

CIVIL RIGHTS COMMISSION ACT OF 1996

SEPTEMBER 26, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CANADY of Florida, from the Committee on the Judiciary, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 3874]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3874) to reauthorize the United States Commission on Civil Rights, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments (which are technical in nature) are as follows:
Page 1, line 9, strike “1986” and insert “1983”.
Page 3, line 3, strike ““agency”” and insert “‘agency’”.

PURPOSE AND SUMMARY

The United States Commission on Civil Rights was originally established in 1957 as a temporary agency designed to serve as an independent, bipartisan, fact-finding agency of the executive branch. As currently constituted, the Commission has eight members: four appointed by the President, two appointed by the Senate and two appointed by the House. 42 U.S.C. 1975 et seq. The Commission's current authorization expires on September 30, 1996.

H.R. 3874, the "Civil Rights Commission Act of 1996," extends the authorization of the U.S. Commission on Civil Rights for one year and authorizes funding at \$8.75 million. In response to issues raised as a result of oversight conducted by the Subcommittee on the Constitution, the legislation also makes needed changes to the Commission's authorization statute. The legislation proposes two minor changes to the Commission's authorization statute to inject accountability into its proceedings: (i) It requires a vote of a majority of the Commissioners, a quorum being present, to issue subpoenas; and (ii) allows a majority of the Commissioners to vote to remove the Staff Director.

BACKGROUND AND NEED FOR THE LEGISLATION

In October 1995, after receiving numerous allegations of mismanagement and waste and pursuant to its oversight authority, the Subcommittee on the Constitution requested information and documents from the Commission relating to its program management, personnel practices, and procurement.

While some of the requested information was provided, many of the requests were unanswered or only responded to in part. Subsequently, the Chairman requested that the General Accounting Office investigate the Commission's program, personnel and procurement practices. In addition, the Office of Personnel Management was asked to conduct a thorough Personnel Management Evaluation. Both of these investigations are ongoing.

Also in October 1995, the Subcommittee held an oversight hearing to investigate reports of disturbing activities at the Commission. The Commission had failed to comply with the statutory requirement that it submit to Congress at least one report each fiscal year that monitors federal civil rights enforcement (for fiscal year 1995), even though it had received an additional \$1.2 million in funding; three Commissioners were not given a proper opportunity to vote on a Commission report entitled "Funding Federal Civil Rights Enforcement" in June of 1995; and perhaps of greatest concern, the Commission used its subpoena authority in a manner that "chilled" the First Amendment-protected activities of individuals in connection with hearings conducted in Miami, Florida in September 1995.

SUBPOENAS FOR THE MIAMI HEARING

At its October 1995 oversight hearing, the Subcommittee on the Constitution investigated claims that the Commission used its subpoena power to force individuals engaged in legal and constitutionally-protected political activities to testify before the Commission and to submit copies of their organizations' internal records at

its September hearings in Miami, Florida. Once the Commission's activities were subject to the scrutiny of the press and calls for a Congressional investigation, it backed down.

As part of its continuing series of hearings on the issue of "Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination," on September 14 and 15, 1995, the Commission held two days of hearings in Miami, Florida.¹ In preparation for the hearings, Commission staff contacted potential witnesses including JoAnn Peart, a housewife who is President and Co-Founder of Floridians for Immigration Control; Robert Ross, President of the Florida-187 Committee; and Enos Schera, Vice-President of Citizens of Dade United.

These individuals, engaged in legitimate and constitutionally-protected political activities, were eventually served with subpoenas to compel attendance against their will, along with detailed requests for internal records and documents regarding their First Amendment-protected activities.

After having repeatedly been contacted by Commission Attorney Sicilia Chinn and informed that her attendance would be compelled by subpoena, if necessary, on August 25, 1995, Mrs. Peart wrote to Florida Congressman Mark Foley complaining that, "Since I am not an expert and have no firsthand information relating to the ostensible purpose of the Hearings, then I do not understand why I am being threatened by an employee of the federal government with forced attendance at the Miami Hearing." (Letter of JoAnn Peart, August 25, 1995).

On the same date, Congressman Foley wrote to Ms. Mary Mathews, Staff Director for the Commission, asking her to "respond to Mrs. Peart's specific comments" and to "specify the Commission's official policy in these circumstances." (Letter of Rep. Mark Foley, August 25, 1995) Ms. Mathews responded to Congressman Foley by letter dated August 30, 1995, but on September 2, the subpoenas directed to JoAnn Peart and Robert Ross were served by federal marshals.

