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SENATE RECORD VOTE ANALYSIS—TEMPORARY

101st Congress
1st Session

Vote No. 175

September 13, 1989, 5:15 p.m.
Page S-11011 (Temp. Record)

FSX FIGHTER JET CODEVELOPMENT PROJECT/Veto

SUBJECT: **Prohibiting the export of technology, defense articles, and defense services to codevelop or coproduce the FSX aircraft with Japan . . . S.J. Res. 113. Passage, upon reconsideration, the objections of the President notwithstanding.**

ACTION: VETO SUSTAINED, 66-34

SYNOPSIS: Pertinent votes on this legislation include Nos. 66-67.

On May 16, the Senate approved the Byrd et al. substitute to S.J. Res. 113, a resolution to reject the agreement to codevelop and coproduce the Fighter Support Experimental (FSX) aircraft with Japan.

The Byrd substitute approved of the FSX agreement with the requirement that the President ensure that all U.S. technology, defense articles, and defense services provided to Japan for codevelopment of the FSX be subject to the requirements of the Arms Export Control Act. It also provided that the United States and Japan negotiate and sign a memorandum of understanding (MOU) containing terms and conditions for joint production of the aircraft including:

- Prohibiting the transfer to Japan of critical engine technologies;
- Prohibiting the sale or retransfer by Japan of the FSX weapon system or any of its major subcomponents codeveloped or coproduced with the United States; and
- Specifying that the U.S. share of coproduction not be less than 40 percent the project's total value.

In addition, the substitute provided that, beginning 6 months after the date of enactment and every 12 months thereafter, the U.S. Comptroller General submit to Congress a report describing progress made in implementing the MOU between the Department of Defense (DoD) and Japan's Defense Agency.

Finally, the substitute required that in implementating this MOU or any other MOU related to the FSX agreement, the Secretary of Defense solicit the recommendations of the Secretary of Commerce with respect to the memorandum's potential impact on U.S. international competitiveness and required that the President not implement any MOU he determines would have a detrimental impact on U.S. industry.

On July 31, President Bush vetoed S.J. Res. 113. In his veto message, President Bush asserted that the bill was unnecessary to protect the interests of the United States and inconsistent with the long-standing requirements of the

(See other side)

YEAS (66)			NAYS (34)			NOT VOTING (0)	
Republicans (12 or 27%)	Democrats (54 or 98%)		Republicans (33 or 73%)		Democrats (1 or 2%)	Republicans (0)	Democrats (0)
Bond	Adams	Johnston	Armstrong	Lugar	Bradley		
Coats	Baucus	Kennedy	Boschwitz	Mack			
Cohen	Bentsen	Kerrey	Burns	McCain			
D'Amato	Biden	Kerry	Chafee	McClure			
Danforth	Bingaman	Kohl	Cochran	Murkowski			
Gorton	Boren	Lautenberg	Dole	Nickles			
Heinz	Breaux	Leahy	Domenici	Packwood			
Helms	Bryan	Levin	Durenberger	Roth			
Kasten	Bumpers	Lieberman	Garn	Rudman			
McConnell	Burdick	Matsunaga	Gramm	Simpson			
Pressler	Byrd	Metzenbaum	Grassley	Specter			
Wilson	Conrad	Mikulski	Hatch	Stevens			
	Cranston	Mitchell	Hatfield	Symms			
	Daschle	Moynihan	Humphrey	Thurmond			
	DeConcini	Nunn	Jeffords	Wallop			
	Dixon	Pell	Kassebaum	Warner			
	Dodd	Pryor	Lott				
	Exon	Reid					
	Ford	Riegle					
	Fowler	Robb					
	Glenn	Rockefeller					
	Gore	Sanford					
	Graham	Sarbanes					
	Harkin	Sasser					
	Heflin	Shelby					
	Hollings	Simon					
	Inouye	Wirth					

Compiled and written by the staff of the Senate Republican Policy Committee
William L. Armstrong, *Chairman*

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Arms Export Control Act. Also, President Bush contended that the resolution "contains binding provisions that unconstitutionally infringe on the powers of the Executive."

NOTE: A yea vote was a vote to override the President's veto; a nay vote was a vote to sustain the veto. A two-thirds majority of those present and voting (67 in this case) is required to override a veto.

Those favoring the resolution contended:

If Senators have any doubts over why Japan's high-tech industries consistently outperform our own high-technology producers, they have only to look at the original FSX agreement and the fire-sale mentality it represents. In the original agreement, President Reagan's negotiators proposed we sell to the Japanese, for $500 million, U.S. aerospace technology which cost U.S. taxpayer $7 billion. In return for this giveaway, the Japanese agreed to consider letting us help them produce the plane. At the time of the agreement, the Administration argued that, although the Japanese had not made any formal commitments to define the extent of U.S participation in the new plane's production, Japanese negotiators had signed several side letters indicating what that participation would include. We have experience with Japanese side letters and we are not impressed with their results. We needed a more concrete definition of what the U.S. could expect from the Japanese in return for giving them our technology and support.

The Byrd substitute is a constructive contribution to the FSX project which clearly defines U.S. expectations. As amended, the resolution prohibits U.S. negotiators from including vital engine technologies in any technology transfers and forbids the Japanese from selling the FSX aircraft to any third-party countries. We believe, considering the economic and strategic importance of the technologies involved, that these are minimal precautions which can only protect our national economic and security interests. The resolution also requires that the President and the Secretary of Defense take economic considerations into account when considering a future MOU related to the FSX deal. When the Administration sold the FSX deal to the Senate, it emphasized the positive economic impact it would have on the U.S. aerospace industry and on the U.S./Japan trade deficit. We think it is only logical to verify this assumption before we formally agree to any further technology transfers.

