United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, SECOND SESSION

Vol. 120 WASHINGTON, MONDAY, MAY 6, 1974 No. 62

Senate

MODEL STATE DAY CARE FACILITY LICENSING ACT

Mr. MONDALE. Mr. President, we have all become aware, especially during recent months, of the tragic consequences of failing to provide adequate care and support to the Nation's families and children. In an effort to assist families and others working to support families in their task of adequately caring for children, the Congress passed and the President signed important legislation which aims to preventing child abuse.

There is another aspect to child abuse, involving children out of their own homes, that has also come to the attention of Congress and the Nation. That involves the quality of day care services. We have all come to realize the horror that can result when, inadvertantly, we do not adequately protect our children.

Some of the terrible things that can happen to children are so stark that they need no explanation—six children are burned to death in a basement, a 5-week-old baby dies of head injuries during nap time in a family day care home. There are less dramatic, but equally compelling reasons to insist that children be protected, but it is these instances that remain in one's mind.

Because of the need to protect children, because families want and need our support in this effort, and because there is such a broad concensus among professional groups in support of a floor of protection, the Congress has repeatedly and overwhelmingly voted in favor of basic day care standards. This essentially noncontroversial aspects of the Congress work has resulted in the maintenance, at the Federal level, of a basic floor for day care called the Federal Interagency Day Care Requirements. These Federal Requirements have now been in effect nearly 6 years.

At the State level, work has also gone forth on behalf of children. In many States, there was a sound floor in law or regulation before we recognized the need at the Federal level. For many of those States, the move to revise and improve their day care standards has been a continuous process.

One aspect of that process has been proceeding quietly, through the work of local, State, and national organizations, under the auspices of the National Council of Organizations for Children and Youth—NCOCY—headed by its able and creative executive director, Ms. Judith S. Helms. NCOCY members, constituting themselves as a "Day Care Alliance," have been working for nearly a year to arrive at the point where they could offer assistance to States that wish to revise and improve their day care licensing. It is through the exercise of licensing that we are assured that our children are protected. In addition, licensing is a protection for parents, in that they may be assured that the places their children are cared for are beneficial. And those who care for others children have the guidance and support of licensing staff, as they carry out day care services or plan new services.

The Day Care Alliance has now completed work on a model statute which States may wish to consider, a statute that has several excellent features:

First. The Day Care Facility Licensing Act generally provides for a quality of care similar to that which is reimbursable under Federal legislation—it is sound from the intergovernmental viewpoint;

Second. The Day Care Facility Licensing Act provides for appropriate involvement by that most essential group of persons, parents of children actually receiving day care services—it is sound from the point of view of families;

Third. The Day Care Facility Licensing Act provides a quality of care that has won the support of 35 organizations concerned about families and their children, ranging from the AFL–CIO and other national groups such as the Child Welfare League of America and the National Council of Jewish Women to groups with experience at the State level such as the Minnesota Children's Lobby and Quality Child Care, Inc., of Minneapolis—a group with special expertise in family day care—it is sound from the point of view of experts and operators;

Fourth. The Day Care Facility Licensing Act, finally, provides the States with a moderate approach in terms of suggested legislation, moderate in its clarity of language, its brevity, and its reliance on State legislators and State agencies to utilize the framework of the model act as they deem appropriate—it is sound from the standpoint of being adaptable for each State.

Mr. President, I believe that it is very important to know the breadth of support that the Day Care Facility Licensing Act has won. Therefore, I ask unanimous consent to have printed at the end of my remarks in the RECORD a complete list of the National, State and local organizations that have endorsed the act.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MONDALE. Mr. President, finally, let me say that it is my hope that this proposed act will encourage States to reexamine their existing licensing codes and to compare them. Just as many States are reexamining their child-abuse laws in the light of recent experience and the recommendation of groups with special expertise, so also States might wish to look at this related matter of day care from a fresh perspective. I believe the model legislation which the Day Care Alliance has prepared to be enormously useful, and I commend it to you for your consideration. I ask unanimous consent to print the text of the act in the RECORD.

In order that we may understand the background of the act, and the way it compares to other guidelines issued for the consideration of the States, I refer my colleagues to the introduction to the act, and I also ask unanimous consent that this introduction be permitted in the RECORD at the close of my remarks.

There being no objection, the introduction was ordered to be printed in the RECORD, as follows:

THE STATE DAY CARE FACILITY LICENSING ACT

INTRODUCTION

There is little disagreement that children in day care need adequate protection. There is a great deal of difference of opinion about what is "adequate." On the one hand, many organizations hold that the interests of the child are most important and need to be protected by the licensing process. This position grows out of and is directly related to their position in regard to child neglect and abuse: some parents and guardians do not care for their children adequately. On the other hand, there are those who hold that there is no need to license day care, and that the responsibility of deciding what is and what is not adequate care for children should be left to the caregivers and the parents.

In addition to this basic disagreement about whose interests are paramount, there are also conflicting interests apart from those at issue in the day care of children.

If the various problems connected with licensing day care were solved, as a service caring for children, there would be still three related areas: fire codes; safety codes; building codes. In each of these three areas, there are legitimate concerns which also must be addressed. For instance, it can be said that day care centers should be allowed wherever there is a need for such services. On the other hand, allowing day care centers to be built in some areas would be ill-advised: certain residential areas have zoning restrictions; certain other areas are inappropriate for children because of hazardous conditions.

In recognition of these problems, and stimulated by a substantial growth in interest by governments and others in more rapid development of day care services, a licensing project was begun by the Federal government beginning in September, 1970. Many organizations sent representatives to the various meetings called in connection with that project, but some were dissatisfied with the day care licensing act and related materials which HEW eventually published. The dissatisfaction with the HEW document was along two lines: 1) the document attempted to cover too much detail, and was not in a format which could be easily addressed by most stage legislatures; 2) the document reflected a philosophy of day care licensing which was not sufficiently protective of children.

The Act drafted by the Day Care Alliance does not attempt to discuss all of the issues related to day care facility licensing. Although the Day Care Alliance recognizes that there are problems with fire, safety, and building codes for day care facilities, the Alliance believes that those issues must be dealt with in other documents, not as part of any suggested legislation. Additionally, the Alliance believes that the variance between states is, to some degree, the result of practical experience gained over time and that any adjustments in the fire, safety, and building codes within a state must be done with utmost caution. Many of the organizations in the Alliance have published materials relating to these matters and at some future date the Alliance may draft some general guidelines in the area. For now, the Alliance believes that the major need is for a licensing act that responds to the needs identified early by the HEW study:

1. "The three categories of day care facilities—family day care homes, group day care homes, and day care centers—are defined in different terms from State to State, but some States do not include all three definitions in their regulations."

2. "State licensing of family day care homes is not mandatory in 10 States."

3. "Some States do not apply mandatory State licensing requirements in all cities and counties."

The Alliance's draft legislation is aimed at meeting these three major deficiencies. The Alliance draft:

1. Defines the three categories of day care facilities (cited above) in terms similar to those contained in the chief Federal regulation which applies to day care and with which most states must comply in order to receive reimbursement, the 1968 *Federal Intergency Day Care Requirements.*

2. Makes licensing of family day care homes mandatory.

3. Provides a legal base for states to apply mandatory state licensing requirements in all cities and counties.

The Alliance draft, since it is related closely to the 1968 *Federal Interagency Day Care Requirements,* would provide slightly higher quality care than the HEW draft. The Alliance believes that, essentially, the quality floor should be higher than those who published the HEW draft. There are also important differences in two other areas: the Alliance draft stresses parental involvement; the Alliance code recognizes the fact that day care services involve a number of professional disciplines.

The Alliance draft also differs from the HEW draft in that it requires most family day care homes to be individually licensed. This recommendation, while it differs from that of some licensing experts, is based on the history of failure of the alternative approach—registration or non-licensing. An important study just completed in England shows that unlicensed family day care homes are a key factor in the continuing incidence of deprivation and poverty, and that there are clear connections between school failure, delinquency, and the like, and the use of non-licensed family day care homes.

The Alliance draft also differs from the HEW draft in that it does not allow for a delegation of licensing authority to large operators of day care programs called "day care systems." Some believe that it may be a conflict of interest for a day care operator to license or otherwise enforce regulations which pertain to his programs.

The Alliance draft grows out of a belief that children require "an extra pound of protection," that the evidence shows that even well-meaning care-givers can and do harm children, and that it is the duty of the states to set such licensing requirements as are necessary to guarantee the health, safety and well-being of these particularly vulnerable citizens, young children.