Shortly after the subpoenas were served, there was an outcry in the press that the heavy-handed tactics of the Commission were chilling First Amendment rights.²

On September 8, 1995, the Commission held its monthly meeting at which time Commissioners Constance Horner, Carl Anderson and Robert George expressed concern over the scope of the subpoenas and their impact on First Amendment rights. In response to charges that Mrs. Peart, Mr. Ross and Mr. Schera were unfairly singled out, Chairperson Berry argued that the subpoenas were a "routine tool" needed to insure attendance by witnesses and that all witnesses within the 100 mile radius of the hearing were subpoenaed without regard to their point of view. With respect to the requests for internal documents of their organizations, Berry stated

¹Hearings were also held in Washington, D.C. (January and May, 1992), Chicago, Illinois (June, 1992), Los Angeles, California (June, 1993), and New York City, New York (September, 1994 and July, 1995).

²"Civil Rights Panel Subpoenas Anti-Immigration Leaders," Palm Beach Post, 9/7/95; "Racial Hearings Stir Up Speakers," Sun-Sentinel, 9/7/95; "Subpoena Tactics Draw Fire," Tampa Tribune, 9/7/95; "U.S. Panel Orders Anti-Immigration Leaders to Appear," AP wire story, 9/7/95; "Sparks Flying Over Civil Rights Subpoenas," The Herald, 9/8/95; "Illegal-immigrant foes get subpoenas" Washington Times, 9/11/95.

that the subpoena duces tecum issued to Ross was not unlike that issued to other witnesses with opposing viewpoints, such as Orvaldo Soto, President of the Spanish American League Against Discrimination.³ She also noted that the subpoenas duces tecum did not explicitly ask for membership lists and, therefore, did not violate the First Amendment. Berry also asked the Commission staff to prepare a memo on the Commission's practices and policies related to the issuance of the subpoenas.

After the Chairman of the Subcommittee announced there would be a congressional oversight hearing on the matter and recipients of the subpoenas threatened to file a lawsuit, Berry wrote to Mrs. Peart, Mr. Ross and Mr. Schera informing them that if they chose not to attend, she would not enforce the subpoenas served them.

These actions have had the effect of chilling the lawful exercise of First Amendment rights by citizens. In addition, because of the nature of the topic, it has created the appearance that the powers of the Commission are being used to target individuals based on the content of their political advocacy.

With respect to its subpoena authority, the Commission's authorizing statute provides: The Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides. * * * In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena. 42 U.S.C. § 1975a(e)(2).

The ability of the Commission to use subpoenas to engage in fact-finding was upheld by the United States Supreme Court in *Hannah v. Larche*, 393 U.S. 420 (1960) and *U.S. v. O'Neill*, 619 F.2d 222 (1980). In establishing that the Commission has the power to subpoena witnesses and documents, the O'Neill court also explains that this power is limited by statute to that which is "pertinent, relevant and non-privileged." 619 F.2d 222, 224 (1980).

Of course, the subpoena authority must be exercised within the framework of constitutional guarantees. In *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), the U.S. Supreme Court held that the state of Alabama could not compel the National Association for the Advancement of Colored People (NAACP) to reveal to the state's Attorney General the names and addresses of all of its Alabama members. The NAACP put forth evidence showing that compelled disclosure of its members on past occasions had subjected them to economic reprisal, loss of employment, threat of

³The subpoena duces tecum issued to Robert Ross asked for internal documents and "drafts" of the proposed constitutional amendment. The subpoena duces tecum to Orvaldo Soto only requests public materials—no drafts or internal documents. Also, individuals who would be an excellent source for documents containing factual information to the Commission such as Dr. Max Castro, Professor of Sociology and Director of the North-South Center's Research Program on Immigration and Refugees at the University of Miami and Dr. Raymond Mohl, Chairman of the History Department at Florida Atlantic University (whose teaching and research fields include American Urban History, Race and Ethnicity, American Social History, Modern American History, Florida History, and Historiography) were not asked to bring any documents. In contrast, it is curious that a housewife with a discussion group on immigration-related issues is served with a subpoena to empty out her "files" on the activities of her group.

physical coercion, and general public hostility. In articulating the right protected, a unanimous Court declared:

Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny. *NAACP v. Alabama*, 357 U.S. 449 (1958) (internal citations omitted.)

