtain enough votes to stop a filibuster. EMK says: "Today, more than 31 million women are at risk of unintended pregnancy in the United States. Yet Title X is serving fewer people than it was serving in 1981—and I regard that as unacceptable." The program is eventually authorized for \$139 million for fiscal year 1989, \$23 million less than in 1980. (*1990 Congressional Quarterly Almanac*, pp. 604-05)

*October* On the 19<sup>th</sup>, the Senate approves S 2857 by voice vote after striking Harkin's provisions to fund new research centers to study contraception and infertility. On the Senate floor, EMK tells Harkin that his language was dropped after Republican abortion opponents threatened to block debate on the bill. (*1990 Congressional Quarterly Almanac*, p. 603)

Facing a certain presidential veto, sponsors of the NIH bill modify it considerably, removing many of the provisions intended to promote research on women's health. The Bush administration objects to overturning the ban on certain types of fetal research and to the creation of new research centers to study infertility because it believes the measures will encourage abortions. On the 26<sup>th</sup> and the 27<sup>th</sup>, the House and then the Senate approve this stripped-down version of the NIH bill. EMK declares that a full NIH reauthorization bill, complete with provisions for improving research on women's health, will be a priority for the Senate Labor and Human Resources Committee in 1991. Bush signs the bill into law on November 16th. (*1990 Congressional Quarterly Almanac*, pp. 600, 604)

## **1991**

*March* A woman accuses William Kennedy Smith, EMK's nephew, of rape after drinking with him and EMK at a bar in Palm Beach. EMK is called to testify at Smith's trial in December. (Clymer, p. 486)

*May-July* The Supreme Court, in *Rust v. Sullivan*, upholds the Reagan administration's regulations prohibiting abortion counseling and referrals for abortions in federally funded family planning clinics. EMK subsequently introduces a bill (S 323) to

overturn the anti-abortion regulations, and it is approved by the Labor Committee 12 to 5. In July, the Senate approves an amended version of the bill by voice vote. EMK does not pursue reauthorization of Title X. (*1991 Congressional Quarterly Almanac*, pp. 340-42)

*Summer* A few months after the end of the Gulf War, Kennedy and Senator William Roth (R-DE) cosponsored a floor amendment to a defense authorization bill (S 1507) lifting the ban on women flying combat missions. The House earlier repealed the combat-exclusion law as part of its annual defense authorization measure (HR 2100). The Kennedy-Roth amendment passes by voice vote after an amendment to table it fails 30 to 69. Kennedy says: "The issue is not whether women should be shot at. They already are—five women died from enemy fire during the Gulf War. The real issue is whether women can shoot back. The issue is not whether women should fly high-performance aircraft. They already do. Women serve as instructors for combat pilots. The real issue is whether we select our combat pilots based on ability or gender." (Clymer, p. 485; *1991 Congressional Quarterly Almanac*, p. 414)

*Summer-Fall* Bush nominates Clarence Thomas to the Supreme Court to replace the retiring Justice Thurgood Marshall. During his confirmation hearings, EMK criticizes Thomas for refusing to address issues he had written about in his past, especially in regard to abortion. "The vanishing views of Judge Thomas have become a major issue in these hearings," he says. A few days before the hearings begin Ricki Seidman, an aide to EMK on the Labor Committee, interviews Anita F. Hill, a law professor at the University of Oklahoma, about reports that Thomas had sexually harassed her when she worked for him at EEOC in the 1980s. Hill tells Seidman she is willing to talk about the sexual harassment, but wants her allegations kept confidential. EMK's Judiciary Committee staffers tell her that EMK cannot be involved. Hill contacts Judiciary Chairman Joseph Biden (D-DE) and is told that other committee members will not be notified about her allegations unless the FBI is permitted to investigate and Thomas is allowed to respond. After Hill agrees, the FBI investigates the allegations but their findings are inconclusive. The Senate Judiciary Committee deadlocks 7 to 7 on the Thomas nomination, with EMK voting against it. But the committee votes to send the nomination to the Senate without a recommendation. Only the committee's Democrats and Senator Strom Thurmond (R-SC) are aware of the FBI investigation at the time the committee votes. A few days later, the media reports Hill's allegation of sexual harassment against Thomas. In the face of public outcry, the Senate postpones the Thomas vote for a week and calls for a new round of hearings. During the three days of hearings, Hill testifies to Thomas' alleged harassment and Thomas categorically denies any of it happened. He calls the proceeding a "high-tech lynching." According to *Congressional Quarterly*, EMK and the other Democrats on the committee "made little effort to counterattack or defend Hill." Several other witnesses testify for both Hill and Thomas. The Senate eventually confirms Thomas to the Supreme Court by a vote of 52 to 48. On the day of the vote, EMK denounces the treatment Hill received