It is the hope of the Alliance that consideration of this draft legislation will lead to an examination of the existing state and other licensing codes, and that such amendments will be made as are necessary to protect children.

State Day Care Facility Licensing Act

(Most states currently have statutes that provide for the licensing of day care facilities; however, when legally challenged, it has been demonstrated that some of the statutes are deficient. The draft legislation below constitutes no more than suggestions with respect to the problems posed by some licensing statutes. The language should, therefore, be introduced only after careful consideration of local conditions. Existing constitutional and statutory requirements should be examined.

In general, the draft is based on these premises: 1) government's responsibility to protect the rights and welfare of its citizens in matters related to the provision and use of services rests on a benevolent exercise of the police powers of the individual states; 2) day care as a facility or a service to be regulated to be an exercise of the doctrine of *parens patriae*—the state acting as protector or ultimate guardian in matters affecting the welfare of children.)

SUGGESTED LEGISLATION

(Title, enacting clause etc.)

Section 1. Short Title. This Act shall be entitled The Child Day Care Facility Licensing Act.[1]

Section 2. Purpose. The purpose of this Act is to authorize the licensing of day care facilities for children. Licenses are authorized if the Act and applicable rules and regulations are met. Penalties are established if day care facilities are operated without the required license. The purpose of licensing is to regulate day care facilities so as to assure that those facilities will offer and assure children the care, protection, supervision and the promotion of sound growth and development necessary to their health, safety and welfare.

---

[1] (*Comment.* The statute is addressed to day care and not to the licensing of other child care or child placement facilities. Some legislatures may wish to conclude other licensing tasks in a single statute.)

Section 3. Definitions. As used in this Act:

(1) "day care" means the care, supervision, and guidance of a child or children, unaccompanied by a parent, on a regular basis, with or without pay, for periods of at least 2 hours but less than 24 hours per day, in a place other than the child's or the children's own home or homes;

(2) "day care facility" means a "family day care home," a "group day care home," or a "day care center," as defined in this Act, whether known or incorporated under some other descriptive title or name such as "Day Nursery," "Nursery School," "Child Play School," "Day Camp," "Child Development Center," "Early Childhood Center," "Recreation Center," and the like: provided, however, that "day care center" does not include a public or private elementary or secondary school engaged in providing legally authorized educational and related functions and which meets the accreditation standards applicable in that state; [2]

(3) "family day care home" means an occupied private residence which receives one or more but fewer than seven children who are related or unrelated to the resident caregiver. No more than five children may be received when children under 3 years of age are received, and no more than two children under 3 may be received at the same time. The maximum number of children to be received shall be reduced by the number of children normally residing in the home.

(4) "group day care home" means an occupied private residence which receives seven through twelve children who are related or unrelated to the resident caregiver. The maximum number of children to be received shall be reduced by the number of children normally residing in the home.[3]

(5) "day care center" means (i) any facility other than an occupied residence which receives one or more children for day care, or (ii) any facility including an occupied residence which provides day care for 13 or more children including the children normally residing in the home and children received for day care who are related or unrelated to the resident caregiver.[4]

Child-staff ratios in all facilities should be lowered in all instances where children with handicapping conditions or special

---

[2] (*Comment.* It is recognized, however, that a day care facility, subject to licensing, might be operated in connection with these public or private schools.)

[3] *Comment.* It is recognized, however, that the group day care home would probably require some modification of the home and that the modified home should serve only as many children as it can integrate into its own physical setting and pattern of living. It is especially suitable for school-age children, who do not require a great deal of mothering or individual care, and who can profit from considerable association with their peers. If preschool children are received, appropriate reduction should be made in the total number of children received or additional staff should be obtained. Preschool children should be cared for somewhat separately, and the child-staff ratio for the preschool group should not exceed five to one. If children under 3 are received, they should be cared for separately, by caregivers who are solely responsible for their care, and the child-staff ratio should not exceed two to one.)

[4] (*Comment.* Day care centers should not accept children under 3 years of age unless the care approximates the mothering in the family home. If children under 3 are received, they should be cared for in a separate part of the center, by caregivers who are solely responsible for their care, and the child-staff ratio should not exceed two to one. As far as a reasonable staffing pattern will permit, the same persons would be charged with the care of the same infants.)

needs are served.

(6) Day Care Operator. The person, corporation, partnership, voluntary association, or other public or private organization ultimately responsible for the overall operation of a day care facility.

(7) Caregiver. Any person whose duties include direct care, supervision and guidance of children in a day care facility.

(8) Child. A person who has not reached the eighteenth birthday.

(9) Department. The State agency designated to administer day care licensing under this Act.[5]

(10) Board. The State Advisory Board on day care licensing named under this Act to advise the department.

(11) Director. The administrative head of the department.

(12) Related. Any of the following relationships by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, step-brother, step-sister, uncle, aunt.

(13) License. A license issued to an operator of a new day care facility authorizing the licensee to operate in accordance with the provisions of the license, this Act, and the rules and regulations of the department.

(14) Provisional License. A license issued to an operator of a new day care facility authorizing the licensee to begin operations although the licensee is temporarily unable to comply with all of the requirements for a license, but in no case shall such a provisional license be effective beyond 18 months.

(15) Approval. A written notice issued to a department, agency, or institution of the State, or a county, city, or other political subdivision, approving the operation of a day care facility in accordance with the provision of the notice, this Act, and the rules and regulations of the department.

(16) Provisional Approval. A written notice issued to a department, agency, or institution of the State, or a county, city, or other political subdivision approving the commencement of operations of a day care facility although the operator is temporarily unable to comply with all of the requirements for approval, but in no case shall such provisional approval be effective beyond 18 months.

Section 4. [Licensing and approval.]

(a) No person, corporation, partnership, voluntary association, or other organization may operate a day care facility unless licensed to do so by the Department: Provided, however, that operation of a home specifically excluded from the definition of family day care home shall not preclude the issuance of a license if application is made for one.

(b) Day care facilities operated by the State, or by a county, city, or other political subdivision, must meet or exceed requirements for all other licensed operators of day care facilities. The department, agency, or institution of the State, or the county, city, or other political subdivision which operates a day care facility or facilities shall obtain approval from the department rather than licensure in order to operate such facility or facilities. The department shall provide visitation, consultation, and information services to such departments, agencies, or institutions of the State, and to such counties, cities, or other political subdivisions.

(c) Application for license or approval shall be made on forms supplied by the Department and in the manner it prescribes.

(d) Before issuing a license or approval the Department shall conduct an investigation of the applicant and the proposed plan of care, maintenance, and supervision for children and for operating a day care facility. If the results of the investigation satisfy the department that the provisions of this Act and

---

[5] (*Comment.* The licensing function should be carried by a state agency which has a major interest and responsibility for comprehensive services to children and their families. The legislature in each state can best identify that agency.)

the applicable rules and regulations promulgated by the department are satisfied, a license or approval shall be issued. If the results of the investigation satisfy the Department that all of the applicable rules and regulations cannot be met immediately but can and will be met within six months or less, and the deviations do not threaten the health or safety of the children, then a provisional license or provisional approval shall be issued for a period not to exceed six months from the date of such issuance.

Section 5. [Denial and Notice.]

(a) An applicant who has been denied a license by the Department shall be given prompt written notice thereof by certified or registered mail to the address shown in the application. The notice shall contain a statement of the reasons for the denial and shall inform the applicant that there is a right to appeal the decision to the Director in writing within 30 days after the mailing of notice of denial. Upon receiving a timely written appeal the Director shall give the applicant reasonable notice and an opportunity for a prompt hearing before an impartial hearing examiner with respect to the denial of the application. On the basis of the evidence adduced at the hearing, the hearing examiner shall make the final decision of the Department as to whether the application shall be granted either for a license or a provisional license or denied.

(b) An applicant who has been denied approval by the Department shall be given prompt written notice thereof, which shall include a statement of the reasons for the denial. The notice also shall inform the applicant that it may, within 30 days after the mailing of the notice of denial appeal the denial by making a written request to the director for an opportunity to show cause why its application should not be denied. Upon receiving a timely written request the director shall give the applicant reasonable notice and an opportunity for a prompt, informal meeting with the director or his designee with respect to the denial of the application and an opportunity to submit written material with respect thereto. On the basis of the available evidence, including information obtained at the informal meeting and from the written material, the Director shall decide whether the application shall be granted for approval, provisional approval or denial. The decision of the Director shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to their last known addresses as may be shown in the application, or otherwise.

Section 6. [Powers to suspend, revoke, or make probationary.]