None of these provisions are overly intrusive and we disagree with the President's assertion that they will kill the FSX project. We also disagree with the President's claim that our resolution violates his constitutional powers as the Executive. Article I, section 8 of the Constitution grants Congress the power to regulate commerce with foreign nations. An agreement to codevelop and coproduce a fighter aircraft clearly falls under the heading of foreign commerce.

S.J. Res. 113 is a good resolution which protects U.S. interests. It is our opinion that, without the protective provisions contained in this resolution, the FSX agreement should be scrapped and, for that reason, we disagree with the President's veto message and support adoption of S.J. Res. 113.

Those opposing the resolution contended:

If the FSX agreement were the real issue before the Senate, we would not be having this extended debate. The FSX agreement is similar to past coproduction agreements that have aided U.S. security and improved our trade position. Instead, the FSX agreement has become the scapegoat for completely unrelated economic and burdensharing issues. We hope the Senate will look past those concerns and allow an agreement which is in our best economic and security interests to proceed unencumbered.

When the Senate passed S.J. Res. 113 last May, it acted out of fear. There is growing concern in this country that Japan is slowly taking control of our economic future. The prevalence of Japanese cars and appliances serve as daily reminders that the Japanese are outperforming our own consumer industries. Our trade deficit with Japan is consistently raised as an example of weakness in the American economy.

Because of these fears, the Senate voted to impose restrictions on the FSX program to which the Japanese would never agree. If we adopt this resolution over the President's veto, the Japanese will back out of the FSX program and either develop their own fighter or coproduce one with another country. Either way, the U.S will lose out.

This is the wrong approach to take. The FSX agreement is an opportunity for Congress and the Administration to achieve two important foreign policy goals. First, the agreement will increase U.S. exports to Japan and, second, the agreement will encourage the Japanese to increase their own defense expenditures and assume a larger portion of the defense burden currently shouldered by our own military forces.

By placing overly-restrictive limitations on future agreements related to the FSX program, the Senate not only threatens the agreement, it infringes on the executive power to negotiate agreements with foreign countries. If Senators disagree with the FSX project, they should vote to disapprove the entire agreement. By attaching conditions to the project, we are usurping executive power and violating the Constitution.

We strongly oppose the current resolution and support President Bush's veto. The resolution not only threatens the FSX program, it threatens future defense sales to Japan and it will impose a setback on our burden sharing and trade efforts. For these reasons, we strongly oppose the resolution and support President Bush's veto.

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SENATE RECORD VOTE ANALYSIS

101st Congress
2d Session

Vote No. 1

January 25, 1990, 2:31 p.m.
Page S-382 (Temp. Record)

CHINESE STUDENTS/Veto

SUBJECT: The Emergency Chinese Adjustment of Status Facilitation Act of 1989 . . . H.R. 2712. Passage, upon reconsideration, the objections of the President not withstanding.

ACTION: VETO SUSTAINED, 62-37

SYNOPSIS: On July 31, 1989, the House passed H.R. 2712, the Emergency Chinese Adjustment of Status Facilitation Act, by voice vote. The Senate amended and passed the bill by voice vote on August 4, 1989. Following conference, the House passed the conference report to H.R. 2712, 403-0, on November 19, 1989, and the Senate passed the conference report by voice vote on November 20, 1989.

H.R. 2712 assists Chinese nationals in the United States by: (1) waiving the two-year home country residence requirement for nationals of the People's Republic of China in the United States on an exchange visitor (J) visa (student, teacher, research); (2) continuing the legal status of nonimmigrant Chinese nationals lawfully in the United States as of June 5, 1989, for change of status purposes; (3) permitting Chinese nationals lawfully present in the United States as of June 5, 1989, on (F), (J), or (M) visas (student, exchange visitor, vocational student) to work; and (4) requiring the Attorney General to send explanatory notices of visa expirations (instead of deportation notices) to Chinese aliens during the deferred departure period. As well, H.R. 2712, as amended, would allow Chinese nationals who fear persecution as a result of their opposition to Chinese policies of mandatory sterilization and/or abortion to be granted asylum in the United States.

On November 30, 1989, President Bush returned H.R. 2712 to the House of Representatives unsigned. In his memorandum of disapproval accompanying the bill, the President asserted the bill was unnecessary because he has already extended additional protection to Chinese nationals covered by the Attorney General's June 6, 1989, order deferring their enforced departure. Specifically, the President issued an executive order on November 30, 1989, to: (1) waive the two year home country residence requirement until January 1, 1994; (2) assure continued lawful immigration status for Chinese individuals who were lawfully in the United States on June 5, 1989; (3) authorize employment of Chinese nationals in the United States on June 5, 1989; and (4) send notice of expiration of nonimmigrant status, rather than institute deportation proceedings for individuals eligible for deferral of enforced departure whose

(See other side)