before the committee. Senator Arlen Specter (R-PA) responds by saying: “We do not need characterizations like ‘shame’ in this chamber from the Senator from Massachusetts.” According to Clymer, EMK “got the worst press of his career—some from his friends”—after the Thomas hearings. (Clymer, pp. 494-500; *1991 Congressional Quarterly Almanac*, pp. 274-85)

*November* Congress passes and Bush signs the Civil Rights Act of 1991 to counter a series of recent Supreme Court decisions that had made it more difficult to bring and win job discrimination lawsuits. Among other things, the bill allows for the first time money damages for victims of harassment and other intentional discrimination based on sex, religion, or disability. Although he keeps a low profile during the debate over the civil right’s bill, EMK works behind the scenes with Danforth to secure bipartisan support for it. EMK publicly praises Danforth’s efforts to reach a compromise with the Bush administration, lobbies Senate Democrats, and helps draft the final language. Although some civil rights groups are upset that the bill limits damages, EMK succeeds in raising the limits. (Clymer, pp. 491-2, 501-2; *1991 Congressional Quarterly Almanac*, pp. 251-52)

## 1992

*February* The Senate Labor and Human Resources Committee approves an NIH reauthorization bill (HR 2507), which includes increased funding for diseases primarily affecting women and provisions lifting the ban on research on aborted fetuses. The Senate passes the bill in April, but Bush vetoes it and the House fails to override the veto. (*1992 Congressional Quarterly Almanac*, p. 414-17)

*July* EMK and Victoria Reggie are married in a small ceremony at EMK’s home in McLean, Virginia.

The Labor Committee considers a modified NIH funding bill (S 2899). The bill would require researchers to first use fetal tissue from miscarriages and ectopic pregnancies rather than from elective abortions. The new bill would set specific funding amounts for research on breast cancer (\$325 million) and female reproductive cancer (\$75 million). Chairman EMK says of the new measure: “This is major legislation that should never have been vetoed in the first place. With these good faith revisions, it deserves to be enacted.” The House also considers a new NIH funding bill (HR 5495) but does not vote on it. The Senate votes to limit debate on S 2899 in October, but does not vote on the actual bill. (*1992 Congressional Quarterly Almanac*, p. 417)

*Fall* Senators Patty Murray (D-WA), Carol Moseley Braun (D-IL), Barbara Boxer (D-CA), Dianne Feinstein (D-CA), and Mikulski attend an EMK campaign fundraiser in Boston. In her remarks before an audience of about 1200 women, Mikulski recalls how EMK helped her get on the Appropriations Committee and calls him “one of the great Galahads of the United States Senate.” She says of herself and her fellow female Democratic Senators: “we are pro-choice, we are pro-change,



and we are pro-Teddy Kennedy . . . . We wanted to be there for Ted because Ted had always been there for us.” (Clymer, p. 534)

## 1993

### January

On the 13<sup>th</sup>, the Supreme Court in *Bray v. Alexandria Women’s Health Clinic* rules that a Reconstruction-era civil rights law, the Klu Klux Klan Act, cannot be used to issue injunctions against abortion clinic protestors. (*1993 Congressional Quarterly Almanac*, p. 354)

On the 22<sup>nd</sup>, President William J. Clinton issues an executive order allowing fetal tissue research on aborted fetuses. (*1993 Congressional Quarterly Almanac*, p. 358)