(a) The Department shall have power to suspend, revoke, or make probationary a license or approval if a licensee or approved operator is found not to comply with the rules and regulations of the Department respecting day care facilities.

(b) A licensee or approved operator whose license or approval is about to be suspended, revoked or made probationary shall be given written notice by certified or registered mail addressed to the location shown on the license or approval.[6]

The notice shall contain a statement of and the reasons for the proposed action and shall inform the licensee or approved oper-

empowered to require the presence of witnesses and evidence by subpoena on behalf of the appellant or Department. Hearing examiner decisions shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to their last known addresses as may be shown in the application, or otherwise.[a]

[a] (*Comment.* The licensee is entitled to a trial-type hearing on the issue of suspension or revocation.)

In the case of a license, upon receiving a timely written appeal the director shall give the licensee reasonable notice and an opportunity for a prompt hearing before a hearing examiner with respect to the proposed action. On the basis of the evidence adduced at the hearing, the hearing examiner shall make the final decision of the Department as to whether the license shall be suspended, revoked or made probationary.

In the case of an approval, upon receiving a timely written appeal, the director shall give the approved operator reasonable notice and an opportunity for a prompt, informal meeting with the Director or his designee with respect to the proposed action, and an opportunity to submit written material with respect thereto. On the basis of the available evidence including information obtained at the informal meeting and from the written material, the Director shall decide whether the approval shall be suspended, revoked or made probationary. The decision of the Director shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to their last known addresses as may be shown in the application, or otherwise.

Provided, however, that if the Director finds that the health or safety of the children so requires, he shall order the immediate suspension of the license or approval. The licensee or approved operator shall be given written notice of the order by personal service or by certified or registered mail addressed to the location shown on the license or approval. The notice shall contain a statement of the reasons for the suspension and shall inform the licensee or approved operator that there is a right to petition the Director to reconsider the order. The petition shall be in writing and shall be made within 10 days after the personal service or the mailing of the order. In the case of a license, upon receiving a timely written petition, the Director shall give the licensee or approved operator reasonable notice and an opportunity for a prompt hearing before a hearing examiner with respect to the order of suspension of the license or approval. On the basis of the evidence adduced at the hearing, the hearing examiner shall make the final decision of the Department as to whether the order of suspension shall be affirmed or reversed.

In the case of an approval, upon receiving a timely written petition, the Director shall give the approved operator reasonable notice and an opportunity for a prompt, informal meeting with the Director or his designee with respect to the proposed action, and an opportunity to submit written material with respect thereto. On the basis of the available evidence including information obtained at the informal meeting and from the written material, the Director shall decide whether the order of suspension shall be affirmed or reversed. The decision of the Director shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to their last known addresses as may be shown in the application, or otherwise.

(c) At the hearing provided for by this section or by Section 5, the applicant or licensee may be represented by counsel, and has the right to call, examine and cross-examine witnesses. The hearing examiner is empowered to require the presence of witnesses and evidence by subpoena on behalf of the appellant or Department. Hearing examiner decisions shall be in writing, shall contain findings of fact and rulings of law, and shall be mailed to the parties to the proceedings by certified or registered mail to their last known addresses as may be shown in the application, or otherwise.[a]

[a] (*Comment.* The licensee is entitled to a trial-type hearing on the issue of suspension or revocation.)

Section 7. [Rules and regulations.]

(a) The Department shall develop and promulgate rules and regulations for the operation and maintenance of day care facilities, and for the granting, suspending, revoking and making probationary of both licenses and approvals and provisional licenses and provisional approvals. In developing such rules and regulations the Department shall consult with:

(1) Other appropriate State agencies (including the State Board of Health, the State Department of Education, the State Fire Marshal and the State Attorney General). The agencies consulted are hereby directed to cooperate with and assist the Department in developing appropriate rules and regulations for the licensing and approval of day care facilities.

(2) Parents, guardians or custodians of those children who use the service.

(3) Child advocacy groups.

(4) The State Advisory Board on day care licensing established by this Act.

(5) Representatives of those who operate day care facilities.

(6) Experts in the various professional fields which are relevant to child care, child development, child health, and early childhood education.

Draft formulations shall be widely circulated for criticism and comment.[aa]

(b) The rules and regulations for operating and maintaining day care facilities shall be designed to promote the health, safety and welfare of the children who are to be served by assuring safe and adequate surroundings and healthful food; by assuring supervision and care of the children by capable, qualified personnel of sufficient number; by assuring an adequate program of activities and services to enhance the development of each child; and by assuring continuous parental participation in all aspects of the program.

The rules and regulations with respect to granting, suspending, revoking and making probationary licenses and approvals and licensing and approval administration shall be designed to promote the proper and efficient processing of matters within the cognizance of the Department and to assure applicants, licensees and approved operators fair and expeditious treatment under the law.[b]

(c) The Department shall conduct a comprehensive review of its licensing and approval rules and regulations, at least once each three years.

(d) The rules and regulations shall be published in such a way as to make them readily available to the public.

(e) The Department shall publish a proposed final draft of the rules and regulations, and amendments, as required by the provisions of (the State Code of Administrative Procedure); provided, however, that, in any event, they shall be published in media of general circulation in order to reach the public statewide at least 60 days and no more than 90 days before they are proposed to go into effect. The publication shall invite comments by interested parties. A public hearing will be held at least 30 days prior to adoption of the rules and regulations by the Department.

[aa] (*Comment.* The main thrust of the Act is to enable the appropriate state agency to develop and promulgate the detailed standards, rules and regulations needed both for the substantive and procedural aspects of licensing day care facilities. The agency will possess the experience and the expert assistance which such detail requires. Further, legislation is not as easily amended as licensing regulations ought to be in light of accumulated experience.)

[b] (*Comment.* The text offers the legislative standards which are to guide the development and promulgation of administrative standards, rules and regulations. More specific legislative guidelines may be necessary in states where serious constitutional issues of delegation of power may arise.)

Section 8. [Penalties.]

The operation of a day care facility without a license is a misdemeanor punishable ———. The Department is empowered to seek an injunction in the ——— Court against the continuing operation of a day care facility:

(1) When there is any violation of this Act or of the rules and regulations promulgated by the Department which threatens serious harm to children in the day care facility, or

(2) When a licensee or approved operator has repeatedly violated this Act or any of the rules and regulations of the Department.

Proceedings for securing such injunctions may be brought by (the Attorney General, or by the County Attorney or District Attorney of the Jurisdiction in which the day care facility is located).

Section 9. [Expiration and Renewal.]

Regular licenses and approvals expire at the end of one year from the date of issuance except that when a license or approval is issued immediately following the expiration of a provisional license or approval the expiration of the license or approval shall be one year from the date of the expiration of the original license or approval. Licenses and approvals may be renewed upon application and approval.

Each license certificate and written approval shall clearly state the kind of program the licensee or approved operator is permitted to undertake, the address of the licensee or approved operator, the location of the facility, and the number of children who may be served.

Section 10. [Investigation and Inspection.]

In exercising the powers of licensing, renewing, approving, suspending, revoking, or making probationary licenses and approvals the Department shall investigate and inspect licensees and approved operators and applicants for a license or an approval. The authorized representative of the Department may visit a day care facility at any time during the hours of operation for purposes of investigations and inspections. In conducting investigations and inspections, the Department may call on political subdivisions and governmental agencies for appropriate assistance within their authorized fields and it is authorized to contract for and effect payment for such assistance.

The licensee, approved operator or applicant shall cooperate with the investigation and inspection by providing access to its facilities, records and staff. Failure to comply with the lawful requests of the Department in connection with the investigation and inspection is a ground for revocation of license or approval or for a denial of application. The investigation and inspection may involve consideration of any facts, conditions or circumstances relevant to the operation of the day care facility, including references and other information about the character and quality of the personnel of the facility.

Section 11. [Appeal and Judgment.]

Any final decision of the Department made by a hearing examiner after a hearing, or by the Director after an informal meeting and review of the available evidence may be appealed by a party to the hearing or the informal meeting to the ——— Court for review (by commencement of a civil action) within ——— days after the mailing to the party of the notice of the decision. The review shall not consist of a trial *de novo*. The findings of the hearing examiner or the Director as to any fact, if supported by substantial evidence, shall be conclusive. The Court shall have power to enter judgment upon the pleadings and a certified transcript of the record which shall include the evidence upon which the findings and decision appealed are based.

Section 12. [Consultation.]

The Department shall offer consultation through employed staff or other qualified persons to assist a potential applicant, applicants, licensees, and approved operators in meeting and maintaining requirements for licensing and approval and to help them otherwise to achieve programs of excellence related to the care of children served.