YEAS (62)			NAYS (37)		NOT VOTING (1)	
Republicans (8 or 18%)	Democrats (54 or 100%)		Republicans (37 or 82%)	Democrats (0 or 0%)	Republicans (0)	Democrats (1)
Armstrong	Adams	Johnston	Bond	Lott		Breaux—4
Boschwitz	Baucus	Kennedy	Burns	Lugar		
Cohen	Bentsen	Kerrey	Chafee	Mack		
Gorton	Biden	Kerry	Coats	McCain		
Helms	Bingaman	Kohl	Cochran	McClure		
Kasten	Boren	Lautenberg	D'Amato	McConnell		
Pressler	Bradley	Leahy	Danforth	Murkowski		
Wilson	Bryan	Levin	Dole	Nickles		
	Bumpers	Lieberman	Domenici	Packwood		
	Burdick	Matsunaga	Durenberger	Roth		
	Byrd	Metzenbaum	Garn	Rudman		
	Conrad	Mikulski	Gramm	Simpson		
	Cranston	Mitchell	Grassley	Specter		
	Daschle	Moynihan	Hatch	Stevens		
	DeConcini	Nunn	Hatfield	Symms		
	Dixon	Pell	Heinz	Thurmond		
	Dodd	Pryor	Humphrey	Wallop		
	Exon	Reid	Jeffords	Warner		
	Ford	Riegle	Kassebaum			
	Fowler	Robb				
	Glenn	Rockefeller				
	Gore	Sanford				
	Graham	Sarbanes				
	Harkin	Sasser				
	Heflin	Shelby				
	Hollings	Simon				
	Inouye	Wirth				

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

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nonimmigrant status has expired. As well, the President instructed the Immigration and Naturalization Service to grant asylum to any person who feared persecution as a result of their opposition to mandatory government policies of forced sterilizations and/or abortions. In addition, the President argued that the bill impeded his ability to conduct foreign policy.

On January 24, 1990, the House voted, 390 to 25, to override the President's veto.

NOTE: A yea vote was a vote to override the President's veto; a nay vote was a vote to sustain the veto. A two-thirds majority of those present and voting (66 in this case) is required to override a veto.

Those favoring the veto override contended:

President Bush's veto of H.R. 2712 last November tarnished America's proud history of support for human rights. To remain true to that past, this Senate must pass H.R. 2712, the objections of the President notwithstanding.

June 4, 1989, was a day of shame in the history of China, when its government of old men slaughtered hundreds, if not thousands, of young students peacefully advocating democracy. This barbaric act, condemned by all civilized nations, was followed by wholesale arrests, imprisonments, and executions of Chinese youths whose only crime was to have studied in America and to have brought back with them to their homeland our democratic ideals. As part of its policy of terror and intimidation, China's government intimated that Chinese students who had to return home following the expiration of their visas would be dealt with harshly. To obviate such punishment, last year the House (by a vote of 403-0) and Senate (by voice vote) passed H.R. 2712, which exempted the 40,000 Chinese students studying in the United States from returning to China.

This statutory protection, though, was capriciously eliminated by President Bush. Claiming that he would by executive action waive the return-home obligation, and that he needed a free hand to conduct China policy, the President returned H.R. 2712 to us unsigned.

To begin with, many question the President's authority to declare such a change in immigration regulations. His order provides no statutory legal protection for the Chinese students and can be revoked by the President at his discretion. In addition, the President's order may be open to court challenge, as it appears his action is inconsistent with current immigration statutes. Only legislative changes in present law would unquestionably allow these students to remain in the United States.

As well, while the President argued that he needed to be free of Congressional interference in the conduct of his China policy, his strategy since June 4, 1989, deserves our intense scrutiny. Merely a month after the Tianamen Square murders, the President dispatched a secret mission to Peking to express the outrage of the United States at the action of the Chinese government. This was to no effect; since July, 1989, the government of China has detained or arrested more than 10,000 people, imprisoned more than 800 citizens for counterrevolutionary crimes, and executed up to 1,400 students and workers who participated in the democracy protests. In November, the President sent another delegation to meet the Chinese and, while martial law had been recently lifted in Peking, the government promulgated harsh new laws suppressing political dissent, combined the Peking police with several army units, and began a wholesale "purification" campaign of the Chinese Communist party, aimed at identifying and punishing democracy advocates. In the face of these facts, the President continues to insist that his policies are succeeding, and that Congressional protection of Chinese students seriously threatens his policy.

We do not subscribe to the President's point of view. While our relationship with China has always been complicated, the President's veto called into question United States support for human rights, and was seen as a cowardly kowtow to the butchers of Peking. We must not allow the Chinese government to believe that their brutal actions of last June are in any way endorsed by the government of the United States, and we strongly urge our colleagues to override the President's veto, pass H.R. 2712, and restore the luster to our tarnished human rights legacy.

Those opposing the veto override contended:

We share the revulsion and outrage of our colleagues over the deplorable behavior of the Chinese government last June, when it sent tanks into Tianamen Square to kill peaceful students whose only offense was to demonstrate for democracy. Such abhorrent behavior deserves the opprobrium of the world community. However, the Congress was carried away on an emotional tide last year when it passed H.R. 2712, and the President rightly vetoed the bill.

Uniquely qualified to judge the nuances of our relationship with China (George Bush served as America's liaison to China in 1975-76), the President believed that statutory protection would wreak havoc on the strategic U.S.-China relationship (and according to the Chinese Foreign Ministry, the consequences of a veto override would be quite grave). Instead, to protect the Chinese students and uphold our historic advocacy of human rights, the President by executive action altered the immigration status, not only of these 40,000 Chinese citizens, but all Chinese nationals currently in the United States who do not wish to return, protecting them for at least four years. Further, the President has promised, in his veto message, in communications with Senators, and in press conferences, that no Chinese student will be sent back to China until the conditions in China change.