On the 26<sup>th</sup>, the Senate Labor and Human Resources Committee passes an NIH reauthorization bill (S 1) by a unanimous vote. The bill, sponsored by EMK, is similar to the one Bush vetoed in 1992 except for containing a new provision that would improve coordination of AIDS research. Among other things, S 1 would require the NIH to include more women and minorities in clinical research and employ more women scientists. It would also provide statutory authority for the NIH Office of Research on Women’s Health and would authorize \$400 million for research on breast cancer and other gynecological cancers. The Senate subsequently passes it. (*1993 Congressional Quarterly Almanac*, p. 358)

### March

On the 2<sup>nd</sup>, the House Energy and Commerce Committee approves its version of an NIH reauthorization bill (HR 4), which is very similar to S 1 except that it codifies Clinton’s order lifting the ban on fetal tissue research. The House subsequently approves it. (*1993 Congressional Quarterly Almanac*, pp. 359-60)

On the 10<sup>th</sup>, Dr. David Gunn, who performed abortions in Florida, is shot to death. An abortion protestor is later arrested and tried for the shooting. (*1993 Congressional Quarterly Almanac*, p. 358)

### May

A House and Senate conference on S 1, which includes EMK, reaches agreement and files a conference report. Both the House and the Senate approve the conference report later in the month. The final bill codifies Clinton’s order lifting the ban on fetal tissue research, bans immigration by HIV-infected foreigners, and contains the various provisions promoting women’s health research. Clinton subsequently signs the bill into law. (*1993 Congressional Quarterly Almanac*, p. 363)

The Labor Committee approves a bill reauthorizing the federal family planning program Title X, but it fails to reach the floor. The bill authorizes \$238 million for the program, a thirty-seven percent increase over fiscal 1993 funding. EMK votes for the bill. (*1993 Congressional Quarterly Almanac*, p. 352)

*June* The Senate Labor and Human Resources Committee votes (13-4) for a bill (S 636) to ensure the right of access to abortion clinics by making it a federal crime to use force or the threat of force to intimidate abortion clinic workers or women seeking abortions. EMK, the sponsor of the legislation, revises the measure to gain the backing of the administration and some Republicans on the committee. He broadens the bill to cover counseling centers that offer alternatives to abortions and allows an exception for the actions of parents or guardians of minor children. (*1993 Congressional Quarterly Almanac*, p. 355)

*November* The Senate passes S 636 by a vote of 69 to 30. EMK leads the floor debate on the bill. He says: "The Constitution guarantees the right of a woman to end a pregnancy, but the violence and blockades are designed to make it impossible for women to exercise the right.... This legislation will protect women, doctors, and other health care providers from the tactics of violence and intimidation that are often used by anti-abortion activists." Senator Robert Dole (R-KS) allows the measure to come to a vote after EMK agrees to reduce the penalties for non-violent offenders. Several other amendments are also passed. One amendment, offered by Senator Orrin Hatch (R-UT), protects religious freedom and penalizes those who damage churches. Another EMK amendment stipulates that nothing in the bill is intended to interfere with a person's First Amendment rights. A third amendment, offered by EMK and Boxer, stipulates that nothing in the bill affects the right of states to regulate abortions. The House approves its version of the abortion clinic access bill (HR 796). The measure is similar to S 636, but it does not contain the Senate amendments. The Senate and House do not agree on a compromise bill in 1993. (Clymer, p. 535; *1993 Congressional Quarterly Almanac*, pp. 355-56)

## **1994**

*April-May* House and Senate conferees reach agreement on abortion clinic access legislation. The compromise measure, proposed by EMK, includes the Senate bill's language protecting places of religious worship and lowering penalties for non-violent offenders while retaining the House version on several technical issues. Clinton signs it into law. (*1994 Congressional Quarterly Almanac*, pp. 356-57)

*August* EMK votes for the Violence Against Women Act of 1994, which is part of an omnibus crime bill (HR 3355). Among other things, the measure authorizes \$1.6 billion over six years for programs to fight violence against women, strengthens penalties for stalking, domestic abuse, and sexual crimes against women, and extends federal civil rights protection to violent crimes motivated by gender. The Senate approves the crime bill 61 to 38, and Clinton signs it. (*1994 Congressional Quarterly Almanac*, pp. 273, 289; U.S. Senate website, <http://www.senate.gov>)

