



EDWARD M. KENNEDY ORAL HISTORY PROJECT

Interviewer's Briefing Materials **Edward M. Kennedy Interview, 4/3/2007**

Robert A. Martin, Research Director

Miller Center Documents¹

- Edward M. Kennedy Civil Rights Legislation Timeline.
- Edward M. Kennedy Civil Rights Legislative Highlights.
- Overview memo on open housing legislation. (Prepared for KOHP interview with Walter Mondale.)
- Overview memo on Edward W. Brooke and Civil Rights. (Prepared for KOHP interview with Edward W. Brooke.)
- Overview memo on Bussing for Desegregation 1974-1975.

Secondary Source Materials

- Adam Clymer, *Edward M. Kennedy: A Biography* (New York: William Morrow, 1999) pp. 47-49, 56-58, 65-70, 85-86, 163-166, 222-225.
- James MacGregor Burns, *Edward Kennedy and the Camelot Legacy* (New York: W.W. Norton & Company, Inc., 1976) pp. 101-102, 110, 119-121, 126-130, 178-181.
- Edward M. Kennedy, "Address by Senator Edward M. Kennedy to the Annual Convention of the Southern Christian Leadership Conference, Jackson, Mississippi, 08/08/1966."
- "Congress Enacts Open Housing Legislation," *1968 Congressional Quarterly Almanac* (Washington: Congressional Quarterly Almanac, 1969) pp. 152-154.
- Theo Lippman, *Senator Ted Kennedy: The Career behind the Image* (New York: Norton, 1976) pp. 40-45, 88-92, 99-110.
- Edward M. Kennedy, "Poll Tax Ban Sought," *The New York Times*, 05/10/1965.
- "Voting Rights Act of 1965," *1965 Congressional Quarterly Almanac* (Washington: Congressional Quarterly Almanac) pp. 533, 545-546, 549, 550.
- Stephen Tuck, "Making the Voting Rights Act" in Richard Vallely, ed. *The Voting Rights Act: Securing the Ballot* (Washington, DC: CQ Press, 2006) pp. 77-94.
- Colin D. Moore, "Extensions of the Voting Rights Act," in Richard Vallely, ed. *The Voting Rights Act: Securing the Ballot* (Washington, DC: CQ Press, 2006) pp. 95-111.

¹ 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.

- J. Anthony Lukas, *Common Ground: A Turbulent Decade in the Lives of Three American Families* (New York: Alfred A. Knopf, 1985) pp. 258-271.

Oral History Interviews

- Charles Mathias interview, Kennedy Oral History Project, Miller Center of Public Affairs, University of Virginia, 03/10/2006.
- Charles Ferris interview, Kennedy Oral History Project, Miller Center of Public Affairs, University of Virginia, 06/29/2006.
- Orrin Hatch interview, Kennedy Oral History Project, Miller Center of Public Affairs, University of Virginia, 05/24/2006.
- Barbara Souliotis interview, Kennedy Oral History Project, Miller Center of Public Affairs, University of Virginia, 07/12/2005.
- Eddie Martin interview, Kennedy Oral History Project, Miller Center of Public Affairs, University of Virginia, 04/20/2005.
- Edward Brooke interview, Kennedy Oral History Project, Miller Center of Public Affairs, University of Virginia, 08/16/2006.
- Mary Frackleton interview, Kennedy Oral History Project, Miller Center of Public Affairs, University of Virginia, 07/08/2005.
- Marty Nolan interview, Kennedy Oral History Project, 09/14/2006.
- Gerard Doherty interview, Kennedy Oral History Project, Miller Center of Public Affairs, University of Virginia, 10/10/2005.
- Burt Wides interview, Kennedy Oral History Project, Miller Center of Public Affairs, University of Virginia, 02/02/2007.

Documents Provided by Senator Kennedy

- “Materials for Oral History Taping on Early Civil Rights Issues.”
- “Addendum.”

EDWARD M. KENNEDY AND CIVIL RIGHTS LEGISLATION

Prepared by Anne Mariel Peters, Emily Jane Charnock and Rob Martin

Miller Center of Public Affairs, University of Virginia, 3/27/2007

1963

March Judiciary Committee Chairman James O. Eastland (D-MS) places Senator Edward M. Kennedy (EMK) on the constitutional rights and immigration subcommittees. (Adam Clymer, *Edward M. Kennedy: A Biography*, New York: William Morrow and Company, 1999, p. 46)

June President John F. Kennedy (JFK) gives an important nationally-televised speech to the American people on civil rights on the 11th.

NAACP field secretary Medgar Evers is killed in Jackson, Mississippi on the 12th.

The 1963 Civil Rights Bill is introduced in the Senate on the 19th. The bill “promise[s] equal access to employment and to motels and lunch counters,” broadens federal power on civil rights matters, and “trie[s] to prevent states from denying the vote to anyone with a sixth-grade education.” However, little progress is made on the bill over the summer. (Clymer, p. 48)

1964

April EMK gives his maiden speech on the Senate floor on the 9th in support of the 1964 Civil Rights Act. EMK says, “No memorial oration or eulogy could more eloquently honor President Kennedy’s memory than the earliest possible passage of the civil rights bill for which he fought so long.” (Clymer, pp. 57-60)

June After a cloture vote ends debate on the 19th, EMK votes with the majority to pass the 1964 Civil Rights Act, 73-27, a year to the day after JFK had sent the legislation to Congress. After casting his vote, EMK’s back is broken in a plane crash while traveling to the Democratic state convention in Springfield, Massachusetts. (*1964 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly, Inc., 1964, p. 26; Clymer, pp. 57-60)

August The Gulf of Tonkin Resolution is passed by Congress.

September Robert F. Kennedy (RFK) resigns as attorney general. He is elected to the U.S. Senate from the state of New York in November.

1965

January Still recovering from the plane crash the previous June, EMK joins his brother RFK in Washington, D.C. to be sworn into the Senate.

March

On the 15th, President Lyndon B. Johnson (LBJ) delivers a speech to a joint session of Congress, requesting action on legislation that would allow federal officials to register voters in the South. EMK is reportedly eager to have a role in the voting rights legislation this year, and Washington civil rights lawyer Joseph Rauh advises EMK's legislative assistant, David Burke, that EMK should work on the poll tax. Over the next few weeks, EMK consults with numerous experts on the issue, including Rauh, Federal Circuit judge Thurgood Marshall, and Harvard Law professor Charles Haar. EMK holds one of his first issues dinners at his home in Georgetown with constitutional scholar Paul Freund, Howard Law School Dean Clarence Clyde Ferguson, and Howard professors Herbert Reid and Jeanus Parks to discuss the constitutional arguments. "This technique of collecting experts to brief him over dinner was one Kennedy was to use on issue after issue, from disarmament to paroling convicts to the meaning of the 1994 elections." (Clymer, pp. 66-67)

Civil rights marches from Selma to Montgomery, Alabama are met with resistance from state troopers and the Dallas County Sheriff's Department. James Reeb, a white Unitarian minister from Boston, Massachusetts, is killed in Selma on the 11th after the second march by a group of white segregationists. (Clymer, pp. 65-66)

April/May

LBJ's proposals are introduced as S 1564, the Voting Rights Act of 1965 (VRA), which is sent to the Senate Judiciary Committee with instructions to report by April 9th. EMK is part of a liberal group on the committee which significantly strengthens the bill – extending coverage to areas where discriminatory practices may not be apparent, but where black registration was low, authorizing the use of poll watchers, and making private citizens criminally liable for interference with voter rights. EMK leads the fight to add the most dramatic strengthening measure - a poll-tax ban for state and local elections. EMK's amendment passes the Judiciary Committee by a 9-5 vote on April 8th, but the Johnson administration and some voting rights supporters are reportedly concerned the ban is unconstitutional, and prefer to direct the Attorney General to challenge the constitutionality of existing poll taxes in court. Senate Majority Leader Mike Mansfield (D-MT) and Attorney General Nicholas Katzenbach are also reportedly concerned that the amendment might endanger other more achievable civil rights goals. A week later, EMK defends his amendment in a floor speech largely written by Rauh, gaining more support than anticipated and forcing Mansfield and Katzenbach to work hard to generate opposition to the amendment. Among those Katzenbach recruits is Senator Eugene McCarthy (D-MN). (*Congress and the Nation, A Review of Government and Politics, Vol. II, 1965-1968*, Washington, D.C.: Congressional Quarterly, Inc., 1969, p. 359; Burton Hersh, *The Education of Edward Kennedy*, New York: William Morrow and Company, Inc., 1972, p. 232; Clymer, pp. 68-69)

May

Mansfield and Minority Leader Everett Dirksen (R-IL) delete the poll-tax ban from the VRA bill. On the 11th, EMK tries to reattach it, but is narrowly defeated

45-49, with McCarthy one of only two northern Democrats to vote against (Mansfield is the other). On the 19th, a Mansfield-Dirksen proposal that the Attorney General seek federal court orders against discriminatory poll taxes passes 69-20, and EMK votes in favor. The VRA is passed on August 4th and signed by LBJ on the 6th. It suspends literacy tests for voting and empowers the Attorney General to appoint federal regulators to supervise voter registration in states that are still using literacy tests as of November 1964. The Supreme Court subsequently rules the poll tax unconstitutional in March 1966. (Hersh, p. 232; Clymer, pp. 68-69, 104; *1965 CQ Almanac*, pp. 533, 1037, 1039; *Congress and the Nation, Vol II.*, pp. 359-360)

August LBJ proposes to Congress an overhaul of the nation's immigration policy, which would allow for an unlimited number of Western European immigrants to enter the country legally each year. (Clymer, pp. 70-71)

September EMK manages the immigration bill on the Senate floor. Both Houses pass the bill, which LBJ signs in early October. (*1965 Congressional Quarterly Almanac*, Washington, D.C.: Congressional Quarterly Inc., 1966, pp. 459-481; James G. Gimpel and James R. Edwards, Jr., *The Congressional Politics of Immigration Reform*, Allyn and Bacon: Boston, 1999, pp. 99-103, 109)

October Serving as Chairman of the Judiciary's Subcommittee on Refugees and Escapees, EMK travels to South Vietnam for his first inspection tour of the country from the 23rd to the 27th. (Clymer, pp. 79-82)

1966

March EMK proposes a bill to provide federal assistance for desegregation busing (S 2928), which would provide "assistance to local school boards acting to correct racial imbalance in their schools." The bill has several co-sponsors, including Senator Robert F. Kennedy (D-NY). The bill would also withhold federal money from schools instituting *de facto* segregation, but the bill does not advance. (Clymer, p. 85; *CQ Almanac* 1966, p. 1087)

August EMK delivers an address to the annual convention of the Southern Christian Leadership Conference in Jackson, Mississippi on the 8th. (Taylor Branch, *At Canaan's Edge: America in the King Years 1965-1968*, NY: Simon & Schuster, 2006, p. 513)

EMK visits a neighborhood health center funded by the Office of Equal Opportunity (OEO) in the Columbia Point public housing project in Boston. It is one of eight health centers funded by the OEO. After his visit, EMK sponsors and successfully manages community health center legislation through Congress. The \$51 million Neighborhood Health Center Amendment funds 30 health centers the first year. Over the next four years OEO helps to start about 100 neighborhood

health centers and other health service projects. (Clymer, pp. 86-88; Paul Starr, *The Social Transformation of Medicine*, New York: Basic Books, 1992, p. 371)

September The Senate bypasses the Judiciary Committee to begin debating the 1966 Civil Rights Act, which the House had passed in August (HR 14765) with provisions for open housing. Republicans filibuster and Democrats kill the bill after two unsuccessful votes for cloture. EMK had co-sponsored the original Senate companion measure to the House-passed bill (S3296), but the full committee had taken no action despite the urging of ten committee members, including EMK, to report it. Majority leader Mansfield therefore intercepts the House bill and places it straight on the Senate calendar. EMK votes in favor of both cloture motions. Reportedly, the most controversial part of the bill was the open housing provision, which would have barred all racial discrimination in housing rentals and sales. (1966 *CQ Almanac*, pp. 469-472)

1967

February LBJ proposes an omnibus Civil Rights Act of 1967, which consists of several measures, including a provision banning housing discrimination based on race, religion, or national origin. LBJ goes ahead with this inclusion despite advice from Mansfield that the prospects for passing housing discrimination legislation in 1967 are no better than 1966, and House Minority Leader Gerald Ford's (R-MI) serious reservations. The Senate Judiciary Subcommittee on Constitutional Rights, chaired by Sam J. Ervin (D-NC) and of which EMK is a member, holds the only hearings on the omnibus bill (S 1026), reportedly so that Ervin can expose and denounce the most controversial aspect of the bill – open housing. (*Congress and the Nation*, Vol. II, p. 375; 1967 *CQ Almanac*, p. 774)