Section 13. [Establishment of State Advisory Board.]

A State Advisory Board on day care facility licensing is hereby established. It shall consist of ——— members appointed by the (Governor), in accordance with the following:

(a) At least 50% of the members appointed shall be parents of children receiving day care services at the time of appointment who are broadly representative of all such parents in the State. They shall be appointed from a list which has been compiled and submitted to the Governor by the Department. The list shall contain a number of names equal to twice the number of parent vacancies plus one.

(b) Approximately ½ of the remainder of the members appointed shall be representatives of licensees and approved operators. They shall be appointed from a list compiled and submitted to the Governor by the Department, which shall consist of the names of persons who own, operate, administer, or serve on the staff or governing board of day care facilities. The list shall contain a number of names equal to twice the number of vacant positions in this category plus one.

(c) The remainder of the members appointed shall be specialists in the various professional fields which are relevant to child care, child development, child health, and early childhood education. They shall be appointed from a list compiled and submitted to the Governor by the Department, which shall consist of the names of persons who have special qualifications, either by training or experience, in one of said fields. The list shall contain a number of names equal to twice the number of vacant positions in this category plus one.

(d) Members shall serve without pay, but shall be entitled to reimbursement for the reasonable expenses of attending meetings, and a per diem allowance of $——— for each day the board is in session.

(e) Members shall serve for a term of three years from their appointment. Those appointed to fill vacancies created for any reason shall serve only the unexpired portion of the term unless reappointed thereafter. Notwithstanding the foregoing, approximately one-third of the initial appointees shall serve for a one year period and approximately one third shall serve for a two year period; the approximately two thirds of the members whose initial terms shall be so shortened shall be chosen by casting lots among all

the appointees. No board member shall be permitted to succeed himself after serving a full three year term of office.

Section 14. [Powers of State Advisory Board.]

The State Advisory Board on day care facility licensing shall:

(a) Review rules and regulations proposed by the Department and make recommendations thereon to the Director.

(b) Make proposals for the improvement of day care licensing by proposing legislation or rules and regulations to the Department.

(c) Advise the Department on matters of licensing policy, planning and priorities.

EXHIBIT 1

Member organizations who have endorsed the State Day Care Facility Licensing Act as of April 26, 1974:

AFL–CIO.

Amalgamated Clothing Workers of America (AFL–CIO).

American Association of University Women.

American Federation of Teachers (AFL–CIO).

American Home Economics Association.

American Institute of Family Relations.

American Nurses Association.

American Occupational Therapy Association.

American Optometric Association.

American Parents Committee.

American Psychological Association.

Association for Childhood Education International.

Children's Foundation.

Child Welfare League of America.

Daughters of Isabella.

Day Care Council of Nassau County.

Day Care Council of New York City.

Home and School Institute.

Lutheran Church.

Minnesota Children's Lobby.

National Association of Social Workers.

National Association of Training Schools and Juvenile Agencies.

Nat'l Child Day Care Ass'n.

Nat'l Consumers League.

Nat'l Council of Jewish Women.

National Women's Conference of the American Ethical Union.

National Youth Council on Civic Affairs.

Parents Without Partners.

Quality Child Care, Inc.

Salvation Army.

Teen-Age Assembly of America.

United Church of Christ—Board for Homeland Ministries.

United Church of Christ—Division of Health and Welfare.

United Neighborhood Houses.

Volunteers of America.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, SECOND SESSION

Vol. 120 WASHINGTON, MONDAY, MAY 6, 1974 No. 62

Senate

By Mr. MONDALE (for himself, Mr. McINTYRE, and Mr. HUMPHREY):

S. 3443. A bill to promote the growth of competition in interstate commerce of petroleum and petroleum products by providing for a moratorium on the further acquisition, operation, and control of refining, transportation, and marketing of petroleum and petroleum products by major petroleum producers and refiners, and for other purposes. Referred to the Committee on the Judiciary.

Mr. MONDALE. Mr. President, I am pleased to introduce today the Petroleum Moratorium Act of 1974. I am pleased that the distinguished Senator from New Hampshire (Mr. McINTYRE) and the distinguished Senator from Minnesota (Mr. HUMPHREY) are joining me in sponsoring this legislation.

Within the past 2 weeks, the economic power of the oil industry, and the dominance of a small number of companies over th eeconomic fortunes of that industry, has once again been dramatically demonstrated. The gusher of first quarter profits for 1974 has revealed the full extent to which the major oil companies of this country have profited at the expense of the average consumer. Profit increases of 100 percent have not been uncommon; indeed, those "unfortunate" companies which were not able to report increases of at least 50 percent from the year-earlier figures seemed somehow disappointed that their share of the bounty was not greater.

The oil industry's profit levels for 1974 could rise by $5 to $10 billion from the nearly $10 billion in profit which the industry achieved in 1973.

This will represent a massive income transfer from American consumers into the coffers of a few large corporations, a transfer virtually unprecedented in American corporate history.

In short, the American oil industry has once again demonstrated the benefits of monopoly power over the single most important commodity in our economy.

There are many, of course, who believe that there is no problem of monopoly power within this industry. That controversy—over the competitiveness of the American oil industry, and its responsiveness to the public interest during periods of shortage—will form a crucial part of the intensifying debate on national energy policy.

For years, the Congress has discussed and debated the problem of preserving competition within the oil industry. Now, the time has come to insure that the single largest industry in our economy is subjected to the rigors of true competition.

The legislation which I am introducing today seeks to provide a climate in which all sides in this debate can pursue their positions with vigor, while insuring the American public that during this debate further concentration in the oil industry will be minimized.

Quite simply, this legislation imposes a moratorium on the further acquisition of pipelines, refineries, and marketing outlets by the 15 largest domestic crude oil producing companies, beginning on July 1 of this year.

I am pleased that a number of groups both within the oil industry and outside of it have endorsed this legislation. These groups include the National Congress of Petroleum Retailers, which represent over 80,000 independent, branded service station operations; the Society of Independent Gasoline Marketers of America, which represents 210 companies selling about 35 percent of all gasoline marketed under "independent" labels; the United Automobile, Aerospace, and Agricultural Implement Workers of America, and the Consumer Federation of America's Energy Policy Task Force.

I ask unanimous consent that communications from these groups expressing their support for this legislation be entered in the RECORD at the conclusion of my remarks as exhibit 1.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MONDALE. Mr. President, I would like to state at the outset what this bill is not.

This is not a divestiture bill, for it in no way imposes any requirement that any oil company divest itself of any currently owned refinery, pipeline, or marketing outlet.

This is not a bill which would impede the ability of any oil company to expand their operations internally at the refinery and pipeline levels. Nor would it prohibit these same companies from maintaining their retail operations, provided that no expansion can be achieved through new company-owned and operated stations.

As further study of the structure of the oil industry in light of today's market conditions proceeds, we may wish to impose many additional restrictions to improve competition within the industry.

Indeed, the entire question of divestiture is now under intense study by both the Congress and the executive branch. A number of committees of both the Senate and House have conducted or are conducting extensive hearings on various aspects of the operations of the major oil companies, and particularly on the effects of vertical integration and market domination by a small number of companies on competition within the industry.

The Federal Trade Commission has begun proceedings against the eight largest oil companies in the country, charging anticompetitive practices on their part, and the FTC staff has recommended the divestiture of some refinery operations by these eight companies. The Justice Department also has under study a variety of options relating to possible divestiture of pipeline ownership by the major oil companies.

In short, a flurry of activity is underway which is examining the competitiveness of the industry, and which could result in a number of remedies, including partial divestiture.

In addition, a number of pieces of legislation have been introduced in both Houses of Congress over the past year which would seek to preserve competition through partial or full divestiture of various parts of the operations of the integrated oil companies.

But we must be realistic. Divestiture is an extremely complex undertaking, which must be approached with a good deal of caution. It is simply unrealistic to expect any legislative action accomplishing divestiture in the near future. And the administrative actions and studies now underway will clearly go on for years, whatever their ultimate outcome.

Faced with these prospects, I believe that the legislation I am introducing today represents a middle ground which would enable the current legislative and administrative processes to continue, while at the same time assuring that competitiveness within the oil industry will not be further injured by additional forward integration by the largest companies.

There is little doubt that concentration within the oil industry has increased significantly over the past two decades, and is now at the point of real danger to the public interest.

A recent paper prepared by Richard Howard of the Library of Congress' Congressional Research Service, indicates the growing trend toward concentration in the oil industry.