*October* The Senate approves a \$67 million nurses' training bill sponsored by EMK. The legislation, an amendment to Title VIII of the Public Health Service Act, provides loan assistance, scholarships, and other types of financial support for nursing

schools and training programs. The bill does not go any further. (1994 *Congressional Quarterly Almanac*, p. 363)

## 1995

*Nov.-Dec.* Congress passes legislation (HR 1833) outlawing a form of late-term abortion known by abortion critics as “partial-birth abortion.” It is the first time either the House or Senate votes to criminalize an abortion procedure. The bill imposes fines or sentences of up to two years for doctors convicted of performing the procedure. The Senate passes the measure 54 to 44 with EMK voting against it. The Senate version of the bill includes an amendment, adopted 98 to 0, making an exception when a woman’s life is in danger and no other medical procedure could save her life. EMK votes for the amendment, but he warns that the language could leave doctors vulnerable to later legal sanction: “Doctors who literally saved a patient’s life could find themselves in a federal prison because a prosecutor and a jury concluded after the fact that the patient’s life could have also been saved using a different medical procedure that offended Congress’ sensibilities less.” EMK also votes for an amendment to expand the exception to preserve “the life and health” of the mother, but it fails 47 to 51. (1995 *Congressional Quarterly Almanac*, pp. 7-30, 31)

## 1996

*April-Sept.* In April, Clinton vetoes HR 1833. In September, the House overrides the veto but the Senate fails to do so by a vote of 41 to 57. (1996 *Congressional Quarterly Almanac*, pp. C-46, 47)

## 1997

*June* Senators EMK, Mikulski, Moseley Braun, and Olympia Snowe (R-ME) introduce legislation to require the federal government to make an annual assessment of the athletic opportunities for women at colleges and universities and the overall state of women’s athletics in higher education. EMK says that too many people “still believe that women and girls should be spectators in the grandstand, not participants on the playing field.” (*Portland Press Herald* [Maine], 06/22/1997)

*September* During Senate debate over a bipartisan bill (S 830) to overhaul the regulatory procedures of the Food and Drug Administration (FDA), EMK, allied with the Clinton administration, wins a compromise allowing states to continue regulating cosmetics. The bill originally calls for the FDA to create national standards for cosmetics and assume sole responsibility for their regulation. The compromise authorizes the creation of national standards, but it also permits states to issue warning labels except in cases in which the FDA rules. EMK argues that having the FDA be the sole regulator of cosmetics would endanger consumers, most of which are women. He says that the FDA has neither the staff nor the legal

authority to regulate cosmetics properly. (*1997 Congressional Quarterly Almanac*, pp. 6-20, 21)

## 1998

*July* The Senate Judiciary Committee considers legislation (S 1645) that would make it a federal crime to transport a minor across a state line for the purpose of avoiding a parental notification law. EMK proposes an amendment to the bill that would require that before a person could be charged with the crime the Justice Department would have to show that no state planned to prosecute and that the federal government had an interest in doing so. (*1998 Congressional Quarterly Almanac*, p. 3-5)

## 1999

*July-October* The Senate approves a Commerce-Justice-State (CJS) appropriations bill (S 1217) containing EMK language adding crimes motivated by a victim's gender, sexual orientation, or disability to the list of federal hate crimes and expanding federal jurisdiction over hate crimes to any activity linked to interstate commerce. The legislation also contains a Hatch provision providing new grants for states to prosecute such cases. The House version of the CJS bill does not contain the hate crime provisions, and they are dropped in conference. EMK introduces a separate hate crimes measure (S 622), but it is not voted on. EMK and Hatch work to reach a compromise on hate crimes language to insert into an appropriations bill but cannot find enough votes. (*1999 Congressional Quarterly Almanac*, pp. 2-18 to 2-20, 2-26)

*October* EMK votes for a non-binding amendment supporting the *Roe v. Wade* decision and affirming a woman's constitutional right to an abortion. The Senate approves the amendment 51 to 47 during debate over a measure to ban "partial birth" abortion (S 1692). The Senate passes the bill 63 to 34, but cannot overcome Clinton's veto. (*1999 Congressional Quarterly Almanac*, p. C-20)

## 2000

*June* EMK votes against tabling an amendment to a defense authorization bill (S 2549) that would allow military women and their dependents to obtain abortions at overseas military hospitals, if they pay for the procedure themselves. The motion passes 50 to 49. (*2000 Congressional Quarterly Almanac*, p. S-26)