March Johnson Administration forces split the civil rights bill into separate provisions so that it reportedly can remove the open housing provisions and improve the chances for the bill's other components. EMK opposes the move to split the bill into separate provisions, which include equal employment opportunity, state jury reform, federal jury reform, federal protection for civil rights workers, anti-riot measures, and extending the life of the Civil Rights Commission, as well as open housing, which is introduced by Senator Walter Mondale (D-MN) and a bipartisan group of twenty-one other senators (including both EMK and RFK). Despite this co-sponsorship, EMK argues that civil rights leaders are being short-changed in the break up of the omnibus legislation. "We can give them now, for dropping the housing title, what we could have given them a year and half ago when they were first proposed together. We've got to do better than that." (Clymer, p. 97; 1967 *CQ Almanac*, "Senate Bills" section)

August Testifying before the Senate Judiciary Committee on the anti-riot measure on the 2nd, EMK calls the legislation "a fraud on the American people," presenting "an appearance of action when there has been only reaction," and potentially lulling "the Congress and the public into a sense of complacency about having done

something to control riots when, in fact, we have done nothing.” (1967 CQ Almanac, p. 784) EMK instead emphasizes the need to attack the root causes of social disorder. Hearings on the open housing measure itself (S 1358) are held in the Housing and Urban Affairs Subcommittee of the Banking and Currency Committee from the 21st to the 23rd, but no further action is taken. (1967 CQ Almanac, p. 791)

November On the 21st, Congress enacts the Mental Retardation Amendments of 1967, which extends and expands programs to construct and staff educational facilities for the mentally retarded, and provide teacher training in specialized physical education. EMK sponsors this measure in the Senate. (1967 CQ Almanac, p. 448)

December Of all the measures in the original omnibus bill, only the extension of the Civil Rights Commission passes (HR 10805, S 1359, PL 90-198). S 1359 is sponsored by Senator Philip Hart (D-MI) and co-sponsored by EMK and RFK. Following a House-Senate conference, it is signed into law on the 14th. (1967 CQ Almanac, p. 784)

1968

January LBJ presents his annual civil rights message to Congress, requesting that five measures be enacted: open housing, civil rights protection, enforcement powers for the Equal Employment Opportunity Commission, and reform of state and federal jury selection procedures.

February Along with Senator Edward Brooke (R-MA), Mondale introduces open housing legislation as an amendment to HR 2516, the House-passed civil rights protection bill that was introduced in the Senate this month. Mondale’s bill is essentially the same as the administration bill, S 1358, from 1966. Minority Leader Dirksen, a longtime opponent of open housing legislation, appears more amenable this time around, engineering a compromise bill, the “Fair Housing/Civil Rights Act of 1968.” Mondale kills his own bill to allow for debate on the compromise.

March EMK is a member of the coalition supporting the compromise housing bill, and supports the attachment of a gun control amendment, along with several anti-riot measures, sponsored by Senator Russell Long (D-LA). The bill prohibits discrimination in the sale and rental of housing (and is expected to apply to eighty percent of housing if passed). The Senate invokes cloture on March 4th and passes the bill 71-20 on March 11th. EMK votes in favor of the bill and cloture.

April Rev. Martin Luther King, Jr. is assassinated on the 4th in Memphis, Tennessee. RFK learns of King’s death while on the presidential campaign trail, and delivers an impromptu speech in inner-city Indianapolis calling for racial reconciliation. He is widely credited for the low incidence of race riots in Indianapolis, while riots erupted in other major U.S. cities following word of King’s death. On the

11th, in the wake of King's assassination, LBJ signs the open housing bill into law. (1968 *CQ Almanac*, pp. 152, 162; *The New York Times*, 02/17/1968)

June On the 5th, RFK is assassinated in Los Angeles after winning the California Democratic primary.

1969

January EMK defeats Russell Long (D-LA) for the post of Senate Majority Whip. (James MacGregor Burns, *Edward Kennedy and the Camelot Legacy*, New York: W.W. Norton & Company, Inc., 1976, p. 348; Clymer, pp. 132-134)

April As Chairman of the Subcommittee on Indian Education, EMK leads a congressional delegation on a tour of remote and poverty-stricken Eskimo villages in Alaska. RFK had been scheduled to participate in a similar trip the previous year. EMK is accompanied by Senators Harold Hughes (D-IA), Henry Bellmon (R-OK), George Murphy (R-CA), William Saxbe (R-OH), Ted Stevens (R-AK), and Mondale, as well as Rep. Howard Pollock (R-AK), staff assistants, and members of the press. EMK is told by Eskimo leaders that the Board of Indian Affairs (BIA) is doing a poor job managing native schools. Eskimo leaders make repeated requests that the BIA hire and train bilingual teachers, build regional high schools so that children do not have to travel hundreds of miles from home to go beyond the 8th grade, and help with health, housing, and jobs. (*The Washington Post*, 4/6/1969, 4/13/1969)

July EMK's car accident at Chappaquiddick, Massachusetts.

August President Richard Nixon nominates Federal Circuit Judge Clement F. Haynsworth to replace Supreme Court Justice Abe Fortas. Haynsworth's nomination is immediately opposed by the National Association for the Advancement of Colored People (NAACP), the American Jewish Congress, and the Americans for Democratic Action, who object to Haynsworth's opinions in several civil rights cases before the Fourth Circuit Court of Appeals. EMK helps lead the fight against Haynsworth's nomination, which is rejected by the Senate 45-55 in November. (Henry B. Hogue, "Supreme Court Nominations Not Confirmed, 1789-2004," Congressional Research Service, Library of Congress, 03/21/2005, p. CRS-21; *The Wall Street Journal*, 8/19/1969)

December EMK votes with the majority on the 22nd in favor of the 'Philadelphia Plan,' a bill intended to increase minority employment in federal construction projects by encouraging quotas. In October, EMK had testified before a Judiciary subcommittee in support of the plan. Nixon signs the bill into law on the 26th. (1969 *CQ Almanac*, pp. 417-418, 681)

1970

January Nixon nominates Federal Circuit Judge G. Harrold Carswell to the Supreme Court. The nomination is immediately opposed by the Leadership Conference on Civil Rights (LCCR) on the basis of Carswell's civil rights record. Senators Joseph Tydings (D-MD), Birch Bayh (D-IN), Joseph Biden (D-DE), and EMK, aided by staffer Jim Flug, lead the fight against the nomination, which is rejected by the Senate 51-45 in April. (Clymer, pp. 161-163; Hogue, p. CRS-21; *1970 CQ Almanac*, pp. 20-S, 21-S)

February EMK circulates a memo among his colleagues advocating the lowering of the minimum voting age to eighteen on the basis of legal and political considerations. The memo, drafted by aide Carey Parker, argues that although states have been given primary responsibility for determining voter eligibility, under the Fourteenth Amendment Congress has the power to legislate voter qualifications if it finds that the states are imposing unreasonable or discriminatory requirements. Bayh, who is chairman of the Judiciary Subcommittee on Constitutional Amendments, has been advocating a constitutional amendment lowering the voting age and is allegedly sympathetic to EMK's proposal. EMK indicates that he might tie the minimum voting age legislative amendment to the VRA extension bill in early March, although there are concerns that this might hamper efforts to defeat a Southern filibuster on the VRA, which expires this year. Because of these concerns, EMK suggests he will withdraw his amendment if it will jeopardize passage of the VRA. (*The Washington Post*, 2/26/1970; *The New York Times*, 2/23/1970)

From the 18th to 26th, the Senate Judiciary Subcommittee on the Constitution holds hearings on HR 4249, the VRA extension, which had passed the House in late 1969. The House bill included several amendments recommended by the Nixon administration, most prominently, the elimination of requirements on many Southern states to file election law changes with the Attorney General. The bill moved to the Senate floor without committee recommendation due to referral instructions that it be reported by March 1st – a measure designed to prevent obstruction by Eastland, the Judiciary Committee Chairman. (*1970 CQ Almanac*, pp. 193, 194)

March On the 2nd, EMK and eight other co-sponsors introduce a compromise VRA extension, engineered by Hart and Senate Minority Leader Hugh Scott (R-PA), which is supported by a majority of Judiciary Committee members. The bill includes a five-year extension and two provisions from the administration's bill: a five-year nationwide ban on literacy tests and a uniform sixty-day residency requirement (this requirement was later shortened to thirty days on the recommendation of Senator Barry Goldwater (R-AZ), a measure reflected in the final bill). The bill has the backing of the LCCR. (*1970 CQ Almanac*, p. 196)

Concurrently, throughout February and March, the Senate Judiciary Subcommittee on Constitutional Amendments holds hearings on a constitutional amendment to lower the voting age to eighteen. EMK and Goldwater testify on the 9th. Though Goldwater agrees with EMK that the voting age can be reduced by statute, he prefers introducing it as a separate bill rather than attaching to the VRA. Mansfield and EMK favor introducing it as an amendment. So far, state and local politicians have expressed concern that the amendment could change the composition of school boards and spark a move to reduce minimum ages for drinking and jury service. The Nixon administration, reflecting these concerns, endorses an amendment or statute that is limited to national elections only. (1970 *CQ Almanac*, pp. 713-714; *The New York Times*, 3/10/1970)

On the 4th, Mansfield introduces an amendment to the VRA proposing to lower the minimum voting age to eighteen for federal, state, and local elections. The amendment is co-sponsored by EMK, Senator Warren Magnuson (D-WA), and six other Senators. Despite resistance from some members of the House, who are reportedly concerned with how the amendment could affect their districts, and from some civil rights groups, who are reportedly concerned about the tactic of attaching the amendment to the VRA extension, the Mansfield proposal survives an attempt to table it on the 11th, and passes 64-17 on the 12th. On the 13th, the Senate passes the VRA extension 64-12, extending the VRA for five years, suspending literacy tests in all states, and lowering the minimum voting age to eighteen. (1970 *CQ Almanac*, pp. 195-197)

May On the 15th, the Senate Interior and Insular Affairs Committee, which has jurisdiction over the BIA, reports a resolution that would allow the Department of the Interior to contract with state and local education agencies to build or acquire classrooms and other facilities near Indian reservations, specify equal standards of education for Indian and non-Indian students, and encourage boarding schools to be eliminated from the Indian education program at the earliest possible date. The bill is opposed by the Nixon administration. On the 19th, the Indian education bill is passed by voice vote without debate. The House does not take action on the bill this year. (1970 *CQ Almanac*, p. 953)

June The House agrees to the Senate amendments to the VRA extension on the 17th, and Nixon signs it into law on the 22nd (PL 91-285). In his signing statement, Nixon opposes the statutory alteration of the voting age on the grounds of constitutionality, and encourages Congress to begin work to pass a constitutional amendment. (1970 *CQ Almanac*, p. 192)

October Congress clears the Developmental Disabilities Services and Facilities Construction Amendments of 1970, legislation proposed by EMK to extend and expand federal programs for treatment of mental retardation and developmental problems. EMK claims that existing legislation, geared towards the mentally retarded, has excluded others who might benefit. (1970 *CQ Almanac*, p. 595)

Following passage in the House, Senate debate on an equal rights amendment (ERA) to the Constitution begins on the 7th, though its prospects for success appear dim. EMK and Charles McC. Mathias seek to attach an amendment to it providing full representation to the District of Columbia, though they offer to withdraw it if it will prevent passage of the ERA. No action is taken on the amendment or the bill itself before recess. (1970 CQ Almanac, p. 708; *The New York Times*, 10/8/1970; *The Washington Post*, 10/13/1970)

December The test case encouraged by Nixon regarding the eighteen year old voting age legislation is decided by the Supreme Court on the 21st. The legislation is upheld for federal elections, but found unconstitutional at the state and local level (*Oregon v. Mitchell*). Although he prefers the law to be applied at both the state and federal levels, EMK is pleased that the law still applies to federal elections, calling the Court's ruling "a victory for Congress." (1970 CQ Almanac, pp. 192, 198; 1971 CQ Almanac, p. 475; Clymer, pp. 163-165; *The Washington Post*, 12/22/1970)

1971

January EMK loses his Majority Whip post in a close vote to Senator Robert Byrd (D-WV). (Clymer, pp. 171-173)

EMK becomes chairman of Labor and Public Welfare's Subcommittee on Health.