In the crude oil producing end of the business, the largest 20 companies in the industry controlled 32.8 percent of total crude production in 1952; by 1969, these firms controlled 70 percent of domestic production. And these same 20 firms possessed an estimated 94 percent of domestic proven oil reserves in 1970.

In the refining sector of the industry, the control of the largest 20 companies in the industry has grown from 53 percent of all crude oil refining capacity in 1920 to 80 percent in 1950, and 86 percent in 1970.

In the vital transportation sector of the oil business, the major companies own or have interests in 69 percent of all U.S. pipelines that are regulated by the Interstate Commerce Commission. The major companies control nearly all of the "product" pipelines used to transport oil from refineries to marketing outlets, and have used this control in a variety of ways which are detrimental to the growth of a healthy and competitive independent refining and marketing industry.

Finally, the marketing of petroleum products shares some—though fortunately not all—of the characteristics of the other stages of the petroleum industry. The 20 largest oil companies, according to FTC figures, control approximately 79 percent of the gasoline retailing in this country. In this instance, however, the figures are somewhat more complex, since a substantial percentage of the company-label stations—the so-called "branded" stations—are in fact operated by independent small businessmen or jobbers, who help maintain a substantial degree of competition in the industry.

In addition, there also exists a large and important group of so-called "independent nonbranded" service stations, which account for about one-third of the total number of service stations in the United States. These independents, over the past 2 years, have been hit hard by a combination of events in the world petroleum markets and the actions of the major oil companies.

Both the branded and nonbranded independent marketing outlets, however, are now threatened by the apparent intention of some of the major oil companies to launch large-scale company owned- and operated-marketing outlets. One illustration of the threat which these actions pose to both the viability of the independent service station owner and to competition in the marketing of petroleum products is graphically illustrated by two recent articles from the New York Times. These articles describe the attempt of one of the largest of the major oil companies—Mobil—to take over the most successful of the Mobil stations which previously had been operated by independent small businessmen.

Mr. President, I ask unanimous consent that the text of these articles appear at the conclusion of my remarks as exhibit 2.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. MONDALE. This type of activity, clearly designed by the major oil companies to expand the profitability of their retail operations, and to put pressure on independent service station operators, cannot be allowed to continue if we are to preserve any semblance of competition in the oil industry.

Indeed, concentration in the oil industry is in reality even heavier than the rather distressing figures which I have quoted above.

The Federal Trade Commission recently provided an excellent narrative description of the petroleum industry as part of its proceeding against the eight largest American oil companies. One conclusion is particularly noteworthy:

> It is the repeated meeting of the same firms at every level of the industry that has contributed to the ability of the firms in this industry to behave confidently in an interdependent manner.

At the present time, the long-term trend toward greater forward integration in the oil industry might well be accelerating. The large oil companies see the potential profit base of their foreign crude oil operations threatened by hostile governments, over which they now have relatively little control. As the FTC staff report on the oil industry of last summer indicated, this trend is prompting the desire of the industry to increase the profitability of and possibly decrease the competitiveness in other sectors of their operations—particularly the refining and marketing sectors. This is a trend which, if allowed to go unchecked, might further diminish competition within the oil industry.

THE LEGISLATION

Mr. President, the legislation which I am introducing today attempts to squarely meet this problem of concentration within the oil industry.

The bill would, first, prohibit any corporation which is among the 15 largest domestic producers of crude petroleum from controlling any existing refinery or pipeline which, on the effective date, is owned or operated by anyone other than one of the 15 largest producers.

Second, the bill prohibits any of these 15 companies from operating any wholesale or retail marketing outlet which, on the effective date, is not operated by that corporation, any subsidiary corporation or any salaried employee.

These prohibitions would take effect on July 1, 1974.

Violations of the act would be subject both to criminal and civil penalties, and the Attorney General would be given injunctive power to end violations of the act.

The scope of the bill—limited as it is to the 15 largest domestic crude oil producers —seeks to identify those companies which clearly possess dominant market control in the industry, and whose continued increase in vertical integration would further diminish competition. The accompanying chart, prepared from a recent economic report by the staff of the Federal Trade Commission, indicates that these firms are all among the largest factors in the industry in terms of total assets, crude oil production, refining capacity, and gasoline sales.

Mr. President, I ask unanimous consent that this chart be entered in the RECORD at the conclusion of my remarks as exhibit 3.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. MONDALE. Mr. President, obviously, a few more or a few less firms could be included.

However, as the Federal Trade Commission staff report argues:

> Any reasonable list of major oil companies would include the 14 that are among the top 20 in all four categories (total assets, oil production, refining, and gasoline marketing). These firms have so much weight in the industry that any difference in the marginal firms chosen to complete the list of majors would probably not be significant.

Thus the bill is directed solely at the largest companies in the industry, and attempts to severely limit any further vertical integration while the entire problem of competition in the industry is studied both in Congress and by the executive branch.

To aid in this process, the bill also directs a series of studies by a number of executive branch departments, offices, and agencies on the question of competitiveness in the oil industry and the desirable steps, if any, which might be needed to increase such competition. These studies would be undertaken by the Federal Trade Commission, the Attorney General, the Director of the Federal Energy Office—or any successor thereof—the Secretary of Commerce, the Secretary of the Interior, the Comptroller General, and the Director of the Office of Consumer Affairs, with the results reported to the Congress within 1 year.

Some of these agencies already have work in progress in this area, and for these agencies the studies required by this legislation could be derived from this ongoing work.

The basic reason for these studies is to receive the opinions of a number of agencies and departments which might present differing conclusions on the current degree of competitiveness within the oil industry, and possible steps needed to preserve or increase competition. Hopefully these studies will aid the Congress in its efforts to insure the maintenance of competition within the oil industry.

Mr. President, the American oil industry is simply too vital to the Nation to allow any already monopolistic structure to grow even more concentrated.

At the present time, the largest oil companies have absolutely no incentive to cooperate with the Federal Trade Commission, the Justice Department, or any congressional body which is investigating the problems of anticompetitive practices in the oily industry. Time and delay are on their side, and they know this.

The legislation which I am introducing today would significantly change that situation. Passage of moratorium legislation would have a healthy effect in encouraging the largest oil companies—those which would be covered by this bill—to aid in achieving some type of resolution both in Congress and the Executive branch to pending actions and legislation. In short, it would place the burden of obtaining action on the major oil companies—precisely where it belongs.

The American consumer is paying billions of dollars every year because of monopoly control in the industry from wellhead to gas pump. Unless we stop the ever-growing domination of a few large companies in the oil industry, we will never regain a free competitive market in oil. The legislation I am introducing is a first step on the road toward reclaiming the rights of American consumers to an oil industry which will serve the public interest as well as private profit.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3443

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Petroleum Moratorium Act of 1974".

DEFINITIONS

SEC. 2. For purposes of this Act, the term—

(1) "petroleum products" means gasoline, kerosene, distillates (including number 2 fuel oil), residual fuel oil, liquified petroleum gas (LPG), refined lubricating oil, or diesel fuel;

(2) "refining" means the refining, processing, or converting of crude petroleum, fuel oil, or natural gas into petroleum products;

(3) "marketing" means the sale and distribution of petroleum products;

(4) "transportation" includes transportation by means of pipelines, railroads, or tankers;

(5) "control" means possession or the acquisition of actual or legal power or influence over another person, whether direct or indirect, including, but not limited to direct, indirect, or interlocking ownership of capital stock, subsidiary corporations (whether wholly or partially owned), interlocking directorates or officers, contractual relations, agency agreements, operating agreements, or leasing arrangements where the result or consequence directly or indirectly affects persons engaged in refining, transportation, or marketing of petroleum or petroleum products;

(6) "major market share" means that proportion of the market for petroleum, as determined by the Federal Trade Commission, which places any persons as among the largest fifteen domestic producers of crude petroleum on May 1, 1974; and

(7) "outlet" means real property used primarily as a place for the wholesale or retail sale of petroleum products, or motor vehicle parts, equipment, accessories, or supplies either directly or indirectly, through any person who receives any commission, compensation, or payment because of the sale of any such product; except that the term "outlet" shall not be construed to prohibit any person from acquiring real property for the marketing of petroleum products, when such marketing at such real property is not operated directly or indirectly by any person possessing a major market share.

MORATORIUM

SEC. 3. (a) No person directly or indirectly engaged in the production of crude petroleum who possesses a major market share shall—

(1) control either directly or indirectly any pipeline or refinery which, on the effective date of this section, is controlled by any person who does not possess a major market share; or

(2) operate either directly or indirectly any outlet which, on the effective date of this section, is not operated by such person, or any subidiary corporation or salaried employee of such person.