The Judiciary Committee votes 17 to 0 to reauthorize the 1994 Violence Against Women Act (S 2787). The bill would authorize more than \$3 billion over five years for grant programs to fight violence against women. Congress overwhelmingly approves the reauthorization of the act and Clinton signs it into law as part of an omnibus anticrime bill (HR 3244). (*2000 Congressional Quarterly Almanac*, pp. 15-19, 15-23)

*June-Sept.* The Senate approves (57 to 42) an EMK amendment to its version of a defense authorization bill (S 2549) broadening the definition of federal hate crimes and expanding federal jurisdiction over them. In September, the House, in a non-binding resolution, instructs its conferees to accept the Senate hate crimes language, but House-Senate conferees eventually drop the provisions from the final version of the defense bill. (*2000 Congressional Quarterly Almanac*, p. 15-27; *The New York Times*, 06/21/2000)

## **2001**

*April* The day after “Equal Pay Day,” which marks the day when women’s average earnings for the previous year and the current year to date are supposed to equal the average men earned the previous year, EMK calls for Congress to eliminate wage discrimination through the passage of legislation meant to strengthen the Equal Pay Act, originally signed by President Kennedy. The legislation would eliminate loopholes that enable employers to evade the act and would authorize a study on wage disparities. The legislation also would prevent employers from prohibiting the sharing of wage information among colleagues, making it easier for employees to evaluate their pay. EMK repeats the call for wage discrimination legislation in 2006. (*Congressional Record*, 04/04/2001)

## **2001**

The Judiciary Committee passes a hate crimes bill (S 625) sponsored by EMK. (*2002 Congressional Quarterly Almanac*, p. 13-11)

*March* EMK issues a joint resolution proposing an equal rights amendment to the Constitution. EMK says: “In the absence of the ERA, too little progress has been made on women's rights, especially in the area of economic opportunity. An unconscionable gap between the earnings of men and women persists in the workforce.” (*Congressional Record*, 03/22/2001)

## **2002**

*June* Democratic leaders pull the hate crimes bill (S 625) from the Senate floor after a cloture motion fails 43 to 54. (*2002 Congressional Quarterly Almanac*, p. 13-11)

## **2003**

*March* EMK votes against a bill to outlaw “partial birth” abortion except to save the life of the mother (S 3). The Senate approves the bill 64 to 34 and President Bush signs it. It is the first federal law restricting abortion since *Roe v. Wade*. (*2003 Congressional Quarterly Almanac*, pp. 3-3, S-15)

## 2004

*April*

After a top Vatican official says that priests should deny communion to political figures who support abortion, EMK reaffirms his support for abortion rights. EMK calls the statement "an opinion by one member in the Vatican circle . . . but he's not speaking for the pope. That's a major difference. Faith is extremely important to me. . . . I'm going to continue to follow the tenets of the church." (*The Providence Journal* [Rhode Island], 04/24/2004)

*June*

The Senate (65 to 33) approves a hate crimes amendment sponsored by Senator Gordon Smith (R-OR) to a defense authorization bill (S 2400). The amendment is dropped in conference. EMK and Smith have worked together on a bipartisan hate crimes bill since 2000. (*2004 Congressional Quarterly Almanac*, p. 6-9; *The Christian Science Monitor*, 06/23/2000)

*March*

EMK votes against legislation (HR 1997) criminalizing the harming of unborn fetus during the commission of a federal crime against a pregnant woman. The Senate clears the measure 61 to 38, and Bush signs it into law. (*2004 Congressional Quarterly Almanac*, pp. 12-3, S-15)

## 2006

*May*

EMK withdraws an amendment to expand the definition of hate crimes from a bill to create a national sex registry. The Senate then votes to approve the bill in an unrecorded vote. It marks the seventh time EMK has failed to muster enough votes to pass a hate crimes bill. "It is clear that the Republican leadership will do anything to stop our hate crimes bill," EMK says. (*Sentinel and Enterprise*, Fitchburg, Mass., 05/06/2006)