In a letter to Chairman Charles Canady dated September 18, 1995, Chairperson Berry stated, "[j]udicial supervision makes it impossible to 'chill' any constitutionally-protected activity by subpoenaing a witness."

It is true that an individual whose rights are violated by a government agency can seek redress through the courts if that individual can afford the commitments of time and money to hire an attorney to match the resources of the federal government and if that individual does not fear further intimidation, humiliation and alienation. Having to go to court to protect yourself means that your freedom has already been "chilled." In addition, individuals who desire to express similar ideas or political views are less likely to speak up for fear they too may be visited by a federal marshal serving a subpoena.

Individuals should not be forced to suffer this burden in order to exercise rights granted by the Constitution. The burden is on the government agency, in the first instance, to abide by the Constitution and to insure that its actions do not infringe upon or chill constitutional rights.

Testimony received by the Subcommittee at its October 1995 hearing did little to comfort Members of Congress and the press that the Commission's subpoena authority was being exercised in a responsible fashion. At that hearing, Staff Director Mary Mathews and then Deputy General Counsel Stephanie Moore informed the Subcommittee about the Commission's current practice of issuing subpoenas. All witnesses within the 100-mile radius of proposed hearings are routinely subpoenaed. The Commission's staff determines who to subpoena and then the chair signs the subpoenas provided by the staff. Under current Commission procedures, the Commissioners agree to a project design and have an opportunity to suggest witnesses, however, they are excluded from the process of selecting witnesses and are not permitted to review or approve subpoenas and subpoenas duces tecum prior to such subpoenas being issued.

The Commission staff selects witnesses for the hearings and prepares subpoenas and subpoenas duces tecum as they see fit. Even

where witnesses express reservations about being subpoenaed to provide testimony, those concerns are not passed on to the Chair who signs the subpoenas so that they can be served by U.S. Marshals. In this instance, for example, when Chairperson Berry wrote to Mrs. Peart and others informing them that she would not enforce the subpoenas against them, she indicated that she had learned of their concerns through "press accounts." Even more alarming, Staff Director Mathews testified before the Subcommittee that she did not inform the Chair that Congressman Foley had written to her expressing concern that his constituent was being harassed by Commission attorneys and felt her rights were being violated. Further testimony at the October hearing indicated that Commission staff had little awareness or concern for protecting basic constitutional rights. For example, Ms. Moore testified that, other than asking for membership lists, she could not think of any way in which issuing a subpoena could infringe First Amendment rights and that the issuance of subpoenas to individual citizens involved in political activities could not have a chilling impact on their First Amendment rights.⁴

FAILURE TO SUBMIT A STATUTORY REPORT

The Commission failed to comply with the mandate in its authorizing statute which requires it to submit to Congress at least one report every fiscal year that monitors federal civil rights enforcement in the United States.

In Fiscal Year 1995, the Commission failed to comply with its statutory mandate which provides:

The Commission shall submit to the President and Congress at least one report annually that monitors Federal civil rights enforcement efforts in the United States. 42 U.S.C. § 1975a.

When one considers that the Commission received a \$1.2 million increase in FY 1995 over its prior year appropriation, failure to properly manage resources in a manner so that it can fulfill its statutory mandate also becomes a concern.

Commission staff prepared a report on enforcement of Title VI of the Civil Rights Act of 1964 which was to have fulfilled the statutory requirement. The report was voted on by the Commissioners at their regular monthly meeting on July 14, 1995, but as drafted failed to meet the approval of a majority of the Commissioners. Chairperson Berry announced that she was voting against the report so that she could bring it up for a revote at a later date and that she would:

[D]iscuss with the Staff Director the possibility of revising the Executive Summary and the findings and recommendations to reflect more clearly [items that are already in the report] . * * * And then to present it to the Commission again with taking into account some of the other comments that have been made here, in September. But I do think with the great expenditure of money and

⁴See "U.S. Commission on Civil Rights," hearing before the Subcommittee on the Constitution, 104th Congress, 1st Session (October 19, 1995), 68.

time and effort, and the fact that we do not have another statutory report, and the importance of the subject that it is worth a try to get it approved.⁵

Commissioner George then asked the Chair if it would be appropriate to submit memoranda through the Staff Director in order to make the requested changes. Berry responded, "What you should do is if you are moved to do so, you should give a memo to the Staff Director with your comments, and do it as soon as possible."⁶

On August 15, 1995, four of the Commissioners (Anderson, George, Horner and Redenbaugh) sent a memorandum to Staff Director Mary Mathews discussing in detail issues that were raised during the Commission's meeting on July 14, 1995 and offering ways to resolve those issues.