February On the 25th, EMK and fifteen other senators, including Mondale, introduce the "Indian Education Amendment" to an aid-to-education bill (S659), which gives Indian communities more control over schools (though it primarily affects students in *public*, rather than BIA schools). EMK notes on the floor that "the Senate can be proud of this step toward giving Indians a controlling voice in the education of their children." (Clymer, p. 185) These provisions are eventually deleted from the aid-to-education bill and introduced as a separate bill (S2482). (1971 CQ Almanac, pp. 391, 583, 623; Clymer, p. 185)

March In response to the voting age test case, the Senate passes on the 10th, and the House on the 23rd, a Constitutional amendment lowering the voting age in federal, state, and local elections to 18. EMK had attempted to attach a rider providing full D.C. representation, but this amendment was tabled by a vote of 68-23. The 26th Amendment secures ratification by three-fourths of the states on June 30th. (1971 CQ Almanac, pp. 475-476)

April In *Swann v. Charlotte-Mecklenburg Board of Education*, the Supreme Court rules that forced busing of students to achieve racial desegregation may be ordered.

October Nixon nominates former ABA president Lewis Powell, Jr. and Assistant Attorney General William H. Rehnquist to the Supreme Court. EMK opposes the Rehnquist nomination, reportedly due in part to Rehnquist's civil rights and civil liberties record. The Judiciary Committee recommends Rehnquist 12-4, and

Senators John Tunney (D-CA), Hart, Bayh, and EMK prepare a minority report opposing confirmation. The Senate approves the Rehnquist nomination 68-26 in December. (1971 CQ Almanac, p. 67-S; *The Washington Post*, 11/6/1971)

On the 8th, the Senate approves the Indian Education Act 57-0. The House takes no action on the bill in 1971. EMK says the bill is the culmination of his Indian Education subcommittee work, which is the subcommittee which RFK had also chaired from 1965-68. (1971 CQ Almanac, pp. 391, 622-623; Clymer, p. 185)

1971/1972 EMK undertakes a series of foreign trips to study the health care systems of other Western countries.

1972

February On the 22nd, the Senate begins reconsideration of S659, the aid to education bill it had passed in 1971. House action in November 1971 had produced a bill containing strong-anti busing measures, which was then returned to the Senate Labor and Public Welfare Committee in December. The committee voted to substitute the Senate plan but add a statement that busing was not *required*. In debate, attempts are made to attach stronger anti-busing amendments, including one by Senate Robert Griffin (R-MI) which would strip federal courts of the power to order busing desegregation, prohibit the federal government from withholding federal funds to coerce busing and postpone the implementation of court orders for busing across school districts until all appeals are exhausted. The amendment is accepted 43-40 on the 25th. EMK votes against it. All five Democratic presidential nominees are absent from the vote. EMK takes to the floor after the vote, claiming that the amendment would effectively end all federal efforts to desegregate schools. However, with the return of several senators the following week, the Senate rejects the amendment 50-47, and then rejects 48-47 a slightly altered version offered by Senator Robert Dole (R-KS). A compromise measure, postponing the implementation of busing court orders until the appeals process was exhausted, is accepted on March 1st. EMK votes in favor of the bill and it is returned to the House. (1972 CQ Almanac, pp. 390, 392, 10-S, 12-S; *The Washington Post*, 2/26/1972, 3/2/1972)

On the 28th, the Senate passes by voice vote an amendment to S659 offered by Bayh that would prohibit sex discrimination in all educational programs receiving federal aid, excepting undergraduate admissions to private colleges. The original version of S659 passed in 1971 had no provisions on sex discrimination. Bayh's amendment is much stronger than the one passed by the House in 1971, which had prohibited discrimination in graduate schools but exempted *all* undergraduate admission policies. Bayh had offered a similar amendment to S659 in August 1971, but this was rejected as non-germane under the terms of the unanimous consent agreement. (1971 CQ Almanac, pp. 587, 596, 598; 1972 CQ Almanac, p. 393; *The New York Times*, 2/29/1972)

March Bayh proposes the Senate version of an ERA to the U.S. Constitution on the 14th, which states that “Equality of Rights under the law shall not be denied or abridged by the United States or by any state on account of sex.” EMK switches from opposing to favoring passage reportedly because more conventional alternatives, such as Supreme Court decisions or Equal Employment Opportunity Commission (EEOC) regulations, have proven unsuccessful. The Senate passes the bill on the 22nd, by a margin of 84-8. The House had approved the bill on October 12th, 1971. Ultimately, the ERA does not receive approval by the three-fourths of the state legislatures necessary for ratification. (Clymer, p. 185; *1972 CQ Almanac*, pp. 199-204)

On the 17th, Nixon details his anti-busing plans in a message to Congress, urging legislation that would “clearly define what the federal courts could and could not require.” (<http://www.presidency.ucsb.edu/ws/print.php?pid=3776>)

May In a rare move, the House votes on March 8th and May 11th to restrict its conferees in the discussion of S659 regarding the anti-busing amendments. The conference concludes in May with a slight House compromise on busing, and on the 24th the Senate approves the final conference report 63-15. Northern liberals senators such as EMK, Mondale, and Senator Jacob Javits (R-NY) are reportedly among the few to oppose the anti-busing provisions. The House accepts the conference report June 8th. (*1972 CQ Almanac*, pp. 385-394, 397, 27-S; *The Wall Street Journal*, 5/25/1972)

June On the 23rd, Nixon signs the 1972 Education Amendments (S 659 —PL 92-318) into law, which includes the landmark Title IX prohibition against sex discrimination in almost all education programs receiving federal funds. The 1971 Indian Education Act is also incorporated as part of the Amendments, as the House had taken no action on that bill in 1971. It becomes Title IV. (*1971 CQ Almanac*, p. 622; *1972 CQ Almanac*, p. 387)

1973

February The Senate Labor and Public Welfare Committee approves S7, the Vocational Rehabilitation Act, which provides financial assistance to states for vocational rehabilitation programs aimed at the handicapped. Nixon had pocket-vetoed a near-identical bill in 1972. S7 clears Congress March 15th, but is vetoed by Nixon on March 27th. When the Senate fails to override the veto, the House Education and Labor Committee takes up the cause in June and introduces HR 8070, an amended bill with greater restriction to the severely handicapped. EMK is a co-sponsor on a similar Senate compromise measure, S1875, which passes July 18th. (*1973 CQ Almanac*, pp. 557-564)

September Following a House-Senate conference, the Senate approves the Rehabilitation Act of 1973 by a vote of 88-0 on the 13th. The act extends basic federal aid programs for the handicapped until 1975 and prohibits discrimination on the basis of

disability in programs conducted by federal agencies or receiving federal financial assistance, in federal employment or in the employment practices of federal contractors. EMK votes in favor. (1973 *CQ Almanac*, p. 557; U.S. Department of Justice, <http://www.usdoj.gov/crt/ada/cguide.htm#anchor65610>)

1974

- April* Five hundred Charlestown, Massachusetts residents march to Boston's Beacon Hill neighborhood to protest school busing for desegregation. (J. Anthony Lukas, *Common Ground: A Turbulent Decade in the Lives of Three American Families*, New York: Alfred A. Knopf, 1985, p. 259)
- May* An amendment to the Elementary and Secondary Education Act (ESEA) extension bill sponsored by Senator Edward Gurney (R-FL), which would issue an all-out ban on busing, is narrowly tabled 47-46. Siding with traditional civil rights senators such as Claiborne Pell (D-RI), Hart, Javits, Mondale, and Brooke, EMK provides continual criticism of the amendment and votes to table it. Bayh successfully proposes a diluted amendment, which emphasizes court-ordered busing as a last resort and prohibits cross-district busing unless both districts involved have practiced segregation. The Bayh amendment is voted on twice, with EMK voting against it the first time and not voting the second (EMK later expresses his opposition in the CQ poll). EMK manages to attach an amendment to the bill reinstating special "concentration" grants for urban and rural areas where poor students live in extremely high concentration. The ESEA extension (HR 69, with some provisions added from S 1539) passes the Senate 81-5 on the 20th, with EMK voting for it, and following a conference, the bill is signed by President Gerald Ford on August 21st. (1974 *CQ Almanac*, pp. 462, 463, 30-S, 31-S, 32-S; *The Washington Post*, 5/16/1974)
- June* On the 21st, Federal District Judge Arthur Garrity, who also happens to be close to the Kennedy family, rules that Boston has deliberately maintained unconstitutionally segregated schools. Boston is one of the largest cities outside of the South that faces a federal desegregation order, and the implication of Garrity's ruling is likely to be a massive program of busing for desegregation. Boston resident Louise Day Hicks creates a coalition of anti-busing advocates called Restore Our Alienated Rights (ROAR). (*The New York Times*, 6/23/1974)
- August* ROAR asks to meet with EMK and Brooke in their Boston offices before a September ROAR rally. Brooke says he will not be in town, but assigns two staff assistants to meet with the organization. EMK reportedly does not respond to ROAR's request. (Clymer, pp. 223-224)
- September* Without prior notification, EMK appears at the ROAR rally; Anthony Lukas speculates that EMK decided to address the crowd because an article by *Boston Globe* columnist and EMK acquaintance Mike Barnicle appealed for him to do so. (Lukas, p. 260) At the rally, EMK is chased off the speaker's stand into a nearby

federal office building. Most of the protesters come from solidly Democratic, Irish, and pro-Kennedy neighborhoods, and are angry at EMK's vote that helped narrowly defeat the anti-busing amendment in May. Although the amendment would not have bound a federal court, ROAR wants to express its outrage at the perceived pro-busing stance of EMK and Brooke. Additionally, because EMK is close to Garrity and sees him with some frequency, EMK and Garrity are often linked at anti-busing rallies. (Lukas, pp. 259-260; Clymer, pp. 222-225)

1975

- February* The House Judiciary Subcommittee on Civil and Constitutional Rights holds hearings on a variety of proposals to extend the VRA. The Ford administration supports a five-year extension while the Civil Rights Commission favors a ten-year extension. The subcommittee also hears testimony on two bills that would expand voting rights coverage to Spanish-speaking Americans. (*1975 CQ Almanac*, p. 525)
- April* EMK is jeered and jostled by busing opponents after giving a speech at a school in Quincy, Massachusetts.
- June* On the 4th, the House passes a bill extending the VRA for ten years and extending its coverage to language minorities. Clarence Mitchell, Legislative Chairman of the LCCR and head of the NAACP's Washington bureau, had lobbied for a simple extension of the VRA, fearing that its extension to language minorities would make the bill more difficult to pass and more likely to be ruled unconstitutional. However, other civil rights advocates, such as John Lewis, head of the Atlanta-based Voter Education Project, Rauh, now counsel to the LCCR, and the Commission on Civil Rights, support the measure. On the 11th, the Judiciary Committee Constitutional Rights Subcommittee (of which EMK is a member) reports S1279, a bill near-identical to the House version. (*1975 CQ Almanac*, p. 527; *The Washington Post*, 3/9/1975; *The New York Times*, 4/10/1975)

Also in June, EMK co-sponsors legislation expanding the provision of education for the handicapped, in response to several court orders ruling handicapped children are entitled to free public school education (the chief sponsor is Senator Harrison A. Williams, D-NJ). The legislation, which amends the 1967 Education of the Handicapped Act, authorizes \$6 billion in grants to states, and requires that they provide a "free and appropriate" education to all handicapped children. This requires setting up "individualized educational programs" for each child, in consultation with parents. EMK is also a co-sponsor on an amendment offered by Senator Robert T. Stafford (R-VT), which increases grant amounts available for educating handicapped children aged 3-5. The bill passes the Senate on the 18th, 83-10, and following House passage and a conference, Ford reluctantly signs it into law on November 29th. The legislation becomes known as the Individuals with Disabilities Education Act. EMK does not vote on final passage, but is listed

in favor according to the CQ Poll. (IDEA, PL 94-142; *1975 CQ Almanac*, pp. 651-656, 35-S; THOMAS on S 6)

July

Judiciary Committee Chairman Eastland begins to take action on the VRA extension on the 17th when, recovering from injury in Mississippi, he authorizes Hart to chair a full committee meeting. On the 18th, EMK votes in committee to report S1279, the Senate Judiciary VRA extension. However, to avoid delay and possible obstruction in waiting for the committee report, Mansfield immediately calls up the House-passed bill on the Senate floor, with Majority Whip Robert Byrd (D-WV) filing a cloture motion to limit debate. When debate on the merits begins on the 22nd, floor manager Senator John Tunney (D-CA) announces that the bill's supporters will move to defeat all amendments to the House bill. The Ford administration generally supports a five year extension, but late in the Senate's consideration, the president requests that the VRA have national, rather than predominantly southern, application. The amendment, proposed by Senator John C. Stennis (D-MS), is killed 58-38, and this late push for national coverage causes EMK to comment that Ford's position "does a good deal to confuse exactly what the position is of the president..." Despite defeating several amendments to weaken the VRA legislation, the Senate accepts one amendment on July 23rd, proposed by Byrd as an attempt to assuage Southern dissatisfaction, to extend the measure for only 7 years as opposed to the 10-year extension authorized by the House. The amendment passes 52-42 with EMK voting nay. (*1975 CQ Almanac*, pp. 530-532; *The Washington Post*, 07/19/1975)

On the 24th, EMK votes with the majority, 77-12, to extend the VRA for seven years and include language minorities under its protection. Throughout the process, EMK votes in favor of the legislation when it is delayed in the Senate Judiciary Committee and filibustered on the Senate floor. Though civil rights advocates had reportedly feared a House-Senate conference due to the difference in authorization periods, the House agrees to accept the Senate seven year extension, passing the bill on the 28th. Ford signs the legislation on August 6th. (*1975 CQ Almanac*, pp. 521, 532, 47-S)

September

The JFK birthplace in Brookline, Massachusetts is defamed with graffiti reading, "Bus Teddy," and damaged by fire in an apparent act of protest against busing. EMK still refuses to hedge his support for desegregation busing.