(b) Any person who knowingly violates any provision of subsection (a) shall be punished by a fine of not exceeding $100,000 or by imprisonment for not exceeding ten years, or both. A violation of subsection (a) by a corporation is also a violation by the individual director, officer, receiver, trustee, or agent of such corporation who authorized, ordered, or performed any of the acts constituting the violation in whole or in part.

DUTY OF ATTORNEY GENERAL

SEC. 4. The Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person violates any provision of section 3(a). Any action under this section may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

CIVIL REMEDY

SEC. 5. Any person injured as a result of a violation of section 3(a) may bring a civil action to enforce compliance with or enjoin any violation of section 3(a) and shall recover threefold the damages suffered by him as a result of such violation, together with the costs of such action and reasonable attorney's fees, as determined by the court. Any such action shall be brought in the United States district court in the district in which the defendant is found, is an inhabitant, or transacts business. Process in any such action may be served in any other judicial district.

STUDIES AND REPORTS

SEC. 6. (a) The Federal Trade Commission, the Attorney General, the Secretary of the Interior, the Director of the Federal Energy Office (or any successor office), the Secretary of Commerce, the Comptroller General, and the Director of the Office of Consumer Affairs shall each undertake a study of the actions which may be required to preserve and enhance competition in the production, refining, transportation, and marketing of petroleum and petroleum products in the United States.

(b) Each such study shall include, but not be limited to, recommendations on the need, if any, (1) for divestiture of persons engaged in the production and refining of petroleum in the United States from the transportation or marketing of petroleum and petroleum products, or both, and (2) for divestiture of persons engaged in the production of petroleum from the refining, transportation or marketing of petroleum and petroleum products, or both.

(c) The studies required under this section shall be completed and their results submitted to the Congress and the President not later than one year following the date of enactment of this Act.

CONSTRUCTION

SEC. 7. The provisions of this Act shall not be construed to affect the rights and duties arising from any contract entered into or any proceedings that were begun pursuant to any provision of law prior to the effective date of this Act.

SEVERABILITY

SEC. 8. If any part of this Act is invalid, all valid parts that are severable from the invalid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more applications, the part remains in effect in all valid applications that are severable from the invalid applications.

EFFECTIVE DATE

SEC. 9. This Act shall become effective on July 1, 1974 except that section 6 shall be effective upon enactment.

EXHIBIT 1

NATIONAL CONGRESS OF PETROLEUM RETAILERS,
Washington, D.C., April 26, 1974.

Hon. WALTER MONDALE,
U.S. Senate,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR MONDALE: The National Congress of Petroleum Retailers, representing approximately 80,000 service station dealers, supports and endorses the Petroleum Moratorium Act of 1974.

Major petroleum companies are moving downstream into retailing by terminating or failing to renew dealer leases. A continuation of this marketing practice will allow major petroleum companies to assume total control of the industry, from production through retailing. We do not believe this is in the best interest of either small business or the consuming public.

The legislation you propose will stop the forward integration of these companies, and provide for a much needed study of the oil industry's market structure.

Very truly yours,

CHARLES L. BINSTED,
Executive Director.

SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA,
Washington, D.C., April 11, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR MONDALE: Your staff has been kind enough to discuss a bill which we understand you are considering introducing in the Senate which would have the effect of imposing a legislative injunction against further integration by the major oil companies. I want you to know that this is a concept which SIGMA can heartily endorse and we look forward to seeing the bill as it is finally proposed when you undertake to introduce it.

Unless steps are taken now to insure that the structure of the U. S. Oil Industry is preserved with an independent segment intact, there will be little for the Federal Trade Commission of the Justice Department to rescue should a litagation prove successful some years hence.

I want to thank you for discussing this matter wih our organization, and we stand ready to offer whatever help you feel might be useful in this regard.

Sincerely,

SPENCE W. PERRY.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
April 17, 1974.

Hon. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: Any action which has the effect of promoting competition in the oil industry would be a welcome development for the American people at this time. Enactment of your bill to provide a moratorium on future acquisitions of pipelines, refineries and marketing outlets by the major oil companies obviously would be such an action.

The public interest would be served by action to curb the growth of vertical integration in the oil industry—a condition which promotes the economic power of huge oil companies at the expense of the public. Your bill, the "Petroleum Moratorium Act of 1974", could help to assure that the future does not see ever increasing vertical integration and accumulation of economic power among the giants of the oil industry.

The UAW supports efforts to curb the excessive power of the oil companies over the economic health of our nation. Your bill represents one means of accomplishing this objective. We therefore hope the Congress will act favorably upon it.

Sincerely,

JACK BEIDLER,
Legislative Director.

ENERGY POLICY TASK FORCE,
Washington, D.C., April 29, 1974.

Hon. WALTER MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: Your proposal to establish a moratorium on the acquisition of facilities or companies involved in transportation and marketing of petroleum and petroleum products while the Congress is focusing on basic energy issues, including the structure of the petroleum industry, makes a great deal of sense.

This Nation facs some very significant decisions, and it is essential that there be protection against actions that would be inconsistent with or in conflict with an national policies that will flow from those decisions. It is at least conceivable, however, that there might be some acquisition that ought to be permitted, with the burden on applicants for approval of such an otherwise prohibited act, and you may wish to add that concept to your bill.

As we see it, consumers would be benefitted by enactment of your moratorium proposal in that it would preserve the current situation and protect against any difficult-to-reverse actions in conflict with national policy and interests.

If there is any way we can help in securing broader understanding or support for your suggested legislation, please let me know.

Sincerely,

LEE C. WHITE.

EXHIBIT 2

[From the New York Times, Mar. 19, 1974]

SERVICE STATIONS BATTLE MOBIL OIL IN CONNECTICUT

(By Fred Ferretti)

The Mobil Oil Corporation and some of its Connecticut gasoline dealers are pitted against one another in a battle that typifies the nationwide fight for survival of independent service station operators.

Some Connecticut dealers say that Mobil wants to drive them out of business and is using the passage of a franchise law last October as an excuse to withhold gasoline, auto supplies and renewals of leases.

These dealers, most of them members of the Connecticut Gasoline Retailers Association, contend that their only protection against unwarranted cancellation of their leases with Mobil is the new franchise law, and a group of them say they are going to Hartford today to declare their support for it, and several new amendments that they say say will further strengthen it, at a legislative public hearing.

VAGUENESS SEEN

Other Mobil dealers, members of the Mobil Dealers Association, say they are going to appear, too, to contest the franchise law because they believe it is too vague and does not afford them enough protection. Oddly, this latter group, for different reasons, finds itself allied with Mobil.

Mobil says the five-month-old law deprives the company of control of its own properties. It admits that leases have been canceled and withheld.

The focus of the immediate dispute is the law that prohibits franchisers, including oil companies from canceling or refusing to renew a lease without cause and gives the franchisee the right of appeal to the courts to protect his interest. The Connecticut Legislature is holding hearings on amending the law to prohibit franchisers who renew leases from raising rents exorbitantly or altering significantly the terms of the previous lease.

NEW YORK BILL INTRODUCED

New York State has no such franchise law, but last week a bill was introduced in the Legislature that would prohibit the major oil companies from taking over gasoline stations from independent operators. The bill, introduced by Senator William T. Conklin of Brooklyn and Assemblyman Eugene Levy of Suffern, both Republicans, would amend the General Business Law to prevent oil companies from owning or operating any service stations other than those they already operate.

In addition, Senator John Calandra, Republican of the Bronx, has sponsored a bill that gasoline dealers say would protect them from arbitrary cancellation.

New Jersey does have such a law to protect independent gasoline dealers, and last year it prompted Mobil to begin withholding its support of independents in that state.

In Connecticut, a Mobil spokesman said recently, of 515 stations displaying the company's insignia, 33 are owned and operated by Mobil through managers, and 216 are situated on land that Mobil either owns or holds long-term leases on. The remaining 266 dealers either operate their own stations or are lessees of stations owned by wholesale gasoline distributors.

Since the franchise law went into effect, Mobil said that 26 of its independents have been told that the company intended to take over full control of their stations, keeping on the operators as salaried employes rather than independent businessmen. In addition, dealers say there have been wholesale cancellations of leases, without cause. Mobil said that only 10 independents have received new leases.

While other oil companies have not been actively canceling leases or publicly attacking the franchise law, preferring, it is reported, to let Mobil carry the fight, the outcome of the dispute will have significance for the entire industry and independent dealers, not only within Connecticut's borders.