On August 18, 1995, Chairperson Mary Frances Berry and Vice-Chairperson Cruz Reynoso responded to the memorandum, stating, "if the nature of this draft as an enforcement report were clearly understood by every Commissioner, we have no doubt it would garner the votes necessary for its approval." In sum, they thought it was unnecessary to make any changes. Mathews never responded to the August 15, 1995 memorandum from the four Commissioners.

At the Commission's monthly meeting on October 6, 1995 when Commissioner Horner raised the issue of the August 15, 1995 memorandum offering to work out changes to the Title VI report, she was informed by Berry and Mathews that it was the policy of the Commission that the Staff Director would not receive any memorandum purporting to be from Commissioners unless signed by the Commissioners themselves. Since the memorandum requesting changes to the report was not signed, it was not accepted.⁷

Berry also informed the Commissioners that they had reached an impasse because four Commissioners found the report perfectly acceptable and four did not. As far as she was concerned there was "nothing to discuss." Finally, an agreement was reached whereby the Commissioners' Staff Assistants were instructed to meet in order to attempt to resolve the impasse.

The report was finally approved by the Commissioners in January of 1996. The final published version was issued in August of this year—almost a year after the deadline.

Unfortunately, it appears that this fiscal year the Commission will fail to comply with the mandate of its statute that it issue one report monitoring federal civil rights enforcement. Again this year, the staff of the Commission failed to provide an acceptable draft report to the Commissioners so that it can be approved and published prior to the end of the 1996 fiscal year.

⁵ Unedited remarks of Commission Chair Mary Frances Berry, p. 121–122, Commission Transcript, Meeting of July 14, 1995.

⁶ *Id.* at 125.

⁷ It is not clear why, if Mathews was in doubt about the source of the memo, she did not contact the Commissioners to verify its authenticity, especially when at the end of the July meeting, she was present when the Commissioners discussed the fact that they would be sending the memo. The origin of the policy on "signed" memos is also unclear. One could credibly argue that Mathews was under some obligation to try to work out the concerns of the Commissioners so that the Commission could comply with the mandate of its authorizing statute.

VOTING IRREGULARITIES

The Staff Director closed the voting on adopting a report without giving all the members of the Commission the opportunity to cast a vote.

By memorandum dated June 6, 1995, Staff Director Mathews sent to the Commissioners a draft report entitled, "Funding Federal Civil Rights Enforcement" and informed them that it was important to issue the report as soon as possible so as to "provide a meaningful contribution to the analytical process on the Hill." She also proposed that "a poll vote be taken for approval of this report at a time convenient to all Commissioners."⁸

On Friday, June 9, 1995, the Commission held its monthly meeting at which time Berry announced, "the hope is that you could read it and that we could take a poll vote at some point and if it seems not to be contentious that we could pass it and send it up because they will be marking up appropriations bills on the Hill before we meet again."⁹ It was agreed that there would be a telephone poll vote at a convenient time.

On June 19, 1995, Commissioners Horner and Redenbaugh wrote to Berry, with the accord of Commissioners Anderson and George, informing her that:

"Because we have serious questions and reservations, we feel it is necessary to discuss this report—among the Commissioners and with the staff authors—before voting. We kindly request that you arrange for such an opportunity through the Office of the Staff Director."¹⁰

On June 21, 1995, by memorandum, Mathews informed the Commissioners that a poll vote had been taken on the report which "resulted in approval of the report." Also by memorandum dated June 21, 1995, Mathews wrote to Berry informing her that the report had been approved by a vote of 4–1 with three Commissioners not voting.¹¹ The memorandum stated that the poll was conducted "in accordance with Commission procedure" and that:

As in other instances, individual Commissioners expressed a desire for a delay or made other suggestions which would have prevented the polling from occurring (sic). However, the poll proceeded according to Commission policy that the Staff Director implements a Commission decision to poll unless prevented by lack of a quorum.¹²

By letter of June 23, 1995, Commissioners Anderson, George, Horner and Redenbaugh wrote to Chairman Canady asking that he not accept the report because "[t]he report in its current form was published prematurely and represents neither a majority nor a consensus of the Commission." In addition, the letter states:

⁸As of the writing of this memo, this report has *still* not been transmitted to Congress.