November

On the 20th, the Senate passes 89-0 a conference report extending the 1965 Older Americans Act and strengthening provisions that protect the elderly from discrimination in any program or activity receiving federal funds. The anti-discrimination provision, Title III, comes from the House bill. The Senate conferees preferred an eighteenth month study to identify "unreasonable" age discrimination, to be undertaken by the Commission on Civil Rights, and this disagreement holds up the conference for five months. After a five-month impasse, the Senate conferees accept the discrimination ban. EMK votes in favor. (*1975 CQ Almanac*, pp. 681, 685)

1976

June EMK supports a bill to award attorney's fees to citizens who win federal civil rights suits. The measure, S 2278, is reported on the 29th and passes the Senate September 29th, 57-15. An amendment offered by EMK is one of the few to be adopted, extending the bill to cover suits brought under the sex and blindness discrimination provisions of the 1972 Education Act. The bill passes the House on October 1st (PL 94-559). (*1976 CQ Almanac*, pp. 411-413)

1977

March On the 22nd, the Carter administration proposes an election reform package, which includes abolition of the Electoral College, public financing of congressional elections, reform of the Hatch act, other campaign finance alterations, and the Universal Voter Registration Act, which would allow voter registration on Election Day itself and provide grants to states to finance it. EMK is a co-sponsor of the registration measure in the Senate, but it does not reach the Senate floor. (*1977 CQ Almanac*, pp. 798-801; THOMAS on S1072)

August On the 1st, the Senate Judiciary Committee votes 11-6 to report out a measure restricting the circumstances in which federal courts can order desegregation busing. S 1651 is the first committee bill which attempts to restrict court authority in this matter, and EMK opposes it, co-authoring a minority view with Senators Bayh, John Culver (D-IA) and James Abourezk (D-SD). It is reported September 21st, but no further action is taken in 1977. (*1977 CQ Almanac*, pp. 510-511)

1978

September Legislation extending the Civil Rights Commission for five years is passed, with discrimination based on age and handicap added to its existing jurisdiction (race, color, religion, and national origin). The Senate bill is sponsored by Bayh, and EMK is one of 15 co-sponsors. (*1978 CQ Almanac*, p. 789; THOMAS on S 3067)

1979 EMK becomes Chairman of the Judiciary Committee. One of his goals as chairman is the appointment of 152 new federal judges according to merit, emphasizing minorities and women. (*The Washington Post*, 1/25/1979)

1980

February On the 26th, the Senate passes 55-36 a bill designed to protect the rights of institutionalized individuals. The bill allows the federal government to file suit against states to protect the rights of people in jails, mental hospitals, etc. The bill had long been delayed in the Senate Judiciary Committee by opponents. Though he announces in favor and is a co-sponsor of the Senate version, EMK does not vote on the legislation, which is primarily the effort of Bayh and Rep. Robert

Kastenmeier (D-WI). The legislation is signed by President Jimmy Carter on May 23rd. (1980 *CQ Almanac*, pp. 383-384, 9-S; THOMAS on S 10)

October On the 7th, Carter signs the Mental Health Systems Act, which expands and restructures federal aid for mental health services. EMK is the primary sponsor on this legislation, which he introduced in May 1979. The bill, S 1177, was reported in May but faced strong floor opposition to a mental patients bill of rights included by EMK and Javits. Labor and Human Resources committee staffers work out a compromise with opponents, substituting a diluting amendment that simply *recommends* that the individual states adopt such codes. Javits is unhappy with this and neither he nor EMK are on the floor when it is proposed (and adopted, 91-1). The bill passes on July 24th, 93-3. EMK does not vote. (1980 *CQ Almanac*, p. 431; THOMAS on S1177)

December Hoping to pass progressive legislation before the Republicans take control of the Senate in 1981, EMK and Byrd attempt to push through a fair housing bill that would provide more robust enforcement mechanisms than its 1968 predecessor. The new bill would make it easier for the federal government to sue over housing discrimination issues. EMK is a co-sponsor and floor manager of the Senate version, though Majority Leader Byrd, a strong backer of the legislation, keeps a copy of the House version at the desk for parliamentary purposes. Although EMK and Byrd break a filibuster on the 4th to begin debate on the bill, they are unable to break a December 9th filibuster on the bill itself. Cloture is blocked six votes short of sixty, largely due to the opposition of Senator Orrin Hatch (R-UT). (Clymer, pp. 323-324; 1980 *CQ Almanac*, pp. 373-377; THOMAS on S 506)

1981

April On the 7th, Mathias, EMK, and six other senators introduce legislation to extend key provisions of the VRA until 1992 (S 895). President Ronald Reagan takes no formal position on the bill, but expresses reservations. Dole, a member of the eighteen-person Judiciary Committee, appears to be on the fence, as does Senator Howell Heflin (D-AL). (1981 *CQ Almanac*, p. 416; Clymer, p. 335)

October On the 5th, the House passes its VRA extension bill, HR 3112, thus clearing the way for Senate action. However, negotiations between Senate Majority Leader Howard Baker (R-TN), Senators Howard Metzenbaum (D-OH), Biden, Byrd, Mathias, and EMK fail to determine a date for Judiciary Committee action on the VRA. At the last moment before normal procedures would have sent the bill to the Judiciary Committee, Byrd objects on the floor, thus keeping the bill on the Senate calendar and allowing Baker to call it up whenever he chooses. Supporters had feared that staunchly conservative Judiciary Chairman Strom Thurmond (R-SC) would bottle up the bill, though Thurmond, responding to Byrd's objection, claims he will hold hearings regardless. (1981 *CQ Almanac*, pp. 415-418)

December On the 16th, Mathias and EMK, with fifty-nine other co-sponsors introduce a carbon copy of the successful House VRA extension (HR 3112, S 1992). The most controversial provision of the House bill is an amendment to Section Two of the VRA that would establish a “results” test to determine whether election laws or procedures are discriminatory. The LCCR, under its new director, Ralph Neas, has pushed for this “results” provision in response to the 1980 Supreme Court decision in *Bolden v. City of Mobile*. In this case, the court ruled that racially discriminatory electoral districts must be drawn with *intent* and *effect* to warrant constitutional protection. As legislative intent is very difficult to prove, the *Bolden* ruling could allow states and localities to retain voting laws which undermine the voting strength of minorities. EMK works with Neas on the VRA extension, particularly the Section Two amendment to overturn the “intent” ruling. Another issue concerns the Section Five enforcement provisions, which the House bill would extend permanently. Reagan announces his preference for a simple ten-year extension of the VRA, which Majority Leader Baker had proposed early in the month, to the consternation of civil rights groups and EMK. (1982 *CQ Almanac*, p. 375; Clymer, p. 332; *The New York Times*, 12/3/1981; *Virginia Law Review*, 05/1983; THOMAS on S 1992)

1982

January On the 8th, the Reagan administration announces that it will reverse a twelve-year-old precedent denying tax-exempt status to private schools that discriminate against blacks. The administration intends to grant tax-exempt status to Bob Jones University and the Goldsboro Christian Schools, both of which are appealing IRS status decisions to the Supreme Court. After strong public criticism, Reagan quickly reverses his decision and sends legislation to Congress on the 18th authorizing the IRS to deny tax-exempt status to segregated schools, and leaving the Jones/Goldsboro cases to the Courts. The IRS legislation never moves beyond hearings this year. (1982 *CQ Almanac*, p. 397)

On the 28th, Hatch’s Subcommittee on the Constitution opens hearings on the VRA extension. Hatch warns that a “results” test would “establish the concept of ‘proportional representation by race’ as the standard by which courts evaluate electoral and voting decisions.” (Clymer, p. 334) During the hearings, Attorney General William French Smith advocates a simple ten-year extension. EMK clashes with Smith, claiming that there is a “crisis of confidence” in the administration’s commitment to women and minorities. Hatch’s subcommittee reports a simple ten-year extension without the Section Two amendment on March 24th. (1982 *CQ Almanac*, p. 375)

April On the 15th, an Alabama federal judge rules again on *Mobile v. Bolden*, utilizing research on over 100 years of Alabama history to determine that the Mobile system *intended* to discriminate against blacks. While supporters of “intent” claim victory as the judgment shows it is a *provable* standard, opponents claim the

massive amount of time that lawyers, paralegals, expert witnesses, and the judge had to spend on the case is wasteful. (1982 *CQ Almanac*, p. 375)

May With the support of the LCCR, EMK and Mathias fight for the reenactment of the VRA. Facing an extremely close vote in the Judiciary Committee, EMK and Mathias woo Dole to support a renewal that includes the Section Two “results” test. Dole is being pressured by editorials to support the bill, and his aide Sheila Blair begins working with EMK staffer Burt Wides and Mathias staffer Mike Klipper. On the 3rd, Dole announces a compromise bill on the VRA extension, which he drafted with Mathias and EMK. The “Dole compromise” keeps the “results” test from the House bill, but adds a section which specifies how the test could be met. The compromise also recommends a 25-year extension of Section Five, rather than the permanent extension in the House bill or the ten year extension favored by the administration. Dole has also spoken with Reagan, who publicly endorses the compromise bill the same day. (1982 *CQ Almanac*, pp. 374-375; Clymer, p. 336; *The New York Times*, 5/4/1982)

On the 4th, the Dole VRA compromise is adopted by the Judiciary Committee 14-4. Dole’s support had triggered significant momentum, although Senator Jesse Helms (R-NC), Thurmond, and Hatch still strongly oppose the bill. (1982 *CQ Almanac*, p. 376; *Virginia Law Review*, 05/1983)

June On the 18th, the Senate passes the VRA extension 85-8, with EMK voting in favor. Before approving the bill, the Senate overwhelmingly rejects fifteen amendments that Mathias, Dole, and EMK claim would weaken the measure. The Senate sponsors are trying to prevent all non-technical amendments and thereby avoid a conference with the House (House sponsors have promised to accept the Senate bill if it passes without substantive change from the Judiciary Committee version). The House accepts the Senate amendments on the 23rd, and Reagan signs PL 97-205 into law on the 29th. (1982 *CQ Almanac*, pp. 373, 376, 33-S)

1983

October Mathias and EMK lead the Senate effort for making King’s birthday a national holiday. Helms opposes, citing King’s communist ties, and a lack of hearings on the proposal (though hearings had been held in 1979). A bitter, personal and public debate with EMK ensues. Ultimately, amid passionate rhetoric and several Helms’ attempts to add poison pill amendments, the bill passes on the 19th, 78-22. The House had passed its bill August 2nd, and thus Senate action clears the bill for Reagan, who signs it November 2nd (PL 98-144). (Clymer, pp. 347-348; 1983 *CQ Almanac*, pp. 600-602)

November On the 15th, a late-session effort to revive the ERA in the House fails. Speaker of the House Tip O’Neill (D-MA) had brought the ERA to the floor under suspended rules, a move usually reserved for non-controversial legislation. Hatch, in charge of the Senate Subcommittee on the Constitution, had been holding new hearings

on the ERA since May, but his hearings were designed to highlight potentially undesirable effects of the amendment, and ultimately the subcommittee does not vote on the matter. (1983 *CQ Almanac*, pp. 296-298)

On the 30th, a bill reconstituting the Civil Rights Commission and extending it for six years is signed into law (PL 98-183). In September, EMK was one of twenty-two senators that wrote to Senate Majority Leader Howard Baker (R-TN) urging him to expedite the legislation. However, Hatch claimed that he would not move on the legislation in his subcommittee until the Senate voted on three new Reagan nominees to the panel. A delicate compromise is engineered after marathon negotiations involving civil rights activists, members of the Judiciary Committee, Baker, and the White House. At the conclusion of the bargaining, the Democrats reportedly believe that they have secured reappointments of four commissioners critical of the administration's civil rights policies (a Democrat, Independent, and two Republicans). Yet weeks after passage, the White House claims that there is no deal on the reappointment of the two Republican critics. (1983 *CQ Almanac*, p. 292; *The Washington Post*, 9/14/1983)

1984

October On the 2nd, the Senate shelves the Civil Rights Restoration Act, which is sponsored by EMK and considered to be the most significant civil rights legislation of the year. The act would overturn the Supreme Court's *Grove City v. Bell* decision, which had restricted the application of Title IX of the 1972 Education Amendments to the *program* receiving federal aid, rather than the entire school. Such a restrictive standard made it difficult for the government to deem an institution ineligible to receive federal aid for engaging in discriminatory practices. EMK reportedly believes that this decision hinders efforts to end discrimination not only against women in educational institutions, but also, due to administrative interpretations, blacks, the handicapped, and the elderly. The bill stalls in the Senate Labor and Human Resources Committee, chaired by Hatch. Efforts to attach the bill to the FY 1985 continuing appropriations bill by Byrd, acting for EMK, spark a parliamentary battle over the Senate's rules. Senator Bob Packwood (R-OR), a major co-sponsor, ultimately moves to table the Byrd civil rights amendment. (1984 *CQ Almanac*, pp. 241-242; Clymer, p. 410)

1985 Anthony Lukas publishes *Common Ground*, his Pulitzer Prize-winning account of desegregation busing in Boston and its impact on three families.