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SENATE RECORD VOTE ANALYSIS

101st Congress
2d Session

Vote No. 121

June 21, 1990, 11:32 a.m.
Page S-8350 (Temp. Record)

HATCH ACT AMENDMENTS/Veto

SUBJECT: **The Hatch Act Reform Amendments of 1989 . . . H.R. 20. Passage, upon reconsideration, the objections of the President notwithstanding.**

ACTION: VETO SUSTAINED, 65-35

SYNOPSIS: Pertinent votes on this legislation include Nos. 76-90.

On April 17, 1989, the House passed H.R. 20, the Hatch Act Amendments of 1989, by a vote of 297-20. The Senate amended and passed H.R. 20 by a vote of 67-30 on May 10, 1990. The House agreed to the Senate amendments on June 12, 1990, by a vote of 334-87.

H.R. 20 makes substantial changes to the Hatch Act, greatly expanding the allowable political activity of Federal employees on and off duty. Under the provisions of H.R. 20, Federal employees could: hold office in a political party; distribute campaign literature and solicit votes; organize and participate in phone banks (off duty); organize and participate in political meetings (off duty); publicly endorse candidates and urge others to support them (off duty); solicit contributions to the PAC of a Federal employee organization to which both the employee and the donor belong (off duty). The bill also stipulates that coercing Federal employees to participate in political activities is illegal, and establishes penalties for violations, including removal of Federal employees from government employment for a second violation; exempts most employees of the Federal Election Commission from expanded political activity under H.R. 20; clarifies the definition of "Federal employee organization" for purposes of solicitation; and prohibits Federal employees from knowingly soliciting anyone who has any current business or litigation with or before the agency of the soliciting employee.

On June 15, 1990, President Bush vetoed H.R. 20, stating that it could expose Federal employees to partisan political pressures, without providing them adequate legal protection. On June 20, 1990, the House voted, 327-93, to override the President's veto.

NOTE: A yea vote was a vote to override the President's veto; a nay vote was a vote to sustain the veto. A two-thirds majority of those present and voting (67 in this case) is required to override a veto.

(See other side)

YEAS (65)			NAYS (35)		NOT VOTING (0)	
Republicans (10 or 22%)	Democrats (55 or 100%)		Republicans (35 or 78%)	Democrats (0 or 0%)	Republicans (0)	Democrats (0)
Durenberger	Adams	Inouye	Armstrong	Humphrey		
Hatfield	Akaka	Johnston	Bond	Kassebaum		
Heinz	Baucus	Kennedy	Boschwitz	Lott		
Jeffords	Bentsen	Kerrey	Burns	Lugar		
Kasten	Biden	Kerry	Chafee	Mack		
McCain	Bingaman	Kohl	Coats	McClure		
Packwood	Boren	Lautenberg	Cochran	McConnell		
Specter	Bradley	Leahy	Cohen	Murkowski		
Stevens	Breaux	Levin	D'Amato	Nickles		
Warner	Bryan	Lieberman	Danforth	Pressler		
	Bumpers	Metzenbaum	Dole	Roth		
	Burdick	Mikulski	Domenici	Rudman		
	Byrd	Mitchell	Garn	Simpson		
	Conrad	Moynihan	Gorton	Symms		
	Cranston	Nunn	Gramm	Thurmond		
	Daschle	Pell	Grassley	Wallop		
	DeConcini	Pryor	Hatch	Wilson		
	Dixon	Reid	Helms			
	Dodd	Riegle				
	Exon	Robb				
	Ford	Rockefeller				
	Fowler	Sanford				
	Glenn	Sarbanes				
	Gore	Sasser				
	Graham	Shelby				
	Harkin	Simon				
	Heflin	Wirth				
	Hollings					

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William L. Armstrong, *Chairman*

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Those favoring the veto override contended:

The Hatch Act, under the guise of protecting Federal employees from political coercion, in fact strips three million workers in our national government of their most basic political right, that of full and free participation in the political process. Paternalistic in concept and confusing in application, the Hatch Act needs the reasonable reforms that H.R. 20 proposes.

In 1939 Congress, concerned that the incumbent candidates in the 1936 and 1938 elections used their positions to coerce civil servants into supporting their electoral efforts, overreacted by casting Federal employees outside the circle of full democratic citizenship, mandating nonpartisan behavior on their part. In communities throughout America, Federal employees who might serve on local boards of education, finance boards, zoning boards, or local legislative bodies can not participate and add their knowledge and expertise to the deep well of talent necessary for a fully-functioning civic organization. This is wrong. Throughout the past 51 years, the Hatch Act has led to a confusing thicket of administrative and judicial interpretations of its provisions. A Federal employee can express a political opinion publicly, but he can not give a speech. He can display signs of certain dimensions on his lawn and car, but he can not hold a sign at a rally. He can invite a friend or a neighbor to attend a political rally with him, but his intent in proffering the invitation must be apolitical. Such ludicrous interpretations of the Hatch Act stifle legitimate political behavior

H.R. 20 attempts to clarify the confusion and bring our Federal employees back into the circle of political participation. Simply, the Hatch Act Reform Amendments would allow most types of political activity off the job and on the employee's own time, while prohibiting all political activity on the job. Contrary to the assertions of the President, such loosening of Hatch Act provisions will not result in political coercion of Federal workers. Since 1974, 41 States have liberalized their versions of the Federal Hatch Act; many allow quite a few more freedoms than H.R. 20 envisions. No problems have arisen as a result of these revisions. Further, the bill does not eliminate the numerous civil and criminal laws that prohibit the coercion of employees and protect the integrity of the civil service. In fact, the bill explicitly prohibits intimidation or coercion by anyone to force any employee to participate in any political activity.