## CIVIL RIGHTS ACT OF 1991

*Prepared by Nadia Shairzay*

*Miller Center, University of Virginia, 01/24/2006*

---

**Background:** The Supreme Court’s decision in *Wards Cove* reallocated the proof burden making it more onerous for the plaintiff to prove discrimination. Under the 1971 *Griggs* decision, to establish a case of unintentional discrimination, the plaintiff had to present evidence of a disparate impact resulting from an employment practice. Then the burden of proof shifted to the employer who could rebut the claim with a business necessity defense that the employment requirement had a manifest relationship to the employment in question. The 1989 *Wards Cove* decision required the plaintiff to show disparate impact through evidence of a statistical imbalance in the composition of the employer’s workforce compared to the qualified labor pool. The employee also had to isolate and identify which specific employment practices were responsible for the statistical disparities. Under *Wards Cove* the employer could rebut discrimination claims by offering a business justification for the use of the challenged employment practice. The employer did not have to prove his defense; it was accepted unless the plaintiff could disprove its legitimacy. Moreover, the justification did not have to have a “manifest relationship” to the job as per *Griggs*. Under *Wards Cove*, a wider range qualified as business necessity justifications.

Legislative proposals to address this triggered debate over whether an employer could set up a qualification (i.e. business necessity justification) for employment that had nothing to do with the ability to do the job. Opponents insisted that the legislative proposals would cause employers to “hire by the numbers.”

1989	5 Supreme Court decisions altered prior interpretations of federal employment law affecting burdens of proof requirements involving “disparate impact” discrimination and “mixed motive” discrimination under Title VII of the Civil Rights Act of 1964. The effect was to negatively affect the ability of victims of discrimination to obtain remedies for intentional and disparate impact discrimination.
February 1990	H.R. 4000 introduced by Hawkins with 122 original cosponsors (eventual 183); S. 2104 by Kennedy with 37 original cosponsors (eventual 49). Danforth became a cosponsor on 05/17/90.
July 18, 1990	S. 2140 adopted with amendment by Senate vote of 65-34
August 3, 1990	H.R. 4000 adopted by House vote of 272-154
October 22, 1990	S. 2104 (after conference) vetoed by President Bush.
October 24, 1990	Senate failed to override veto by 66-34.
January 1, 1991	H.R. 1 introduced by Brooks with 175 cosponsors. Provided for burdens of proof when allegation of unlawful employment practice is based on disparate impact. Declared when employment practice is alleged to have

mixed motives, unlawful employment practice is established when discriminatory basis was a motivating factor, even though other factors also contributed. Allowed certain types of compensatory damages and punitive damages (with caps) for intentional discrimination.

- June 4, 1991 S. 1207, S. 1208, S. 1209 introduced by Danforth with 8 cosponsors—referred to Labor Committee. S. 1207 dealt with “mixed motives” and provided limited types of relief (not damages). S. 1208 dealt with disparate impact and declared mere existence of statistical imbalance is not alone sufficient to establish a prima facie case of employment discrimination. Defined “required by business necessity” to mean that challenged practice must 1) in cases of *selection*, bear manifest relationship to requirements for effective job performance and 2) in case of other practices, bear manifest relationship to a legitimate objective of employer. S. 1209 dealt with compensatory and punitive damages (with caps) for intentional discrimination.
- September 24, 1991 Compromise bill S. 1745 introduced by Danforth with 6 cosponsors (Chafee, Durenberger, Jeffords, Cohen, Hatfield, and Specter). Became P.L. 102-166.
- S. 1745 defined “required by business necessity” as must: 1) in case of practices used as job qualifications or to measure the ability to perform the job, bear a manifest relationship to the employment; and 2) in the case of other practices, bear a manifest relationship to a legitimate business objective of employer. This language was broader than in S. 1208 because it affected more than just selection process (promotions etc.).
- Provided burdens of proof when allegation of unlawful employment practice is based on assertion of disparate impact. Used similar language to H.R. 1 on discriminatory intent and mixed motives.
- October 22, 1991 Cloture invoked 93-4 on S. 1745.
- October 30, 1991 S. 1745 passed Senate, as amended, by 93-5.
- November 7, 1991 S. 1745 passed House by 381-38.
- November 21, 1991 S. 1745 became Public Law No: 102-166.