January EMK travels to South Africa to speak against apartheid as a guest of Nobel laureate Desmond Tutu and Allan Boesak, head of the World Alliance of Reformed Churches. EMK receives a mixed greeting. While many black South Africans cheer for EMK in the streets, the Azanian People's Organization, a black nationalist group, derides EMK as a pawn of Western imperialism and stages protests wherever he goes. EMK spends his first night at Tutu's home in Soweto, a sprawling black ghetto. On the 13th, EMK cancels the last rally of his South

African tour, which is to take place at Soweto's Regina Mundi Cathedral. Earlier that day, pro-EMK and anti-EMK protesters had marched towards each other, meeting at the church's altar. Although Tutu was able to obtain a vote in favor of EMK speaking, he recommends that EMK not speak for fear that the South African police will intervene. South African Foreign Minister Pik Botha sends EMK a note upon his departure that states, "You did not come here to establish the facts. Your motive was to use your visit as a forum to obtain publicity for a set of preconceived value judgments." (*The Washington Post*, 1/6/1985, 1/14/1985)

- February* EMK sponsors another measure to overturn the *Grove City* decision, "the Civil Rights Restoration Act," without success. (THOMAS on S 431)
- April* On the 3rd, the Senate approves 89-4 a resolution introduced by EMK that condemns apartheid in South Africa (SJ Res 96). (*1985 CQ Almanac*, pp. 85, 9-S)
- May* On the 2nd, the House Foreign Affairs Committee approves EMK's Senate resolution against apartheid, but the resolution never makes it to the House floor. On the same day, the committee approves a bill (HR 1460) that would impose immediate sanctions on South Africa, which can be waived for an initial period of one year and successive periods of six months if the Pretoria government demonstrates progress in deconstructing apartheid. (*1985 CQ Almanac*, p. 85)
- June* Reagan appoints Bradford Reynolds to the position of Associate Attorney General. EMK is part of the Democratic opposition seeking to prevent the appointment, because of Reynolds's record on civil rights. EMK says in hearings on the 4th that "Mr. Reynolds has been the architect of most, if not all, of the Administration's retreat on civil rights." Reynold's appointment is killed in committee on the 27th, by an 8-10 vote. (Clymer, pp. 375-376)
- On the 4th, the Senate Foreign Relations Committee approves 16-1 a compromise bill that imposes a combination of immediate and delayed sanctions on South Africa. The bill incorporates provisions from a bill offered by Senator Richard Lugar (R-IN), Mathias, and Dole, and a stronger alternative formulated by Senator Chris Dodd (D-CT). Defeated 7-9 by the committee are tough provisions to ban new investment by U.S. firms, technology sales to the Pretoria government, and the importation of Krugerrands. These unsuccessful provisions were taken from a bill sponsored by Senator Lowell Weicker (R-CT) and EMK that is nearly identical to the House bill (S 635). On the 5th, the House votes overwhelmingly to impose sanctions on South Africa. (*1985 CQ Almanac*, pp. 86-88)
- July* On the 8th, the South Africa sanctions bill comes to the Senate floor. Reportedly, conservatives try to delay action on the measure while many Democrats try to add harsher sanctions to it. Helms raises the specter of a filibuster, but Dole files a successful cloture petition to proceed with debate. EMK and his allies re-group to push for a ban on Krugerrand imports, but drop this demand in exchange for a

GOP pledge to oppose amendments that would further dilute the bill. On the 11th, the Senate votes to approve sanctions, 80-12. (1985 *CQ Almanac*, p. 30-S)

September

In conference, Lugar tries to get House conferees to adopt the weaker Senate South Africa sanctions bill, fearing a filibuster or veto if the stronger measure is voted upon. He is persuaded in negotiations to accept the Kruggerand ban, and the threatened filibuster looms larger. Dole sets a cloture vote for the 9th, and he and Lugar press the White House to accept the sanctions bill or at least adopt some of its provisions. Reagan signs an executive order for sanctions on South Africa just hours before the scheduled Senate vote, but declares he will be forced to veto the Congressional legislation if passed. Dole persuades most Republicans to accept the executive order and not vote for cloture, and asks for unanimous consent to put aside the cloture vote. EMK objects on the grounds that the executive order is too weak. (1985 *CQ Almanac*, p. 30-S)

On the 10th, EMK appears on the *CBS Morning News* and states that the Republican Party must choose between being “the party of Lincoln or the party of apartheid.” In the coming days, Democrats continue to keep the sanctions issue alive, with EMK proposing repeated cloture motions. On the 11th, his motion falls three votes short (57-41), and after further parliamentary maneuvering, Dole and Lugar take the highly unusual step of removing the bill from the Senate chamber, thus preventing further consideration. EMK and Byrd are furious. When the bill resurfaces two weeks later, the Democratic effort has lost steam. (1985 *CQ Almanac*, pp. 88-90; Clymer, pp. 380-381)

1986

Summer

EMK leads the fight against the appointment of William H. Rehnquist as Chief Justice, on the grounds that he is “too extreme to be chief justice” and for his history of opposing expansive civil rights legislation. As a law clerk for Justice Robert H. Jackson, for example, Rehnquist had written, “I think *Plessy v. Ferguson* was right and should be re-affirmed.” The Judiciary Committee recommends confirmation, 13-5. EMK mounts an unsuccessful filibuster and on September 17th, Rehnquist is confirmed by a vote of 65-33. Also during this time, EMK votes for the nomination of Antonin Scalia as Associate Justice in committee and on the floor. (Clymer, pp. 403-405; 1986 *CQ Almanac*, p. 71; *The Washington Post*, 07/30/1986; *The New York Times*, 09/16/1986)

August

Throughout the year, EMK repeatedly threatens to introduce South Africa sanctions legislation as amendments to the defense bill and an extension of the federal debt limit, allegedly angering Dole. On the 1st, one week after Reagan has appealed to Congress “to resist this emotional clamor for punitive sanctions,” the Senate Foreign Relations Committee approves 15-2 a strict sanctions bill (S 2701) that is largely based on a proposal by Lugar. (1986 *CQ Almanac*, pp. 364, 412)

On the 15th, the Senate passes 84-14 the Anti-Apartheid Act, imposing sanctions on South Africa, after substituting the text of the Senate measure into the House bill. Lugar claims that the overriding goal was to round up at least eighty votes; this would either persuade Reagan to sign the bill, or provide the means to override his veto. Included in this bill are strict measures forbidding the imports of South African iron, steel, and agricultural products, as well as the export of U.S. crude oil and petroleum products. These provisions were introduced as a floor amendment by EMK, and were initially tabled on the 14th. However, after dropping a provision prohibiting renewals of current loans and short-term credits, the measure is adopted despite an effort by Lugar to table it. (*1986 CQ Almanac*, pp. 364, 366, 367, 43-S)

September The House accepts the Senate bill on the 12th, with overwhelming support, but on the 26th, Reagan again vetoes the Anti-Apartheid Act. The House votes to override on the 29th. (*1986 CQ Almanac*, pp. 361, 371-372)

October On the 2nd, the Senate enacts HR 4868 by a 78-21 vote, overriding Reagan's veto and marking one of the most stunning blows to Reagan's presidency and the first override on a major foreign policy issue since 1973. The override is strongly supported by EMK but criticized by Dole, who contends that South African apartheid is a domestic civil rights issue that cannot be remedied by a "feel good vote." (*1986 CQ Almanac*, pp. 359, 372)

1987

March The Judiciary Committee begins hearings on a bill proposed by EMK to "put teeth" into the 1968 Fair Housing Act. It reportedly stalls when Robert Bork is nominated to the Supreme Court in July. (Clymer, p. 416; *1987 CQ Almanac*, p. 23)

April-May As Labor and Human Resources Committee Chairman, EMK sponsors and oversees the effort to pass the Civil Rights Restoration Act. Allegedly irritated with Republican efforts to postpone committee meetings, EMK calls for a Labor Committee meeting at midnight on the 6th. After defeating a series of abortion-related amendments (due to pro-life concern that the legislation would expand abortion rights, and fears among Catholic bishops that it would force Catholic teaching hospitals to perform abortions) and an amendment authorizing the firing of anyone with AIDS, the Labor Committee approves the bill on the 20th by a 12-4 vote. The bill also stalls in the controversy over the Bork nomination. (Clymer, pp. 410-412; *1987 CQ Almanac*, pp. 281-282)

July Reagan nominates Bork to replace Associate Justice Lewis Powell on the Supreme Court. Within an hour of the announcement, EMK delivers a controversial floor speech calling for the Senate to reject Bork's nomination, invoking two key arguments against Bork: his involvement in Nixon's Saturday Night Massacre and his "extremist" judicial interpretation, particularly with

regards to civil rights. EMK frequently meets with the “Block Bork” coalition, which consists of more than three hundred national organizations, including People for the American Way, the LCCR, and NARAL Pro-Choice America. Boston pollster Thomas Kiley finds that Bork is vulnerable on three grounds: civil rights, privacy and individual freedom, and big business versus the individual. Furthermore, he concludes that voters will be turned against Bork if they perceive him as not “fair-minded,” and that the best way to increase voter skepticism is to attack Bork’s record on civil rights. A Roper poll of voters in twelve southern states shows that fifty-one percent oppose confirmation. Bork opponents use these figures to help win over swing votes in the Senate—the Southern Democrats, who now represent large black constituencies. The Bork nomination is defeated in the Senate 42-58 in October. (1987 *CQ Almanac*, pp. 271-274, 60-S; Clymer, pp. 416-427; Hogue, p. CRS-21)

1988

- January* Following delays in 1987, the Civil Rights Restoration Act reaches the Senate floor. The bill holds that the discrimination ban for recipients of federal aid holds in all workplace departments, not just the one directly receiving aid. Senator John Danforth (R-MO) successfully amends the bill to allow recipients of federal assistance to refuse to carry out or pay for abortions. In addition, Hatch attempts to limit the bill’s applicability to educational institutions, but Dole, concerned about the implications of *Grove City* for the treatment of the disabled, leads a small group of Republicans to oppose this amendment, which is defeated. On the 28th, the bill passes 75-14, with EMK commenting that despite the setback on abortion, the bill itself was still positive. (1988 *CQ Almanac*, p. 65)
- March* On the 2nd, the House passes the Senate civil rights bill again with a veto-proof majority of 315-98. Despite this, Reagan vetoes on the 16th, and religious conservative groups mount an intensive campaign to sustain it. As debate comes to an end in the Senate on the 22nd, EMK remarks; “The arguments of the opponents are awash in hypocrisy. They pay lip service to civil rights, but...when the chips are down, they never met a civil rights bill they didn’t dislike...” (Clymer, p. 434) On the 22nd, the Senate and the House overturn Reagan’s veto 73-24 and 292-133 respectively. (Clymer, pp. 432-434; 1988 *CQ Almanac*, pp. 63-68)
- June* EMK and civil rights groups pressure the House to initiate a bill strengthening the law against housing discrimination. In the House, the primary disagreement is over the use of administrative judges in the Department of Housing and Urban Development for settling disputes. On the 21st, a solution is reached by which either side could take the dispute to a federal court instead. The compromise is proposed by Penda Hair of the NAACP and praised by EMK.
- July* EMK sponsors and oversees passage of the Fair Housing Amendments Act, the companion measure to HR1158, while serving as both Labor Chairman and acting