H.R. 20 affords the Senate the opportunity to give the Bill of Rights real meaning for more than 3 million American citizens whose rights today as employees of the Federal government are separate and unequal. We hope the Senate takes advantage of this opportunity and votes to pass the Hatch Act Amendments of 1989, the objections of the President notwithstanding.

Those opposing the veto override contended:

The President's concerns regarding the impact of H.R. 20 on the political behavior of our Federal employees are legitimate and well-founded. Over 50 years ago, the Congress enacted the Hatch Act to extirpate the corrupting opportunities granted to individual citizens, legislators, and political parties to sway the actions of United States civil servants. Contrary to the assertions of our opponents, H.R. 20 will not restore absent rights to 3 million Americans; it will erode needed protections for both Federal workers and the American public.

Astonishingly, the bill would allow Federal employees the opportunity to serve as campaign and party officials, and run as delegates to party conventions. More disturbing, employees would no longer be barred from soliciting contributions from co-workers to fund the political action committees of various Federal employee and postal unions. It requires little imagination, especially given the tumultuous history of our Federal civil service, to foresee that some day Federal employees, including tax auditors and prosecutors, will be forced to cope with subtle pressures to contribute money and time to partisan causes. Just when the Supreme Court has outlawed patronage in the appointive ranks of government, H.R. 20 reintroduces the idea of political litmus tests into what must always be a nonpartisan body of employees dedicated solely to a nonjudgmental execution of the law.

Let us also remember that no legions of Federal workers have clamored for these changes; only Federal employee union leaders have pushed for H.R. 20, anxious to sweep away the Hatch Act so as to throw their fund-raising activities into high gear. The bill creates a private reserve of Federal political action committees soliciting contributions only from other Federal employee union members. It is no secret that most Federal labor union leaders regularly support Democratic candidates. We can not endorse any such outrageously partisan fund-raising.

The President rightfully vetoed H.R. 20, which weakens a law that has protected Federal workers and United States citizens for over 50 years. We hope our colleagues will uphold President Bush's veto of H.R. 20.

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SENATE RECORD VOTE ANALYSIS

101st Congress
2d Session

Vote No. 304

October 24, 1990, 11:52 a.m.
Page S-16589 (Temp. Record)

CIVIL RIGHTS BILL/Veto

SUBJECT: Civil Rights Act of 1990 . . . S. 2104. Passage, upon reconsideration, the objections of the President notwithstanding.

ACTION: VETO SUSTAINED, 66-34

SYNOPSIS: Pertinent votes on this legislation include Nos. 144-145, 158-161, 273-276, and 304.

S. 2104, the Civil Rights Act of 1990, was introduced on February 7, 1990, and reported to the Senate with a substitute amendment on June 8, 1990. The committee substitute amendment was withdrawn, a Kennedy substitute amendment offered, and consideration of the bill began, on July 10, 1990. The Senate passed the bill on July 18, 1990 (see vote No. 161). The House called up the bill and substituted the language of its version, H.R. 4000, on August 4, 1990. The first conference report was filed on September 26, 1990, but was recommitted to conference committee with instructions on October 11, 1990, by the House. A second conference report was filed on October 12, 1990. The Senate agreed to the conference report on October 16, 1990 (see vote No. 276), and the House agreed to the conference report on October 17, 1990. The bill was cleared for the White House on October 17, 1990, and presented to the President on October 20, 1990. The President vetoed the bill on October 22, 1990.

In his veto message, President Bush cited a "maze of highly legalistic language" that would force the use of quotas by employers in hiring decisions. He also criticized the foreclosing of appeals to litigated and consent orders and decrees; the transformation of Title VII of the Civil Rights Act of 1964 into a litigation, not mediation, provision as a result of S. 2104; "inappropriate incentives for litigation," including excessive damages and ability for attorneys' and experts fees; and the mandate in the bill to broadly construct all civil rights laws, which he believes will "make it extremely difficult to know how courts can be expected to apply the law."

NOTE: Two-thirds of those present and voting (67 in this case) are necessary to override a President's veto.

Those favoring the veto override contended:

The two-centuries-old struggle to erase the legacy of slavery has been a joint national undertaking, and has brought

(See other side)

YEAS (66)			NAYS (34)		NOT VOTING (0)	
Republicans (11 or 24%)	Democrats (55 or 100%)		Republicans (34 or 76%)	Democrats (0 or 0%)	Republicans (0)	Democrats (0)
Boschwitz	Adams	Inouye	Armstrong	Lugar		
Chafee	Akaka	Johnston	Bond	Mack		
Cohen	Baucus	Kennedy	Burns	McCain		
Danforth	Bentsen	Kerrey	Coats	McClure		
Domenici	Biden	Kerry	Cochran	McConnell		
Durenberger	Bingaman	Kohl	D'Amato	Murkowski		
Hatfield	Boren	Lautenberg	Dole	Nickles		
Heinz	Bradley	Leahy	Garn	Pressler		
Jeffords	Breaux	Levin	Gorton	Roth		
Packwood	Bryan	Lieberman	Gramm	Rudman		
Specter	Bumpers	Metzenbaum	Grassley	Simpson		
	Burdick	Mikulski	Hatch	Stevens		
	Byrd	Mitchell	Helms	Symms		
	Conrad	Moynihan	Humphrey	Thurmond		
	Cranston	Nunn	Kassebaum	Wallop		
	Daschle	Pell	Kasten	Warner		
	DeConcini	Pryor	Lott	Wilson		
	Dixon	Reid				
	Dodd	Riegle				
	Exon	Robb				
	Ford	Rockefeller				
	Fowler	Sanford				
	Glenn	Sarbanes				
	Gore	Sasser				
	Graham	Shelby				
	Harkin	Simon				
	Heflin	Wirth				
	Hollings					