To demonstrate the plight of the independents, Connecticut gasoline dealers pointed to a report by Hartford's Department of Civil Preparedness, released early this month, which reported that, of that city's 163 gasoline stations, 59, or 36 percent, have gone out of business since July, 1973. The report concluded that "independent service station operators are being forced out by big suppliers."

One independent who is protesting what he called "the major oil company squeeze" is Laurence J. Ancker, a Mobil dealer who operates the North Avenue Service Center in Norwalk.

Mr. Ancker contends that Mobil's efforts are concentrated on stations selling more than 500,000 gallons annually—usually the bigger, better situated stations. One of these is his. He has had a Mobil station for two years and says he regards himself as the "Lord & Taylor of Norwalk's gas stations."

His first one-year lease was renewed, and a year later Mobil sent a letter that, Mr. Ancker complained, said "simply that I was being canceled and that it was inadvisable to renew my lease. That's all. No cause. No nothing."

"They came to me and said make this a good Mobil station. I did. And now I'm getting dumped."

Mr. Ancker had some of his regular customers write to Mobil. Among the replies was the following:

"As you may know, an amendment to the Connecticut franchise law recently took effect. We believe this law will seriously jeopardize the substantial investment Mobil has in its service station properties in the State of Connecticut by removing nearly all control that we would have over such investment, even to the extent of preventing us from choosing not to continue doing business with a dealer after a lease or a supply contract has expired. . . . The new amendment . . . left us no alternative but to endeavor to work out a new relationship with dealers in Connecticut."

J. William Dalgetty, a lawyer for Mobil, told the state's legislative General Law Committee essentially the same thing recently, and said in a later interview that the act "has the effect of impairing contract rights," that "we have no alternative but not to allow some dealers to renew." These were, he said, "high-valued, high-volume stations, some of them $300,000 properties. We'd be putting them in the hands of a third party."

Mr. Dalgetty's appearance before the legislators has become another issue in the dispute. A state legislator, Representative James F. Bingham, Republican of Stamford, said recently that Mr. Dalgetty was liable for arrest unless he apologized to the legislators for remarks that Mr. Bingham called "intimidation."

He declared that Mr. Dalgetty had said in his appearance before the committee that Mobil would replace all of its independent stations with company-owned operations if the Legislature did not repeal the franchise law. Mr. Bingham said that the lawyer's remarks "went beyond the usual recommendations of a lobbyist" and constituted "a form of intimidation." He cited a 1973 law under which a person found guilty of interferring with the legislative process or coercing a state lawmaker by intimidation or other means could be imprisoned for up to five years and fined $5,000.

Mr. Dalgetty said he was "shocked" to hear of Mr. Bingham's charges. "There were no threats made, or intended," he said. "All we were trying to do was point out the repercussions that the franchise legislation produced."

He said that, as far as he was concerned, his appearance had been amicable.

Nevertheless, Mr. Bingham has called for an investigation of the "threat" and said he would recommend that the House Judiciary Committee undertake such an inquiry.

On March 8, Mr. Bingham wrote to the Secretary of State, Gloria Schaffer, suggesting that Mr. Dalgetty, because he was attempting to influence legislation, should be registered as a lobbyist with the state, Miss Schaffer agreed and referred the matter to State Attorney Joseph Gormley.

The co-chairman of the General Law Committee, Senator Stanley H. Page, Republican of Guilford, said he received word from the Mobil Dealers Association that they had been asked to today's hearing.

[From the New York Times, Mar. 20, 1974]

CONNECTICUT FEUD ON OIL MAY BE NEAR COMPROMISE

(By Lawrence Fellows)

HARTFORD, March 19.— Connecticut's legislators, its gasoline dealers and the Mobil Oil Corporation appear today to have battled their way to the verge of compromise.

As with most tentative cease-fires, the willingness to settle is there. Only the details remain to be worked out.

"As far as I am concerned, the hatchet is buried," State Senator Stanley H. Page, co-chairman of the Assembly's General Law Committee, whispered in an aside midway through a hearing this afternoon on a new law the committee is proposing that would make it difficult for the oil companies or anyone else to cancel a franchise without good cause, or to accomplish the same ends by renewing leases on prohibitive new terms.

New York and New Jersey will be considering similar legislation. It has obvious national implications for the oil industry and many others.

So worked up are the dealers who lease gasoline stations from the big oil companies that more than 200 of them squeezed into the hall of the House of Representatives for the hearing, some of them empowered to speak for dozens of others. When the seats were taken, dealers stood in the back of the hall, and in the doorways.

A DIFFERENT TUNE HEARD

"I used to be a Mobil dealer," Harry Sperling of Norwalk said bitterly. "I took a rundown station, built it up. After nine and a half years Mobil came along. I will stay, though, they gave me three months' notice."

"Mobil does not want to take over the operations of its independent dealers," said J. William Dalgetty, an attorney for the company.

This was a different tune on the one the committee had heard from Mr. Dalgetty two weeks ago when he said Mobil wanted the 1973 franchise act, with its provisions for "good cause," amended to give the company a freer hand in managing its investment in its own stations.

Unless the act is amended, he said, Mobil would take over all its stations as the leases come up for renewal.

"Are you saying that if we don't repeal the act, there won't be any individually-operated stations left that are worth anything?" asked Senator Page, a Guilford Republican.

Mr. Dalgetty nodded bringing down the wrath eventually of just about the whole Legislature.

Senator Page was plainly irritated, and berated Mr. Dalgetty for "throwing down the gauntlet."

State Representative Howard A. Newman, a Rowayton Republican and the committee's other co-chairman, said the company was using "Arab tactics."

State Representative James F. Bingham, a Stamford Republican and co-chairman of the judiciary committee, said the tactics were "intimidating," and fired off a letter to Secretary of the State Gloria Schaffer, asking if Mr. Dalgetty, who obviously was taking a position for his company on proposed legislation, was registered as a lobbyist.

As Mr. Dalgetty was not registered as a lobbyist, Mrs. Shaffer turned the matter over to chief state's attorney Joseph Gormley for action.

Mr. Dalgetty registered quietly last Tuesday as a lobbyist.

He went to Mr. Bingham and to the leaders of the general law committee, and explained that he had not intended his remarks to sound like a threat.

Also, it was noted that if Mobil was going to get in trouble for its efforts on behalf of all the oil companies, Mobil's brass would be embarrassed, and many of the company's officers live in Connecticut—including the chairman of the board, three of the four executive vice presidents, a senior vice president, four vice presidents, the deputy treasurer, and the assistant treasurer and many others.

Since October, when the franchise law went into effect, the company has told 26 of its independents that their leases would not be renewed, although the operators were told they could stay on as employes. All were running lucrative businesses. Five of them have taken Mobil to court.

"We're not try to water down the franchise act," Mr. Dalgetty said at the hearing today. "We're not trying to subvert it. We're just seeking a reasonable solution."

He suggested that the committee look for a workable definition of "good cause" rather than allow the argued cases to be submitted to arbitration.

"I won't say that Mobil is all heart," Mr. Newman said. "But it may be a workable suggestion."

EXHIBIT NO. 3

MAJOR OIL COMPANIES

Company	Crude oil production rank	Refining capacity rank	Gasoline sales rank	Total assets rank
Exxon	1	1	3	1
Texaco	2	3	1	2
Gulf	3	7	5	3
Shell	4	4	2	7
Standard Oil (California)	5	5	8	5
Standard Oil (Indiana)	6	2	4	6
Atlantic Richfield	7	8	7	8
Mobil	8	6	6	4
Union	9	10	11	15
Getty	10	16	17	17
Sun	11	9	9	13
Continental	12	14	13	11
Marathon	13	17	15	21
Phillips	14	12	10	10
Cities Service	15	15	14	16

Source: Federal Trade Commission, Staff Report on Concentration Levels and Trends in the Energy Sector of the U.S. Economy, March 1974, p. 400.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, SECOND SESSION

Vol. 120 WASHINGTON, WEDNESDAY, MAY 15, 1974 No. 68

Senate

Mr. MONDALE. Mr. President, the debate today is not a new one. Almost every year since adoption of the Civil Rights Act in 1964, we have faced amendments designed to interfere with independent judicial and administrative enforcement of the equal protection clause of our Constitution as it affects public education.

Time and again the Senate has been asked to join in vain efforts to overturn judicial decisions, through legislation which we know to be unconstitutional. And time and again the Senate has refused to do so.

No fact of American life is more unpleasant than the fact of discrimination against schoolchildren based on race and ethnic origin. And no process has been more difficult and painful than our national effort to end this discrimination, over the past 20 years. We have found the road harder than we perhaps expected, the national leadership weaker, the practical barriers greater.