Chairman of the Judiciary Committee (while Biden recovers from a brain aneurysm). Controversy erupts on the Senate floor over requirements that new multi-family units be built with wider bathroom doors and lower light switches to ensure that people in wheelchairs may have more options in selecting housing. EMK recruits Muhammad Ali to help persuade Hatch to support the bill. With support from Hatch and Senator Arlen Specter (R-PA), the bill easily passes on August 2nd, a larger margin than the sponsors expect. It is signed by Reagan on September 13th. (Clymer, pp. 440-441; *1988 CQ Almanac*, pp. 68-74)

1989

- March* EMK replaces Weicker as Senator Tom Harkin's (D-IA) chief co-sponsor on the Americans with Disabilities Act (ADA) after Weicker's defeat in the 1988 election. The ADA would give the disabled broader protections against bias in public accommodations and employment than other minority groups covered under the 1964 Civil Rights Act. Harkin and Weicker first proposed a similar bill in 1986. Anticipating the need to negotiate with Hatch, drafts of the bill go back and forth between Hatch, Harkin, and the White House. (Clymer, pp. 449-450)
- May* The ADA bill (S 933) is introduced on the 9th with hearings starting the same day. The first hearing opens with testimony from disabled Americans. On the 16th, Dole testifies in general support of the bill, but expresses fear that some of its provisions might invite excessive litigation. He conveys that the Bush administration wants to support the bill, but that they require more time to "get their act together." (Clymer, p. 451)
- June* On the 27th, negotiations between Senate leaders and the White House on the ADA begin. Clymer speculates that administration officials prefer to deal with EMK because Harkin is up for re-election in 1990 and they want to deny him credit for the bill. Bush Chief of Staff John Sununu tells EMK that all rifts can be settled easily if EMK removes his chief civil rights counsel, Carolyn Osolinik, from the negotiating team. EMK calls Osolinik and congratulates her on a job well done. (Clymer, p. 452)
- July* During the month, Senate and White House negotiators meet ten times to discuss the ADA. On the 28th, Senator Dave Durenberger (R-MN), Harkin, Hatch, Dole, and EMK meet in Dole's Capitol office with Attorney General Richard Thornburgh, Harkin aide Bobby Silverstein, Samuel Skinner, Roger Porter, Sununu, and Osolinik. Sununu reportedly loses his temper with Silverstein, after which EMK reportedly gets angry and tells Sununu that yelling at staff is unacceptable. A compromise is engineered in which EMK accepts a provision eliminating damages in lawsuits in exchange for administration acceptance of a broad definition of public accommodation. Furthermore, EMK and Harkin agree to allow businesses to discriminate against a limited listing of sex criminals, pyromaniacs, kleptomaniacs and compulsive gamblers, that could directly threaten business - this was a chief concern of Senators William Armstrong (R-

CO) and Jesse Helms (R-NC). All disagreements occurring in negotiation are kept secret until after the bill's passage. (Clymer, pp. 452-453)

August The Senate Labor and Human Resources committee approves the ADA bill (S 933) on the 2nd. EMK persuades Hatch not to add an amendment requiring that the bill apply to Congress, as this would give another committee jurisdiction over the bill. EMK promises to fight for the amendment on the floor. (1989 CQ Almanac, p. 243)

September On the 7th, the Senate approves its version of the ADA, 76-8, with EMK voting in favor. Support from the Bush administration is reportedly gained when sponsors agree to limit remedies for discrimination to those available under the 1964 Civil Rights Act and thus not approve compensation. Progress on the House bill is slow due to multiple committees claiming jurisdiction. Only the Education and Labor committee manages to approve the legislation in 1989. (1989 CQ Almanac, pp. 243-244, 251-252, 35-S)

1990

July President George H.W. Bush nominates David Souter to replace William J. Brennan, Jr. as Associate Justice on the Supreme Court. EMK opposes Souter, whose chief patron is Senator Warren Rudman (R-NH), reportedly over his poor civil rights record and concerns that Souter would erode abortion rights. EMK is joined by groups such as the LCCR. EMK casts the lone dissenting vote against the nomination in the Judiciary Committee, and the nomination is approved by the Senate 90-9 on October 2nd. EMK votes against the nomination. (1990 CQ Almanac, pp. 508-511, 514, 52-S; *The Washington Post*, 10/3/1990)

On the 13th, the Senate approves the conference report of the ADA 91-6. EMK chairs the conference and votes in favor. The most controversial issue in conference is a House amendment allowing HIV-positive individuals to be transferred out of food-handling jobs. Dole is in favor of the amendment despite his dedication to the ADA, disabled rights groups, and AIDS research, but the amendment is eventually dropped by both the Senate and the House. On the floor, during final consideration of the bill, EMK says "Americans with disabilities deserve more than good intentions... They deserve emancipation from generations of prejudice, some of it well-meaning but all of it wrong-minded." (1990 CQ Almanac, pp. 447, 460, 461, 34-S)

EMK proposes the Civil Rights Act of 1990 (S 2104), which would overturn six 1989 Supreme Court decisions, permit victims of discrimination or of sexual harassment to more easily sue their employers for damages, permit the awarding of financial compensation and punitive damages, and allow jury trials in these cases. There is immediate opposition from the administration with Bush threatening not to sign a bill which effectively imposes minority hiring quotas. EMK denies that he is offering a quota bill and allies himself with Danforth to

help the bill pass, although Danforth insists upon a more relaxed standard by which employers could fire employees. EMK and Danforth offer an amendment May 17th that would explicitly prevent quotas, and EMK also attempts, unsuccessfully, to negotiate with the administration through Sununu. EMK's bill passes the Senate 65-34 on the 18th but lacks a veto-proof majority. It passes the House 272-154 on August 3rd. (1990 *CQ Almanac*, pp. 462-470)

October In conference, EMK helps add a cap on damages for all but racial discrimination cases, as an attempt to satisfy southern Democrats supporters. Though EMK was initially optimistic that the conference report would draw a veto-proof majority, it passes 62-34 on the 16th, three votes shy. The House also fails to garner a veto-proof majority, passing the report on the 17th, 273-154. On the 22nd, Bush vetoes the bill, arguing "The bill actually employs a maze of highly legalistic language to introduce the destructive force of quotas into our national employment system." (Clymer, p. 480) EMK works hard in the Senate to gain the votes to override the veto, but fails when thirty-four senators vote to sustain (Clymer, pp. 480-482). The override vote, held on the 24th, fails 66-34, one vote short. (Clymer, pp. 461-462; 1990 *CQ Almanac*, pp. 462-473)

Bush signs the ADA on the 26th (PL 101-336). All of the managers of the bill are invited to the signing ceremony, but Dole is the only lawmaker mentioned by Bush during the ceremony. In his autobiography, Dole cites the ADA as one of his greatest legislative achievements. (Clymer, p. 472; Robert J. Dole, *One Soldier's Story*, USA: HarperCollins, 2005, p. 278)

1991

Spring The House begins consideration on HR 1 in an attempt to reverse the 1989 Supreme Court decisions which impacted civil rights in terms of employment discrimination and remedies. The wide-ranging bill is repackaged to emphasize women's equity, and gains EMK's support, while Danforth prefers a more conservative version. Ultimately, the House version is weakened and passes on June 5th, without substantially greater support than the previous year. That same week, Danforth introduces compromise legislation in the Senate, splitting the legislation into separate bills (in the hope that some of the less controversial measures would pass) and limiting damages available to victims of non-racial discrimination. Bush appears no more amenable to the legislation than the previous year. (1991 *CQ Almanac*, pp. 254-256)

October In the wake of the Clarence Thomas confirmation hearings in September and early October, and the unprecedented focus on sexual discrimination issues, the White House appears more willing to compromise on the civil rights legislation. On the 24th, after twelve hours of meetings, Danforth, EMK, the White House, and Republican Senate leaders reach a compromise for a no-quota employment discrimination bill. The bill, referred to as the Civil Rights Act of 1991, makes it easier for workers to file and win job discrimination suits. It also amends Title VII

of the 1964 Civil Rights Act to permit sexual harassment victims to seek damages but caps them at \$300,000. Bush threatens to veto again, but is convinced not to by Dole and a small group of Senate Republicans. Dole had pressed for meetings with the White House, which were eventually held between White House counsel C. Boyden Gray, Danforth, Dole, six undecided Republican senators, Sununu, and EMK in Dole's Capitol hideaway. In addition to arranging the meetings, Dole also played an active role in negotiating the compromise. Democrats claim that the crucial White House concession was agreeing to jury trials for damages sought in sex discrimination cases, although Sununu insists that this was not a major concession. (*The New York Times*, 10/25/1991, 10/26/1991)

On the 25th, Bush claims that the compromise civil rights bill validates him as a supporter of civil rights without sacrificing his opposition to hiring quotas. EMK praises Bush "for rejecting...the advice of those who have been urging him to divide the nation over race," but Senate Majority Leader George Mitchell (D-ME) claims that the administration only offered a compromise for fear of a veto override. (*The New York Times*, 10/26/1991) The Civil Rights Act of 1991 passes 93-5 on the 30th, with House passage on November 7th. Clymer reports, "Ultimately, the differences between the bills agreed to in 1991 and vetoed in 1990 were slight." (*1991 CQ Almanac*, pp. 251-261; Clymer, pp. 500-501)

November

Bush signs the Civil Rights Act of 1991 on the 21st (PL 102-166). EMK is the only Democratic lawmaker to attend the signing ceremony, others boycott due to three phrases in Bush's draft speech which are reportedly deemed anti-affirmative action. Only one of the phrases remains, advocating a narrow interpretation of the bill; it was written by Dole. (*1991 CQ Almanac*, pp. 251, 261)

On the 27th, anti-crime legislation which had been debated in both 1990 and 1991 fails at the last minute due to a Senate GOP filibuster of the conference report. The Bush administration had requested action on a crime bill within the first 100 days of session, and the administration measure was introduced by Thurmond on March 13th. A Democratic alternative was offered by Biden, which included a provision, sponsored by EMK, allowing death row inmates to challenge their death penalties if they could show that their sentences were the result of racial discrimination. Thurmond incorporated much of Biden's bill into the administration measure, but failed to muster enough support for it by the June deadline. Debate continued on the Biden bill, but EMK's discrimination language was struck from it on a motion by Bob Graham (D-FL), citing unease on both sides of the aisle. Various other amendments were attached to the bill (S 1241), which passed July 11th, 71-26, with EMK voting against. The House also stripped discrimination language from its bill as well as a ban on semi-automatic weapons, and passed the legislation October 22nd. Following a contentious conference, the conference report is finally brought up for a vote on the 27th – while the House scrapes passage, the Democratic majority in the Senate cannot gain cloture to end a GOP filibuster – EMK votes for cloture. (*1991 CQ Almanac*, p. 263, 266, 270, 17-S, 36-S)

1992

August On the 7th, the Senate passes 75-20 a bill that extends and expands the bilingual assistance provision of the VRA. EMK is a co-sponsor on the measure and votes in favor. (1992 *CQ Almanac*, p. 24-S, 330-331; THOMAS on S 2236)

1993

March In 1990, the Supreme Court ruled in *Employment Division v. Smith* (a case involving peyote use by American Indians), that state action which had the *unintentional* effect of limiting free exercise of religion (i.e. it applies equally to everyone) was permissible providing the action served a “valid” state purpose. In response, EMK sponsors the “Religious Freedom Restoration Act,” which requires that state actions substantially burdening the free exercise of religion must be justified in terms of a “compelling” state interest, and must be the least restrictive means to that goal. The measure is also strongly supported by Hatch and 59 other co-sponsors from both parties. The broad bipartisan support is reflected outside of Congress, with EMK noting that groups which rarely agree, like Baptist and Catholic organizations and the ACLU, are supporting the bill. Passage in the House is secure May 11th by voice vote, and with the Senate measure inserted, passes the Senate 97-3 on October 27th. (*CQ Almanac*, 1993, p. 315; THOMAS on S 578) However, in 1997, the Supreme Court strikes down parts of the legislation, on the grounds that it oversteps Congressional enforcement power under the 14th Amendment, in that it is not aimed at remedying a *specific* act of religious discrimination. The case, *City of Boerne v. Flores*, involved religious land use. (1997 *CQ Almanac*, pp. 5-23-5-24)