Compiled and written by the staff of the Senate Republican Policy Committee
William L. Armstrong, *Chairman*

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great credit to both political parties in recent years. The landmark civil rights laws of the past quarter century were a result of Senators placing principle above partisanship, in order to advance the uniquely American ideals of equal justice under the law and equal opportunity for all. The Civil Rights Act of 1990 is part of that historic tradition, and deserves the Senate's support, the objections of the President notwithstanding.

At several stages along the way, many of us genuinely believed that the White House was negotiating in good faith over the provisions of this bill. But on every occasion when we felt a compromise was within our grasp, White House advisers always pulled back, and raised additional objections or submitted patently unreasonable new proposals. Aides to the President have thrown sand into the gears of this civil rights bill, derailing its acceptance. We are sorely disappointed.

The issue that has dominated the many months of this debate is how to deal with "disparate impact" cases. In these cases, while intentional discrimination is not shown, job discrimination still results. In 1989, the Supreme Court made it far easier for employers to justify discriminatory practices in disparate impact cases, and far more difficult for victims of this insidious form of job discrimination to win their case in court. The bill merely restores the status quo before 1989, no matter what bill opponents say about it requiring quotas. We explicitly included provisions in the legislation prohibiting the use of quotas in hiring decisions, and made other changes to address this concern; yet the Bush administration has refused to accept these alterations.

Opponents complain about the damages section of the bill. In a key compromise that was extremely hard to convince our House colleagues to accept, we limited total punitive damages to $150,000 or the amount of compensatory damages, whichever is greater. The White House's proposal in this area so limits damages as to be meaningless when it comes to any sort of reasonable remedy available to courts to order in such cases. The White House would also permit repetitious challenges to consent decrees that have been entered in numerous jurisdictions as part of good faith efforts to resolve festering job discrimination cases and put an end to litigation.

This veto contravenes the basic principles for which George Bush has stood in his long and distinguished career in public life. Many of us had hoped that the Willie Horton strategy adopted by him in the 1988 Presidential campaign was an aberration that would never be repeated. It appears, though, that when the chips are down, President Bush, like candidate Bush, is willing to divide our country for narrow, partisan advantage. He dishonors his office, abuses the cause of civil rights, and stoops to divisive appeals to prejudice and resentment. The President has taken the low road on civil rights; that is no reason for the Senate to do likewise. Join with us and override the President's veto.

Those opposing the override contended:

Title VII of the original Civil Rights Act of 1964 promised every American equal opportunity. The Civil Rights Act of 1990 promises preferential treatment on the basis of race, ethnicity, color, religion, and gender for only some Americans. The Civil Rights Act of 1964 promised colorblind treatment of all Americans in the workplace, where every citizen would be regarded on the basis of his or her talents and merits. This bill promises to make race, ethnicity, color, religion, and gender a conscious part of an employer's treatment of American workers, moving us away from our ideals of a proper relationship of all Americans to each other. The Civil Rights Act of 1964 encouraged conciliation and mediation in solving racial discrimination cases. The Civil Rights Act of 1990 will create tension and discord in the workplace, encouraging lawsuits, ruinous penalties, and protracted litigation. Overall, this bill merited swift rejection by the President, and we should support his veto.

To begin with, in disparate impact cases, the bill will allow broad-scale, across-the-board attacks on all employer practices. S. 2104 will not require a plaintiff to prove a specific practice causes a disparity between the percentage of a group in a job and the percentage of that group in the relevant labor pool. Only if certain records are maintained is a plaintiff required to identify specific practices responsible in whole or in significant part for the disparity--but the significant part requirement only rules out practices that make a trivial or insubstantial contribution to the disparity. Moreover, the bill makes the use of subjective practices such as supervisory evaluations, interviews, and reference checks, much more difficult if not impossible to defend. Overall, the bill shifts the burden of persuasion in disparate impact cases to employers, compelling employers to prove their innocence even though they did not bring the case, a great turnaround in American jurisprudential practice.

The bill requires an employer to prove its challenged practices bear a significant relationship to successful performance of the job. In contrast, relevant Supreme Court decisions mandate that employer practices must have a manifest relationship to the employer in question. The significant relationship test is a more difficult standard than the manifest relationship test; what this means is that employers will hire on the basis of the lowest common denominator. In other words, the only way to avoid costly lawsuits, and huge liability and attorneys' fees and costs, is to hire and promote by quota.

This bill also unconstitutionally forecloses the rights of citizens to their day in court by barring complaints from many whose employment prospects will be affected by the implementation of consent decrees and litigated orders in discrimination cases. This is not the only problem with the litigation portion of the bill. It permits injunctive relief, attorneys' fees and costs in mixed motive cases; adds unlimited damages, no matter the protestation of veto override

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advocates, by allowing the greater of $150,000 or the total of the amount of back pay and unrestricted compensatory damages; makes jury trials obligatory for claims where the plaintiff alleges both intentional discrimination and disparate impact discrimination; and extends the statute of limitations from six months in many cases to two years from the time the alleged offense occurs. All these open the door to stale, costly, arduous lawsuits that will poison workplace relations, reduce productivity, and inflame race relations.