⁹Monthly Meeting of the U.S. Commission on Civil Rights, June 9, 1995, 47–48.

¹⁰Memorandum, June 19, 1995.

¹¹Voting in favor of the report were Berry, Cruz Reynoso, Charles Wang and Arthur Fletcher. Commissioner Horner's written vote against approving the report was submitted to the Staff Director prior to the date of the vote. The votes of Commissioners Redenbaugh, Anderson and George were not recorded.

¹²Memorandum of Staff Director to Chairperson Mary Frances Berry, June 21, 1995.

If all Commissioners had voted, the report would not have passed in its current form. Staff Director Mary K. Mathews and Chairperson Mary Frances Berry were so advised in advance of the telephonic vote. In fact, * * * we were attempting to work with Chairperson Berry to draft a consensus document, and were in telephonic communications with the Office of the Staff Director even as the Staff Director arbitrarily stopped the vote. Moreover, the report was released so hastily that, in violation of normal procedures, Commissioners could not file dissenting opinions, thus denying Congress the differing views of half of this Commission.

By memorandum of June 27, 1995, Commissioner Redenbaugh reiterated the problem to Berry, Reynoso, Fletcher and Wang, stating:

On Tuesday afternoon, I stated to the Staff Director that if the commissioners were required to have our votes recorded on that date, Commissioner Anderson and I must have our votes recorded as "no." She indicated to me that it would be possible to have the vote held over until the next day, and I relied on that representation.

Staff Director Mathews continues to insist that the poll was taken in accordance with "standard commission procedure."

However, there are no specific Commission procedures which govern adoption of reports by notational voting, telephonic voting or poll voting which permits, directs or requires the Staff Director to implement a Commission decision to poll unless prevented by lack of a quorum, or requiring or authorizing telephone voting polls to be closed out in a single day where Commissioners had expressed their desire to vote a day or two thereafter.

If it is true that the vote was indeed conducted in accordance with "standard Commission procedure" then it is clear that "standard Commission procedure" does not protect the rights of the Commissioners to vote and have their votes counted.

And despite clear evidence to the contrary, Mathews continues to insist that "every commissioner had a full opportunity to vote." It is disturbing that a federal commission charged by law with investigating voting rights abuses should deny its own members a vote on a report to Congress.

The October 1995 hearing focused on serious problems that had been brought to the attention of the Subcommittee. Those concerns were raised with the Staff Director and the Commission's General Counsel during that hearing. Unfortunately, the Commission has not taken any action to prevent these problems from recurring. The Commission leadership has failed to address very these serious problems, including: use of subpoenas to chill First Amendment rights, the failure to accomplish the one task mandated by Congress—issuing a statutory report for fiscal year 1995; and serious allegations that the Staff Director denied Commissioners the opportunity to vote on a report issued in 1995.

These are just a few of the serious problems that have been uncovered at the Commission. The legislation proposes sensible, minor changes to the Commission's authorizing statute intended to

address some of these problems. Once the Subcommittee has heard from GAO and OPM, a more comprehensive approach to reauthorization can be pursued.

Now, more than ever, this nation needs an effective voice of leadership to address the sensitive issues of racial discrimination and racial hatred and to bring hope to those who seek a reasoned and peaceful solution to these serious problems. The Commission is the institution designated by Congress and the President to fulfill this role for the nation. Hopefully, the authorization statute will advance the Commission's fulfillment of this important role.

HEARINGS

The Committee's Subcommittee on the Constitution held one day of oversight hearings of the U.S. Commission on Civil Rights on October 19, 1995 and one day of hearings on H.R. 3874, the "Civil Rights Commission Act of 1996," on July 24, 1996. On October 19, 1995, testimony was received from six witnesses: Representative Mark Foley; Representative Louise Slaughter; Representative Dana Rohrabacher; Mary Mathews, Staff Director, U.S. Commission on Civil Rights; Stephanie Moore, Deputy General Counsel, U.S. Commission on Civil Rights; and Robert Ross, Jr., Executive Director, FLA-187 Committee, Inc.