1994

EMK sponsors reauthorization of the Elementary and Secondary Education Act (ESEA), the 1965 legislation providing federal assistance to public schools, and grants for remedial education for disadvantaged students. Though the primary emphasis of the original bill was *poor* children, with a secondary emphasis on under-performing students generally, many states focused on the latter group. A point of contention in the reauthorization was the Clinton administration’s proposal to concentrate more funding in poor school districts, thereby reducing the grant to the average state and school district. In the Senate, EMK and Claiborne Pell (D-RI) propose a compromise formula which would better target funds to needy children without dramatically cutting federal aid to each state. The Senate substitutes its own bill in place of the House version in August, and this passes on the 2nd, 94-6, though a Hatch amendment slightly alters the funding formula. The final Senate version costs approximately \$12.7 billion. A school prayer amendment is also adopted, which causes some problems at the conference stage. The House adopts the conference report on September 30th, with the Senate following suit on October 5th (following a Republican filibuster demanding stronger school prayer language). Clinton signs the bill on October 20th. Though the bill authorizes \$7.5 billion for state grants in fiscal 1995, only \$6.6 billion is appropriated. (Clymer, pp. 551-552; 1994 *CQ Almanac*, pp. 383-392)

1996

September

EMK opposes the Defense of Marriage Act, which defines marriage as a legal union between a man and a woman at the federal level, and declares that states have no obligation to recognize gay marriages performed in other states. This would effectively provide an exemption to the 'full faith and credit' clause in Article IV of the U.S. Constitution. Though the bill has strong support in both Houses, EMK threatens to add an amendment that would extend employment discrimination protection under the 1964 Civil Rights Act to the issue of sexual preference. EMK agrees to offer his proposal as a separate bill (S 2056) rather than an amendment as long as it is considered on the same day as the Defense of Marriage Act. EMK's bill is defeated 49-50 on the 10th. Senator David Pryor (D-AK) says he probably would have voted for it had he not been at home with his dying son, and Vice-President Albert Gore says he would have left the campaign trail to break the tie in EMK's favor. The Senate passes the Defense of Marriage Act with a veto-proof majority, 85-14, on the same day. Clinton quietly signs the bill early in the morning on the 21st. Lawmakers supporting the bill claim that its primary purpose is to prevent judicial and state activism, but on the Senate floor, EMK suggests a more cynical purpose; "We all know what is going on here. I regard this bill as a mean-spirited form of Republican legislative gay-bashing cynically calculated to try to inflame the public eight weeks before the November 5 election." (1996 *CQ Almanac*, pp. 5-26 – 5-29, *Congressional Record*, 09/10/1996, p. S 10101)

1997

May

EMK co-sponsors the Senate IDEA reauthorization, which includes some revisions, including disciplinary action against disabled students. After negotiations between Senator James Jeffords (R-VT) and Rep. Bill Goodling (R-PA) and their committee staffs, the two introduce virtually identical bills, which pass the House and Senate on May 13th and 14th respectively. Clinton signs the reauthorization on June 4th (PL 105-17). (1997 *CQ Almanac*, pp. 7-3-7-4)

June

Clinton nominates Missouri State Supreme Court Justice Ronnie White, an African-American, to the Federal District Court of the Eastern District of Missouri. Although Senator Kit Bond (R-MO) says he will support White, Senator John Ashcroft (R-MO) is extremely critical. While the Senate Judiciary Committee reports White's nomination favorably in 1998, the full Senate takes no action (Salon.com, 1/8/2001, 2001 *CQ Almanac*, p. 10-3)

1999

EMK sponsors an amendment to the 2000 Commerce, Justice, and State appropriations bill to expand federal hate crimes laws to include sexual orientation, gender and disability. Questions about the constitutionality of EMK's amendment arise, though, as the bill would expand coverage of the 1968 hate crimes law to cover any activity that could be linked to interstate commerce. The

bill passes the Senate but is later dropped in conference. (1999 *CQ Almanac*, p. 2-20)

January Clinton re-nominates White, and Bond again offers his support.

October Following Judiciary committee approval, White's nomination is brought up for a vote on the 5th. That same day, Ashcroft circulates a letter urging opposition to White's confirmation on the grounds that he opposed the imposition of the death penalty in numerous cases. He also declares his opposition to the White nomination on the Senate floor. Bond changes his position to oppose White one day later. The White nomination is now essentially doomed, and becomes a rallying point for civil rights groups, who attribute Ashcroft's opposition to racism. (Salon.com, 1/8/2001; 2001 *CQ Almanac*, p. 10-3)

2000 The Senate adopts EMK's and Senator Gordon Smith's (R-OR) amendment to the defense authorization bill to expand federal hate crimes laws to include sexual orientation, gender and disability, but the bill is again dropped in conference. (2000 *CQ Almanac*, p. 15-27)

July In response to the 1997 *Flores* decision, EMK and Hatch hold Judiciary Committee hearings on a religious freedom measure in both 1998 and 1999 (the "Religious Liberty Protection Act"), though it is not reported out. In July, Hatch sponsors and EMK co-sponsors the "Religious Land Use and Institutionalized Persons Act," which gives protections to religious groups in land-use disputes (thus responding to the claim in *Flores* that RFRA did not specify an act of discrimination to remedy), and allows individuals institutionalized in state facilities, such as prisons, to practice their faith unhindered, unless a compelling state interest can be demonstrated. It passes the Senate and the House by voice vote on July 27th, and is signed by Clinton on September 22nd. In contrast to the RFRA, this legislation is later upheld (partially) by the Supreme Court on May 31st 2005. In *Cutter v. Wilkinson*, the Court held that prisons receiving federal funds could not impede the religious practices of inmates, even if considered non-mainstream or disturbing. (*CQ Almanac*, 2000, pp. 15-45-15-46; *The New York Times*, 6/1/2005)

2001

January White testifies at Ashcroft's Senate confirmation hearings for the position of U.S. Attorney General, claiming that Ashcroft deliberately distorted his record. EMK tells White, "What happened to you is ten times worse than anything that's happened to Senator Ashcroft in the current controversy. In my view, what happened to you is the ugliest thing that's happened to any nominee in all my years in the United States Senate." EMK indicates that he might filibuster Ashcroft's nomination on the Senate floor. Ashcroft is confirmed February 1st, with EMK voting no. Ashcroft later meets with the civil rights groups that had opposed him, telling them that he would support the White nomination if White

were nominated by President George W. Bush. (*The Boston Globe*, 1/19/2001; *The New York Times*, 3/1/2001; 2001 *CQ Almanac*, p. S-5)

2004

- May* Senate begins work on reauthorization bills for the Individuals with Disabilities Education Act (IDEA), first enacted in 1975, and rewritten in 1997 (PL 108-446). The main issues of concern during the reauthorization were disciplinary standards for special needs students, and whether program funding should remain discretionary. EMK works with Senate HELP Chairman Judd Gregg (R-NH) to draft a compromise bill (S 1248), after a similar bill they proposed in June 2003 fails to reach the floor before the end of session. The EMK-Gregg bill passes May 13th. (2003 *CQ Almanac*, pp. 8-5-8-7; 2004 *CQ Almanac*, pp. 7-3-7-5)
- November* Despite House passage in April 2003, Senate Democrats delayed the conference on the IDEA reauthorization until EMK is able to secure greater influence for conferees. The conference report clears both the House and Senate on the 19th, and is signed by Bush on December 3rd. (2003 *CQ Almanac*, pp. 8-5-8-7; 2004 *CQ Almanac*, pp. 7-3-7-5)

2005

- February* The GOP leadership manages to push through reform of class-action lawsuits in the Senate, following passage of a similar measure in the House in several previous Congresses. EMK votes against the bill in the Judiciary Committee and proposes a floor amendment which would exclude civil rights class action lawsuits, plus wage-and-hour suits. His amendment is rejected on the 9th, 40-59, and he votes against final passage on the 10th. (2005 *CQ Almanac*, pp. S-5, 14-11)
- Summer/Fall* Bush nominates John Roberts as Associate Justice to the Supreme Court in July and as Chief Justice in September. EMK opposes the nomination, questioning Roberts on his positions on the constitutionality of extant civil rights legislation, such as the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act. EMK particularly focuses on voting rights, which Roberts had previously claimed to be beyond the jurisdiction of the Court. Roberts points out that at the time he expressed these opinions, he was a staff lawyer at the Department of Justice under Reagan. Roberts is confirmed by the Senate 78-22 on September 29th. EMK votes against recommending confirmation in the Judiciary Committee and against confirmation on the floor. (*The Boston Globe*, 9/23/2005; *The Washington Post*, 9/14/2005, 9/30/2005; 2005 *CQ Almanac*, pp.14-3-14-6)
- Fall/Winter* On October 30th Samuel Alito is nominated by Bush as Associate Justice, after the first candidate he tapped, Harriet Miers, asks to have her nomination withdrawn. EMK eventually opposes the nomination, questioning Alito's relationship with the Vanguard investment company and his involvement in Concerned Alumni of Princeton (CAP), a conservative group that opposed the admission to Princeton of

women and minorities. Alito included his CAP membership on a 1985 job application for a position at the Department of Justice under Reagan. On January 31st, 2006, Alito is confirmed by the Senate 58-42. (2005 CQ Almanac, p. 14-8; THOMAS on Nomination PN 1059-109)

2006

January On Martin Luther King Day, Bush announces his support for a renewal of the VRA. Much of the legislation is permanent law, but some key provisions will expire in 2007 if not renewed. This includes requiring several states, mostly in the South, to obtain Justice Department approval before changing precinct boundaries, polling places, legislative districts, ballot formats and other voting procedures. It also requires many jurisdictions to provide bilingual ballots or interpreters to those who need them. (*The Washington Post*, 7/16/2006)

July On the 15th, the NAACP announces that at least one thousand of its members, in Washington for their annual convention, will lobby senators for a VRA extension. (*The Washington Post*, 7/16/2006)

On the 20th, the Senate approves a twenty-five year extension of the VRA by a vote of 98-0, claiming that federal law is still required to protect the voting rights of minorities in some regions of the country. The House bill passed 390-33 the week before, following a period of opposition from several Southern lawmakers. Some Southern senators had voiced similar sentiments, but none voted against the bill. EMK, who is only one of three current senators that served in 1965, says, "I recall watching President Lyndon Baines Johnson sign the 1965 act just off the chamber of the Senate. We knew that day we had changed the country forever, and indeed we had." Bush signs the legislation on the 27th. (*The New York Times*, 7/21/2006; *The Washington Post*, 7/21/2006)

EMK'S CIVIL RIGHTS LEGISLATIVE HIGHLIGHTS

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(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.
1964 Civil Rights Act	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.
1965 Voting Rights Act	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.
1968 Civil Rights Act	Landmark fair housing legislation, co-sponsored by EMK.
1969 Philadelphia Plan	EMK-supported bill requiring govt. contractors to hire minority workers according to quotas; bill passes.
1970 VRA Extension	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 th 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.
1986 Anti-Apartheid Act and Veto Override	EMK-supported bill imposing sanctions on S. Africa; it passes 84-14, is vetoed by Reagan, but overridden 78-21.
1988 Civil Rights Restoration Act and Veto Override	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.
1988 Fair Housing Amendments Act	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.
1990 Amer. w/ Disabilities Act	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.
1991 Civil Rights Act	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.
1992 VRA Extension	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.
<i>2000 Hate Crimes Bill</i>	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.

OPEN HOUSING

Prepared by Anne Mariel Peters

Miller Center of Public Affairs, University of Virginia, 02/25/2006

From 1966 to 1968, Mondale was a key ally of the Lyndon B. Johnson administration in its battle to get open housing legislation passed by Congress. While there is less evidence of direct EMK participation in these legislative initiatives, EMK always voted on the side of the administration. Open housing legislation was finally passed in 1968.

In 1966, Congress reversed its two-year tradition of pro-civil rights legislation and rejected the Johnson administration's Civil Rights Act of 1966. Among other provisions, the bill barred all racial discrimination in the sale and rental of housing. The House passed the bill after twelve days of debate, during which it heavily modified the open housing provision as follows:

- One to four family homes were to be exempted from the discrimination ban.
- An amendment by Rep. Charles Mathias (R-MD) would permit a real estate agent to follow the written instructions of an exempted homeowner, even if discriminatory.

However, once in the Senate, the bill fell to a filibuster. Senate Minority Leader Everett Dirksen (R-IL) led opponents of the bill in attacking the open housing provision as unconstitutional. For the successful 1964 and 1965 civil rights legislation, a coalition of Northern Democrats and Republicans had united to vote for cloture; in 1966, this coalition had disintegrated, possibly due to the nature of the civil rights movement that year, which had become somewhat violent and appeared to lack clear goals and direction. In September 1966, Senate Majority Leader Mike Mansfield (D-MT) finally killed the bill after the failure of two cloture votes to limit debate on the motion to consider the bill. EMK and Mondale voted for cloture both times. The failure of the bill was a stunning setback for the Johnson administration, which had been warned by civil rights leaders in late 1965 that a fair housing bill might generate fatal political opposition.