Finally, one last, atrocious part of this bill deserves condemnation. It requires broad construction of at least seventy other civil rights statutes. This will give bureaucrats and Federal judges carte blanche to revise current interpretation of these laws, doubtless creating extensive, ceaseless litigation that will only roil the racial waters of our country.

A vote to sustain the veto is a vote in favor of a fair America. We, as a nation, should not adopt the policy of parceling out legal rights on the basis of race, color, ethnicity, religion, and gender. We do not need to eliminate the rights of some Americans to ensure equal opportunity; we should not resort to quotas, and proportionality, to protect against employment discrimination; we must not initiate a lawyer's litigation frenzy to guarantee equality. The President has sent sound, thoughtful civil rights legislation to the Congress with his veto message, and pointed out the many other efforts we could make to expand the rights of all Americans by fulfilling our responsibilities to our civic life. We must uphold the President's veto, and hope our colleagues agree.

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SENATE RECORD VOTE ANALYSIS—TEMPORARY

102nd Congress
1st Session

Vote No. 221

October 16, 1991, 12:17 p.m.
Page S–14756 (Temp. Record)

UNEMPLOYMENT COMPENSATION/Veto

SUBJECT: **Emergency Unemployment Compensation Act of 1991 . . . S. 1722. Passage, upon reconsideration, the President's objections notwithstanding.**

ACTION: VETO SUSTAINED, 65-35

SYNOPSIS: On September 17, the House passed H.R. 3040 by a vote of 283-125, and on September 24, the Senate passed S. 1722, the Emergency Unemployment Compensation Act of 1991, by a vote of 69-30. The House then began consideration of S. 1722, substituted the provisions of H.R. 3040, and on September 25 passed it by a vote of 294-127. The conference report to accompany S. 1722 was approved by the Senate, 65-35, on October 1, and by the House, 300-118, on October 1. On October 11, President Bush vetoed S. 1722.

S. 1722, the Emergency Unemployment Compensation Act of 1991, will provide, in those States that agree to participate, 100 percent Federally-funded unemployment benefits to individuals who have exhausted all other unemployment benefits. For purposes of this bill only, the unemployment rate for each State will be calculated by a new formula, using unadjusted numbers and total unemployment figures. The number of weeks that an individual will be eligible to receive benefits will be based upon the average rate of unemployment for the previous 6 months in his/her State when his/her eligibility begins, as shown below:

State unemployment rate	Weeks of eligibility
8 percent or higher	20 weeks
7 percent to 8 percent	13 weeks
Less than 7 percent	7 weeks

If the rate of unemployment rises while an individual is receiving benefits, his/her weeks of eligibility will also rise. Under no circumstances will an individual's weeks of eligibility decline. The amount paid weekly to an individual under this program will equal the amount the individual's State provided before benefits were exhausted. For all people who live in States that have had unemployment rates of 6 percent or more in September or October of 1991, and who have exhausted or will exhaust their benefits after March 31, 1991, and before October 6, 1991, benefits will

(See other side)

YEAS (65)			NAYS (35)		NOT VOTING (0)	
Republicans (8 or 19%)	**Democrats (57 or 100%)**		**Republicans (35 or 81%)**	**Democrats (0 or 0%)**	**Republicans (0)**	**Democrats (0)**
Chafee	Adams	Johnston	Bond	Lugar		
Cohen	Akaka	Kennedy	Brown	Mack		
D'Amato	Baucus	Kerrey	Burns	McCain		
Hatfield	Bentsen	Kerry	Coats	McConnell		
Jeffords	Biden	Kohl	Cochran	Murkowski		
Kasten	Bingaman	Lautenberg	Craig	Nickles		
Packwood	Boren	Leahy	Danforth	Pressler		
Specter	Bradley	Levin	Dole	Roth		
	Breaux	Lieberman	Domenici	Rudman		
	Bryan	Metzenbaum	Durenberger	Seymour		
	Bumpers	Mikulski	Garn	Simpson		
	Burdick	Mitchell	Gorton	Smith		
	Byrd	Moynihan	Gramm	Stevens		
	Conrad	Nunn	Grassley	Symms		
	Cranston	Pell	Hatch	Thurmond		
	Daschle	Pryor	Helms	Wallop		
	DeConcini	Reid	Kassebaum	Warner		
	Dixon	Riegle	Lott			
	Dodd	Robb				
	Exon	Rockefeller				
	Ford	Sanford				
	Fowler	Sarbanes				
	Glenn	Sasser				
	Gore	Shelby				
	Graham	Simon				
	Harkin	Wellstone				
	Heflin	Wirth				
	Hollings	Wofford				
	Inouye					

Compiled and written by the staff of the Senate Republican Policy Committee — Don Nickles, Chairman

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be extended as if they had exhausted their benefits after October 6. If an individual is in a State that provides extended unemployment benefits and receives these benefits, eligibility under this bill will be reduced by the amount of extended benefits received. For States that have extended unemployment programs, the Federal Government will pay all costs associated with such programs for the duration of this program. This program will be effective from October 6, 1991, through July 4, 1992.

A 1-year demonstration program to provide job search assistance will also be established. The Secretary of Labor will enter into agreements with 3 States according to specified criteria to establish job search assistance programs. At least one State must have participated previously in a similar program. Each State, for each participant, shall be paid the lesser of the cost of administering the program or the cost of the participant's unemployment compensation. Individuals who have received between 6 to 10 weeks of unemployment compensation will be eligible. Up to 5 percent of these individuals may participate. Provisions are included to assess the effectiveness of the program.