On July 24, 1996, testimony was received from six witnesses: Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights; Mary Mathews, Staff Director, U.S. Commission on Civil Rights; Wade Henderson, Executive Director, Leadership Conference on Civil Rights; Robert George, Commissioner, U.S. Commission on Civil Rights; Carl Anderson, Commissioner, U.S. Commission on Civil Rights; and Russell Redenbaugh, Commissioner, U.S. Commission on Civil Rights.

COMMITTEE CONSIDERATION

On July 25, 1996, the Subcommittee on the Constitution met in open session and ordered reported favorably the bill H.R. 3874 by a vote of five to two, a quorum being present. On September 18, 1996, the Committee met in open session and ordered reported favorably the bill H.R. 3874 without amendment by a recorded vote of twelve to six, a quorum being present.

VOTES OF THE COMMITTEE

1. Amendment offered by Mr. Watt to delete provisions of H.R. 3874 dealing with the Commission's issuance of subpoenas and requirements for dismissal of the Commission's Staff Director, which was defeated by a rollcall vote of 7-14.

AYES

Mr. Berman
Mr. Nadler
Mr. Scott
Mr. Watt
Ms. Lofgren
Ms. Jackson Lee
Ms. Waters

NAYS

Mr. Hyde
Mr. Sensenbrenner
Mr. McCollum
Mr. Gekas
Mr. Coble
Mr. Canady
Mr. Inglis

Mr. Buyer
 Mr. Hoke
 Mr. Bono
 Mr. Bryant (TN)
 Mr. Chabot
 Mr. Flanagan
 Mr. Barr

2. A motion to favorably report H.R. 3874 was agreed to by a rollcall vote of 12–6.

AYES	NAYS
Mr. Hyde	Mrs. Schroeder
Mr. Moorhead	Mr. Scott
Mr. McCollum	Mr. Watt
Mr. Coble	Ms. Lofgren
Mr. Canady	Ms. Jackson Lee
Mr. Inglis	Ms. Waters
Mr. Buyer	
Mr. Hoke	
Mr. Bono	
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House rule XI is applicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3874, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, September 20, 1996.

Hon. HENRY J. HYDE,
 Chairman, Committee on the Judiciary,
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3874, the Civil Rights Commission Act of 1996.

Enacting H.R. 3874 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
 (For June E. O'Neill).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3874.
2. Bill title: Civil Rights Commission Act of 1996.
3. Bill status: As ordered reported by the House Committee on the Judiciary on September 18, 1996.
4. Bill purpose: H.R. 3874 would authorize the appropriation of \$8.75 million for fiscal year 1997 for the United States Commission on Civil Rights, the same amount as the commission's 1996 appropriation. In addition, the bill would change certain laws governing the commission's operation. Specifically, H.R. 3874 would modify the commission's authority to issue subpoenas, specify terms for removal of the commission's staff director, and make the commission subject to the Freedom of Information Act and other laws relating to public accountability.
5. Estimated cost to the Federal Government: Enacting H.R. 3874 would affect discretionary spending, subject to appropriation of the authorized funds, as shown in the following table. This estimate assumes that the authorized amount will be appropriated for fiscal year 1997 and that spending will occur at the historical rate for the commission. Other provisions of the bill would have no significant impact on spending by the Civil Rights Commission.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
Spending Under Current Law:							
Budget Authority ^a	8.8	—	—	—	—	—	—
Estimated Outlays	8.8	—	—	—	—	—	—
Proposed Changes:							
Authorization Level	—	8.8	—	—	—	—	—
Estimated Outlays	—	8.4	0.4	—	—	—	—
Spending Under H.R. 3874:							
Authorization Level ^a	8.8	8.8	—	—	—	—	—
Estimated Outlays	8.8	8.8	0.4	—	—	—	—

^aThe 1996 level is the amount appropriated for that year.

The costs of this bill fall within budget function 750.

6. Pay-as-you-go considerations: None.

7. Estimated impact on State, local, and tribal governments: H.R. 3874 contains on intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), and would have no significant impact on the budgets of state, local, or tribal governments.

8. Estimated impact on the private sector: H.R. 3874 would impose no new private-sector mandates as defined in Public Law 104-4.