In February 1967, Johnson proposed to Congress the enactment of the Civil Rights Act of 1967, a key provision of which was a prohibition on housing discrimination based on race, religion, or national origin. However, the ban was diluted from Johnson's 1966 proposal, as it was phased in over three years.

- The first stage of the ban, effective with enactment, would cover federally assisted housing, about three to four percent of homes. This ban on discrimination was already in effect from a 1962 executive order given by President John F. Kennedy.
- The second stage, effective January 1, 1968, would incorporate dwellings sold by someone other than their occupant and dwellings for five or more families, a provision roughly equivalent to that in the 1966 bill passed by the House. This would increase the bills coverage to thirty to forty percent of homes.
- The third stage, effective January 1, 1969, would include all housing except for noncommercial dwellings owned by religious organizations. If the plan encountered hostility in Congress, proponents considered dropping this third stage as a compromise.

The Senate Judiciary Committee, chaired by civil rights foe James O. Eastland (D-MS), held the only hearings on the Civil Rights Act of 1967, and the bill was never reported. Mansfield indicated that prospects for the passage of housing discrimination legislation in 1967 were no better than 1966, and House Minority Leader Gerald Ford (R-MI) continued to express serious reservations about open housing legislation. In mid-March, Senate proponents of the bill split it into separate measures: equal employment opportunity; state jury reform; federal jury reform; federal protection for civil rights workers; and open housing, the latter of which was introduced by Mondale and a bipartisan group of twenty-one other senators. The Senate did not pass the measure in 1967.

In January 1968, Johnson presented his annual civil rights message to Congress, requesting that five measures be enacted: open housing, civil rights protection, enforcement powers for the Equal Employment Opportunity Commission, and reform of state and federal jury selection procedures. Most observers were not optimistic about the prospects for the passage of open housing legislation. Along with Senator Edward Brooke (R-MA), the only African-American Senator, on February 6th, Mondale introduced the open housing legislation as an amendment to HR 2516, the House-passed civil rights protection bill that was introduced in the Senate that same month. Mondale's amendment was identical to the administration's 1967 proposal, with the exception of an exemption for owner-occupied dwellings housing up to four families. On February 20th, a majority of senators voted for cloture to limit debate on the bill, demonstrating an unexpected level of support, and on the 21st, the Senate rejected 34-58 a motion to kill the bill. Dirksen opposed the bill in both votes, attributing Mondale's success as the result of "irritation and a desire to get settled this business." A second cloture motion was defeated 56-36 on the 26th before a compromise was reached with Dirksen on the 28th and Mondale killed his own bill to allow for debate on the compromise.

The compromise bill exempted single-family, owner-occupied housing if it was sold or rented by the owner, and covered about ten percent less housing than the Mondale amendment. After one defeated cloture motion, the Senate on March 4th finally voted to limit debate on the Dirksen compromise, and the bill was passed with amendments 71-20 on March 11th. One of the amendments was an EMK-supported provision introduced by Senator Russell Long (D-LA) that applied criminal penalties to individuals transporting firearms or who instruct others in the use of a firearm to be used to cause civil disorder. Some criticized the amendment for being too broad. EMK and Mondale voted in favor of the final bill, but Mondale voted against the firearms amendment.

The House accepted the Senate amendments to HR 2516 on April 10th, and the bill was signed into law on April 11th, 1968.

EDWARD W. BROOKE, III MEMO ON CIVIL RIGHTS

Prepared by Paul S. Martin and Nadia Shairzay

Miller Center of Public Affairs, University of Virginia, 11/01/2005

Background: The Brooke-Mondale open housing amendment had its roots in the 1966 Civil Rights Act. President Johnson proposed legislation that included an open housing amendment to end discrimination in the sale and rental of housing. This proved to be one of the most controversial aspects of the legislation and it failed. In 1967 Johnson proposed the Civil Rights Act of 1967 which also included the open housing bill (S 1358), but was defeated. Johnson tried again with the Civil Rights Act of 1968 (also known as the Fair Housing Act). Senator Walter Mondale (D- Minn.) cosponsored an open housing amendment with Senator Brooke, who was in Africa at the time participating on a fact-finding tour for the Senate Banking and Currency Committee.

The amendment called for an end to housing discrimination that would affect about 91 percent of the nation's homes. The amendment was filibustered and the amendment's supporters sought to override it by getting an early vote for cloture. The first vote for cloture was close. The next day the Senate rejected a motion to table, or kill, the amendment. Again the Brooke-Mondale forces tried to reach cloture, but they fell short of the necessary votes. Seeking to defeat the amendment, one of its strongest opponents, Senate Minority Leader Everett Dirksen (R-Ill.) proposed his own housing bill which would cover 80% of housing in America. The third cloture vote also failed and it did not succeed until the fourth vote for cloture. Senator Jack Miller (R- Iowa) switched his vote exchange for Brooke to support a "weakening amendment" that Miller planned to introduce. The bill was finally passed on March 11 and prohibited discrimination in 80 percent of housing and rentals.

1966	Civil Rights Act of 1966 which had an open housing provision was defeated in Congress.
February 15, 1967	Johnson sent the Civil Rights Act of 1967, also with an open housing provision, to Congress. It was later defeated.
1968	Civil Rights Act of 1968 was introduced.
	Senators Mondale, Mitchell, Hart, Tydings and Brooke (via phone) met to discuss introducing an open housing amendment.
February 6, 1968	The Brooke-Mondale amendment was tabled.
February 20, 1968	The amendment failed to win cloture with a vote of 55-37.
February 21, 1968	The Senate rejected a measure to table the Brooke-Mondale amendment.
February 26, 1968	A second attempt for cloture failed.
February 28, 1968	Senator Dirksen proposed a new plan that called for 80% anti-discrimination coverage.
March 1, 1968	A third attempt for cloture failed.
March 4, 1968	A fourth and successful vote for cloture, 65-32.

March 11, 1968	The amendments to the Civil Rights Act of 1968 passed, 71-20.
April 4, 1968	Martin Luther King was assassinated.
April 11, 1968	Johnson signed the Civil Rights Act of 1968 into law.

BUSING FOR DESEGREGATION 1974-1975

Prepared by Anne Mariel Peters

Miller Center of Public Affairs, University of Virginia, 04/14/2006

In both 1974 and 1975, Congress passed laws containing amendments that restricted the ability of courts and the Department of Housing, Education, and Welfare to order the busing of students for the purpose of racial desegregation in public schools. While Dole consistently supported anti-busing measures and opposed efforts to dilute them, EMK stood firm against any sort of anti-busing provision throughout this period, breaking with several fellow Northern Democrats and large segments of his urban, working class constituency.

In the early 1970s, a series of federal court decisions found that racially imbalanced schools impeded the civil rights of minority students. As a result, courts began to order the racial integration of public schools, sometimes requiring the racial breakdown of each school to match that of the school district as a whole. To achieve this goal, courts often required students to be bused into schools whose racial profile was considered to be reflective of racial discrimination. In addition, the Department of Health, Education, and Welfare (HEW) had the ability to terminate federal school funds to enforce busing or other desegregation plans under Title IV of the 1964 Civil Rights Act, but the White House had rarely used this tool. Busing occurred most often in large, ethnically segregated school systems, including those in Boston, Cleveland, and Richmond. Busing was met with a fair amount of opposition, particularly among Southerners and the Northern working class.

On March 26 and 27, 1974, the House passed two anti-busing amendments to the Elementary and Secondary Education Act (ESEA) extension bill (HR 69), declaring that:

- All public schoolchildren were entitled to an equal educational opportunity and a child's neighborhood was the basis for his public school assignment; the failure of a school district to attain a racial or gender balance of students would not constitute a denial of equal educational opportunity.
- All federal courts and agencies would be prohibited from ordering long-distance busing of children to end school desegregation.

In the Senate, Senator Edward Gurney (R-FL) sponsored an ESEA amendment proposing an all-out ban on busing, claiming, "Busing is spreading like a cancer through every part of our country." Gurney's amendment was narrowly tabled 47-46. Siding with traditional civil rights senators such as Jacob Javits (R-NY), Claiborne Pell (D-RI), Philip Hart (D-MI), Walter Mondale (D-MN), and Edward Brooke (R-MA), the only black U.S. senator, EMK provided continual criticism of the Gurney amendment and voted to table the bill; Dole voted against tabling. A more dilute amendment proposed by Senator Birch Bayh (D-IN) was subsequently adopted. Key anti-busing provisions in the Senate ESEA bill (S 1539) included:

- Bayh amendment: Prohibited court-ordered busing unless all other alternatives were found inadequate and unless it was found that both districts involved had practiced segregation.

- Dole amendment: Prohibited Department of Justice interference in segregated schools before allowing the school to voluntarily adopt a corrective plan.

While the House amendment completely forbade busing, the Senate amendment allowed courts to order busing beyond districts next to a student's home if doing so was required to guarantee the student's civil rights. Conferees agreed on a busing compromise with the following provisions:

- Allow courts to determine when extensive busing was necessary.
- Allow courts to terminate a busing order if it determined the school district was no longer violating the civil rights of its students.
- Prohibition on the use of federal funds for busing to overcome racial imbalance, except for impact aid designated for handicapped children or the educationally disadvantaged.

On August 21, 1974, President Gerald Ford signed HR 69 into law (PL 93-380). In September 1974, EMK was chased off the speaker's stand into a nearby federal office building at an anti-busing rally in Boston, where he had sought to calm a crowd of disgruntled parents. Most of the protesters came from solidly Democratic, Irish, and pro-Kennedy neighborhoods, and were angry at EMK's vote that helped narrowly defeat the anti-busing amendment in May. In April 1975, EMK was jeered and jostled by busing opponents after giving a speech at a school in Quincy, Massachusetts. And in September 1975, the birthplace of John F. Kennedy in Brookline, Massachusetts was defamed with graffiti ("Bus Teddy") and damaged by fire in an apparent act of protest against busing. EMK still refused to hedge his support for school desegregation.

In November 1974, Congress also attached three diluted Senate anti-busing amendments to the 1975 HEW appropriations bill (HR 15580).

- Prohibition on the use of federal funds for busing to overcome racial imbalance. This provision was intended to close loopholes that surfaced in the ESEA conference bill, but it was likely to have little impact because so few federal funds were used for such purposes.
- The second and third amendments prohibited the use of federal funds to force any school already desegregated to: (a) bus school children; (b) abolish schools; and (c) require attendance at any school against the choice of the student's parents. The House language would have required these amendments to apply to all schools.

In the fall of 1975, anti-busing proponents in the Senate tried to rally support for a constitutional amendment to ban court-ordered busing. It was believed that a constitutional amendment was the only way to end "forced" busing because legislation prohibiting the courts from doing so would probably be found unconstitutional. Four constitutional amendments were proposed:

- S J Res 29, by Senator William V. Roth (R-DE) would amend the constitution to bar the transportation of students on the basis of race, color, national origin, or sex. Similar amendments were proposed by Dewey Bartlett (R-OK) and John Tower (R-TX).

- A broader amendment, offered by William Lloyd Scott (R-VA), would forbid the assignment of students to schools and the assignment of local, state, and federal government employees on the basis of race.

None of the proposals for a constitutional amendment was successful, and on September 3, the Senate tabled 42-35 a Dole amendment to the State, Justice, and Commerce appropriations bill that would have prohibited the use of Department of Justice funds to intervene in any court suit seeking to require forced busing (EMK voted to table the bill). However, on September 26, the Senate passed an HEW appropriations bill (HR 8069), to which it attached three anti-busing amendments that were not included in the House bill. EMK was the only Northern Democrat to oppose all three amendments. These amendments were:

- Biden amendment (1): Prohibited HEW from threatening aid cutoffs to require school systems to assign students or teachers on the basis of race. EMK voted against; Dole announced for. Senator Joseph Biden (D-DE) introduced his amendment as a counter to an unsuccessful amendment by Senator Jesse Helms (R-NC) that would have forbidden HEW to force local schools to classify students by race, thereby depriving HEW of key information used to assess whether a school was guilty of segregation practices.
- Biden amendment (2): A more legally explicit version of Biden's first amendment sought to assure Northern liberals that Biden's first amendment would not weaken HEW's other discrimination remedies. EMK voted against; Dole in favor.
- Byrd amendment: Prohibited HEW from threatening aid termination to force school systems to bus students beyond the school closest to the student's home that offered the courses sought by the student. EMK voted against; Dole against.

Debate over the Senate's anti-busing amendments stalled HR 8069 in conference for two months. Ultimately, both Biden amendments were dropped and the Byrd amendment was retained. Nobody spoke against the bill; Brooke said he would withhold his opposition in the interests of enacting the appropriations bill. Ford vetoed the bill on December 19, claiming that it was too expensive, but Congress voted to override the veto in January 1976, enacting HR 8069 into law (PL94-206)