Other provisions of S. 1722 include: authority for States to seek recovery of funds that have been paid based on deliberately fraudulent claims by program participants; the establishment of an advisory council by the Secretary of Labor to evaluate the unemployment compensation program; the repeal of limitations on unemployment compensation eligibility for honorably discharged veterans (including veterans who have voluntarily separated from the service); a reduction in the length of required active duty that a reservist must serve before eligibility for unemployment compensation is granted; and a requirement that displaced timber workers receive special consideration under the Job Training Partnership Act.

The provisions of (and amendments made by) this Act shall be treated as provisions designated as emergency requirements by the President and the Congress under section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985, and all expenditures under this Act will be excluded from calculations and sequestration orders under the Balanced Budget Act. Thus, enactment of this bill, even over a veto, will automatically cause emergency spending. No new revenue will be raised; all spending will be deficit spending. The cost of the bill will be $6.4 billion.

NOTE: A yea vote was a vote to override the President's veto; a nay vote was a vote to sustain the veto. A two-thirds majority of those present and voting (67 in this case) is required to override a veto.

Those favoring the veto override contended:

We were deeply disappointed when the President chose to veto this bill. This recession is not over. We have a record number of people out of work, and we have the highest number of people who have run out of their unemployment benefits in 40 years. Claims for benefits are rising, even as additional people are running out of benefits.

People are running out of benefits because our archaic system for distributing unemployment compensation does not work. It uses the insured unemployement rate rather than the total unemployment rate to calculate eligibility. The result has been that more than $8 billion has been collected in the extended unemployment trust fund while millions of people who have exhausted their benefits have been denied any relief.

We must reject the argument that there is no need to provide relief now because the recession is ending. Historically, unemployment continues to climb for at least 6 months after a recession ends. In this case, we can expect an even slower recovery because, while most recessions end with vigorous growth, most economists are predicting that this recession will end gradually.

Opponents of this measure concede that extended unemployment benefits should be provided, but they do not believe we face an emergency. We disagree. We believe we are faced with an emergency every bit as pressing as the emergencies that were faced by the Kurds, the Turks, and other foreign peoples. The President showed no hesitancy to provide emergency funds to these people; he should now extend the same consideration to American citizens in need.

Some Senators who have expressed opposition to this bill because it will be paid for by emergency funding have indicated their support for the Dole bill, which will provide substantially less relief, but will raise revenue to pay for itself. We cannot support the Dole bill as an alternative. The Congressional Budget Office estimates that only half the level of benefits would be provided by the Dole bill for all unemployed workers, and, for those workers who have been out of work longest, only one-tenth the amount would be given. Furthermore, we strenuously object to one of the revenue-raising provisions in the Dole bill, which would raise money by slashing $500 million in veterans' benefits.

Unemployed American workers are in need, and they are in need now. The only solution available to help them is this bill. We urge our colleagues to join us in overriding the President's ill-considered veto of this necessary legislation.

Those opposing the veto override contended:

We are appalled that Congress appears to be intent on holding this Nation's unemployed workers hostage for political purposes. We want desperately to pass a bill to help the unemployed workers in this country, but we will not be coerced into destroying the Budget Agreement to accomplish this end.

Our opponents' cavalier rejection of Republican alternatives to this bill strongly indicates that they have little interest in helping the unemployed. These alternatives are the Dole bill, which, though it would provide less benefits, would be signed by the President immediately; the Gramm amendment, which would provide exactly the same

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benefits, but which would pay for itself plus create thousands of new jobs; and now the Durenberger bill, which would provide nearly the same benefits without raising the deficit. These proposals would provide immediate relief, but proponents of S. 1722 are committed to deficit spending. They insist that the only way they will consider helping unemployed workers is by emergency spending. If this bill is such an emergency, why not cut other Federal spending to pay for it? This bill is estimated to cost $6.4 billion over the next 5 years, during which time the Federal Government will spend $7.7 trillion. Certainly, somewhere in that $7.7 trillion, funds can be found to pay for this program. We can and should extend unemployment benefits, and we can and should do it by cutting spending or raising revenue.

Proponents of this bill realize these options exist, but they are committed to portraying the President as being insensitive to unemployed workers and they deliberately provoked a veto to try to prove this. They now hope to override the veto, with the help of Senators who are truly concerned with helping the unemployed, thus passing into law a measure that contains language that in letter and intent abrogates the Budget Agreement.

This bill, as drafted, directly conflicts with the Budget Agreement. Just a little more than 1 year ago, we in Congress solemnly and overwhelmingly agreed to a 5-year agreement mandating fiscal discipline. Part of the agreement allows for deficit spending in emergency situations, but only if both the President and the Congress concur. The ink was barely dry on this agreement before some spendthrift Senators began to try to find ways to get around it. Now, they believe they have found a way. They drafted this bill to say that if it becomes law, both the President and Congress have declared an emergency to exist. Once the precedent is established that Congress can declare that the President says there is an emergency, regardless of what he believes, it will be free once again to recklessly borrow and spend this Nation into economic chaos.

Under the guise of helping the unemployed, this bill villifies the President even as it attempts to return Congress to its days of reckless deficit spending. We find it unfortunate that we are faced with this type of political gamesmanship, and we have no choice but to oppose it.