9. Previous CBO estimate: None.

10. Estimate prepared by: Federal Cost Estimate: Mark Grabowicz. State and Local Government Impact: Karen McVey. Private Sector Impact: Matthew Eyles.

Estimate approved by: Robert A. Sunshine (for Paul N. Van de Water, Assistant Director for Budget Analysis).

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 3874 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section provides that the Act may be cited as the “Civil Rights Commission Act of 1996”.

Section 2. Extension and Authorization of Appropriations

Section 2 of the bill would authorize an appropriation of \$8,750,000 for the Commission for Fiscal Year 1997. This is the same amount appropriated for the Commission in Fiscal Year 1996, and it is in accord with the amount approved by the House in the Commerce, Justice, State and the Judiciary Appropriations bill, H.R. 3814.

In addition, this section provides for a one-year reauthorization of the Commission. The General Accounting Office and the Office of Personnel Management are both currently conducting intensive studies of various aspects of the Commission’s activities and policies. The one-year reauthorization will permit the Commission to continue its ongoing projects, and it will permit the authorizing committee to revisit next year the composition, duties, and powers of the Commission.

Section 3. Subpoenas

The Commission has the statutory authority to issue subpoenas in furtherance of its investigatory responsibilities. 42 U.S.C. § 1975a(e)(2). It is standard practice for the Commission staff to issue subpoenas to all witnesses at hearings, whether or not there is any reason to believe that such compulsory process is necessary or warranted. Subpoenas are signed by the Chairman. The Commissioners are not involved in the decision to issue subpoenas, and are unable to monitor the scope of the requests for documents.

There appears to be widespread agreement that possession of the subpoena power is necessary for the Commission to accomplish its

statutory mandate. Current Commission practice, however, allows the issuance of subpoenas in the absence of careful consideration and sound judgment. The Subcommittee has not been alone in these concerns—they have also been raised by the individuals subpoenaed to appear at the Commission’s 1995 Miami hearing, Members of Congress, civil libertarians and members of the press.

The reauthorizing statute would amend the subpoena authority by requiring “a majority vote of those [Commissioners] present and voting” before a subpoena could be issued. This is a measured attempt to inject some accountability into the Commission’s invocation of this most potent statutory authority and to help insure that the subpoena authority is exercised with the necessary due care and good judgment. It would make the Commission’s subpoena power much like Congress, where subpoenas may be issued only after a vote by the relevant committee or subcommittee members.¹³ Of course, this change to the statute does not preclude the Commission from implementing additional safeguards in the future should it choose to do so.

Section 4. Staff Director

While the eight Commissioners alone have the right to vote on Commission business, they are only involved with the Commission on a part-time basis. The day-to-day operations of the Commission are directed by the full-time staff, and in particular by the Staff Director. The Staff Director, who is appointed by the President with the concurrence of a majority of the Commission (i.e., at least five of the eight Commissioners), serves “as the administrative head of the Commission,” 42 U.S.C. § 1975b(a)(1). The Staff Director thus exercises an extraordinary amount of influence over the Commission’s activities.

In order to provide an incentive for the Staff Director to work more cooperatively with all Commissioners, the reauthorizing statute provides that the Staff Director may, at any time, be removed from office by a majority vote of the Commissioners (i.e., by at least five Commissioners). If the Commissioners were to exercise this power, the President would have to appoint a new Staff Director acceptable to a majority of the Commission.

Section 5. Application of Freedom of Information, Privacy, and Sunshine Acts

This section is needed to correct an oversight in the existing statute. As currently constituted, the Commission is technically exempt from a variety of federal laws providing for greater public accountability and accessibility. This provision makes sure that those laws will apply by making it explicit that the Commission is an “agency” for purposes of these statutes.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

¹³ See, Rule XI, Clause 2(m)(2), Rules of the 104th Congress, U.S. House of Representatives.

is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CIVIL RIGHTS COMMISSION ACT OF 1983

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SEC. 3. DUTIES OF THE COMMISSION.

(a) * * *

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(e) **HEARINGS AND ANCILLARY MATTERS.**—

(1) * * *

(2) **POWER TO ISSUE SUBPOENAS.**—The Commission may, by a majority vote of those present and voting issue subpoenas for the attendance of witnesses and the production of written or other matter. Such a subpoena may not require the presence of a witness more than 100 miles outside the place wherein the witness is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process. In case of contumacy or refusal to obey a subpoena, the Attorney General may in a Federal court of appropriate jurisdiction obtain an appropriate order to enforce the subpoena.

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) **STAFF.**—

(1) * * *

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(3) **REMOVAL OF STAFF DIRECTOR.**—*The Commission may, by a majority vote of the Commission, remove the staff director from office.*

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(f) **APPLICATION OF CERTAIN PROVISIONS OF LAW.**—*The Commission shall be included in the term “agency” as such term is defined for the purposes of sections 552, 552a and 552b of title 5, United States Code.*

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

【There are authorized to be appropriated, to carry out this Act \$9,500,000 for fiscal year 1995.】 *There are authorized to be appropriated to carry out this Act \$8,750,000 for fiscal year 1997.* None of the sums authorized to be appropriated for fiscal year 【1995】 1997 may be used to create additional regional offices.

SEC. 6. TERMINATION.

This Act shall terminate on September 30, 【1996】 1997.

DISSENTING VIEWS

While we strongly support the existence of, need for, and work of the United States Commission on Civil Rights, we dissent to this reauthorization because of the harsh restrictions placed upon the Commission within this proposed reauthorization.

Specifically, we object to the following:

(1) In the view of many (but not all) of us, the Commission should be extended for more than one year. It is an unnecessary and intrusive requirement to have the Commission constantly under the obligation of responding to the many requests made by the majority of its time and resources, which a one year extension guarantees will be the case. We would prefer a longer reauthorization period, which would permit the Commission to conduct its responsibilities thoroughly.

(2) The reauthorization proposes funding at \$8.75 million, which is level funding (not accounting for inflation), but well below the President's request of \$11.4 million. We would prefer a higher level of funding to help the Commission continue and expand its mission of studying, documenting, and publishing information about civil rights issues in this nation.

(3) The proposed change in the subpoena authority of the Commission will weaken its ability to gather witnesses to testify on sensitive but important matters. The change is unnecessary, and we oppose it. The current practice of the Commission, notwithstanding its authority, is to only recommend enforcement of a subpoena to the Attorney General by a majority vote of the Commission. The Democrats offered an amendment to codify that in Subcommittee, but that amendment was rejected. The proposed change may require a Commission vote of each invited witness, a time consuming and unnecessary burden on what is a part-time Commission.

More importantly, the practice of issuing subpoenas to all invited witnesses is motivated by a desire to protect those witnesses who are intimidated, by community pressure or otherwise, from appearing. Commissioners and representatives of the civil rights community testified that the practice of issuing a subpoena to reluctant witnesses, afraid of retaliation from their neighbors, was to protect the witnesses. The Commissioners also testified that objectors to the issuance of subpoena have been accommodated over the years, through negotiation with the Commission's counsel, over the terms or effect of the subpoena. There have been virtually no reports of abuse of the subpoena power over the many years of the Commission, and the one incident testified to at the Subcommittee's hearing on this matter has been exploited as compelling this statutory change. We believe that the one known incident alleging misuse of subpoena authority merits our oversight, and consideration, and perhaps recommended changes in the practice of the Commission,

but not this statutory change. We understand that one reason the majority seeks to reauthorize the Commission for just one year is to wait for the results of a GAO study on the work of the Commission, expected in 1997. In our view, that report may shed important light on this aspect of the Commission's work, and any statutory change to the subpoena authority of the Commission should suspend pending the report's release.

(4) A provision that the Staff Director be removable by a majority of the Commission. The Commission's Staff Director is currently appointed (and removable) by the President, with the concurrence of a majority of the Commission. The majority proposes to permit the Commission, by a majority, to remove the Staff Director as well, to "insure that the Staff Director, who effectively runs the Commission on a day to day basis, has the incentive to work cooperatively with all members of the Commission." In our view, the Staff Director should be removable by the person, in this case the President, that appointed her. The proposed change injects a layer of politics into the management of the Commission which is unnecessary, and divisive.

For these reasons we oppose this reauthorization of the Commission. We remain eager to see the Commission reauthorized, but cannot support the restrictions put on it by the majority, and so we dissent.

JOHN CONYERS, Jr.
PAT SCHROEDER.
BARNEY FRANK.
MELVIN L. WATT.
XAVIER BECERRA.

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