These problems are real. But the solutions proposed by the pending amendments are not. They are both ill-considered and beyond the legislative power of the Congress.

The power of the Congress to enforce the equal protection clause of the 14th amendment through appropriate legislation plainly does not, as some have argued, include the power to erode its guarantees. As the Supreme Court said in Katzenbach against Morgan:

> Section 5 does not grant Congress power to exercise discretion in the other direction and to enact statutes so as in effect to dilute equal protection and due process decisions of this Court. We emphasize that Congress' power under Section 5 is limited to adopting measures to enforce the guarantees of the amendment: Section 5 grants Congress no power to restrict, abrogate, or dilute these guarantees.

The principle of judicial custody over interpretation of constitutional requirements is a cornerstone of the doctrine of separation of powers, which lies at the heart of our system of government. This principle, crystal clear since Chief Justice Marshall's historic opinion in Marbury against Madison 150 years ago, continues to deserve the respect of the Senate.

And so the key provisions of the pending amendment, which attempt to substitute a rigid congressional rule for the case-by-case inquiries of the courts, are null and void. The only purpose they can serve is to create confusion in over 1,500 school districts now desegregating under constitutional requirements.

THE PENDING AMENDMENTS

The amendment proposed by the Senator from Florida (Mr. GURNEY) is a complex one. But its major impact is summed up in two key provisions.

First, the amendment would prohibit requiring the assignment of students beyond either the school nearest their homes, or the next nearest school. This provision is clearly void, since it flies in the face of Supreme Court decisions that are based upon the Constitution, and it seeks, in effect, to amend the Constitution by statute, something that cannot be done and something we know cannot be done. One wonders why it is being attempted.

In addition, the amendment could work great hardship if enforced. In some instances it would permit the transportation of children over long distances. In others, it would bar even a short walk to an integrated school. It would confine desegregation to those families living on the fringe of segregated housing areas, fostering "white flight" and encouraging the spread of residential segregation.

And in many cases this rigid rule would actually increase the hardship to children and their families. As Chief Justice Burger remarked for the Court in Swann:

> Maps do not tell the whole story since noncontiguous school zones may be closer to each other in terms of the critical travel time, because of traffic patterns and good highways, than schools geographically closer together. Conditions in different localities will vary so widely that no rigid rules can be laid down to govern all situations.

Second, the amendment would permit the opening of every court order and administrative plan entered into since 1954—over 1,500 in all. Even where no transportation is involved under a long-settled desegregation plan, cases could be reopened by a single parent where courts in the past did not follow, in order, a hierarchy of remedies imposed in the pending bill. And the Attorney General is instructed to assist school system in making full use of the "reopener" provision.

This is an invitation to massive relitigation, an unpardonable effort to reopen old wounds which have begun to heal.

While the amendment proposed by the Senator from Florida is complex, the amendment of the Senator from North Carolina is simple.

It attempts to impose on Federal courts and on the administrative process under title VI of the Civil Rights Act of 1964 the "free choice" system of student assignment—a system rejected by the Supreme Court as long ago as 1968, in Green against New Kent County. And it was rejected because it proved a device to continue, rather than remedy, discrimination.

THE STATE OF CURRENT LAW

The Federal courts have not acted to require racial balance in public education. They act only on case-by-case proof of active discrimination against schoolchildren, based on race, color or national origin, by public authorities.

In a number of States, discrimination has taken the form of State laws requiring the segregation of schoolchildren by race. But the courts have increasingly found forms of active discrimination throughout the Nation. In South Holland, Ill., for example, Federal Judge Julius Hoffman found:

> Schools were located in the center rather than at the boundaries of segregated residential areas in order to achieve school segregation.
>
> School assignment policies were adopted under which black children living nearer to white schools attended black schools, and white children living nearer to black schools attended white schools.
>
> School buses were used to transport students out of their "neighborhoods" in order to achieve segregation.
>
> Teachers were assigned on a racial basis.

In Pasadena, Calif., a Federal district court found:

> School zone boundaries were "gerrymandered" to concentrate black students in particular schools and whites in others—and transportation was provided to permit white students to avoid integration.
>
> The size of schools was regulated to assure that integration would not take place—and portable classrooms were located at black elementary schools to prevent assignment of students to adjoining white schools.
>
> Transfers out of "neighborhood schools" were permitted where the purpose was clearly to foster segregation.
>
> The great majority of black teachers and administrators were assigned to black schools—and even substitute teachers were assigned on a racial basis.
>
> Less well-educated, less experienced and lower-paid teachers were concentrated in black schools.
>
> Qualified black teachers were denied advancement to administrative positions on the basis of race.

And even on proof of active discrimination, the law has not required any mathematical balance in the schools. Instead, the Supreme Court has sought to replace officially sponsored segregation with the greatest degree of actual desegregation which can practicably be achieved in each case.

Any doubts about the Supreme Court's intention to apply a rule of practical, case-by-case judgment should be laid to rest by the Court's recent decision in Northcross against Memphis, upholding a desegregation plan under which 30 percent of minority group students will continue to attend wholly segregated schools.

The fact is, then, that the courts are engaged in a case-by-case process, first requiring proof of official discrimination, then searching for individual remedies based on a rule of reasonableness.

Undoubtedly mistakes have been made along the way. Yet I cannot bring myself to believe that the Supreme Court—Chief Justice Burger and Justices Blackmun, Brennan, Powell, Rehnquist, White, Stewart, Marshall, and Douglas—are incapable of developing this area of the law in a fair and impartial way.

The Supreme Court is only now beginning to deal with the most complex issues of school desegregation. Last year in Bradley against Richmond the Court in a 4-to-4 tie vote refused to require metropolitan areawide desegregation. A more definitive ruling on this question is expected any day in Bradley against Milliken, involving schools in the Detroit, Mich., area. And in Northcross against Memphis, decided only 2 weeks ago, the Court gave notice that, depending on local circumstances, acceptable desegregation may be considerably less than total.

Even if Congress had the power to do so, we should think long and hard before replacing this careful, case-by-case approach with the kind of rigid rules put forth in the pending amendment.

CONGRESSIONAL ACTION

For over 2 years, the Senate Select Committee on Equal Educational Opportunity, on which I served as chairman, struggled to come to grips with a broad range of questions revolving around discrimination in public education. And I have become thoroughly convinced that

no single domestic issue which confronts this country is more painful and complex than the question of school desegregation.

Minority group parents and teachers often fear that desegregation may lead to further discrimination as damaging as that involved in segregation itself. And frequently parents from all backgrounds are concerned that desegregation may result in transfer of their children to schools where teacher motivation and academic opportunities may be decidedly inferior.

These concerns are legitimate ones. They are based on hard experience. They deserve our serious attention. And over past years we have tried to respond. Two years ago, Congress adopted and the President signed into law the so-called Scott-Mansfield amendment, which also appears as part of the pending bill.

Mr. President, I ask unanimous consent that the text of the Scott-Mansfield amendment may appear at this point in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

PROHIBITION AGAINST USE OF APPROPRIATED FUNDS FOR BUSING

SEC. 802. (a) No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan for racial desegregation of any school or school system, except on the express written voluntary request of appropriate local school officials. No such funds shall be made available for transportation when the time or distance is so great as to risk the health of the children or significantly impinge on the educational process of such children, or where the educational opportunities available at the school to which it is proposed that any such student be transported will be substantially inferior to those opportunities offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

(b) No officer, agent, or employee of the Department of Health, Education, and Welfare (including the Office of Education), the Department of Justice, or any other Federal agency shall, by rule, regulation, order, guideline, or otherwise, (1) urge, persuade, induce, or require any local education agency, or any private nonprofit agency, institution, or organization to use any funds derived from any State or local sources for any purpose, unless constitutionally required, for which Federal funds appropriated to carry out any applicable program may not be used, as provided in this section, or (2) condition the receipt of Federal funds under any Federal program upon any action by any State or local public officer or employee which would be prohibited by clause (1) on the part of a Federal officer or employe. No officer, agent, or employee of the Department of Health, Education, and Welfare (including the Office of Education) or any other Federal agency shall urge, persuade, induce, or require any local education agency to undertake transportation of any student where the time or distance of travel is so great as to risk the health of the child or significantly impinge on his or her educational process, or where the educational opportunities available at the school to which it is proposed that such student be transported will be substantially inferior to those offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zone established without discrimination on account of race, religion, color, or national origin.

(c) An applicable program means a program to which the General Education Provisions Act applies.

Mr. President, unlike the amendment which we are debating today, this provision is constitutional. It states Federal policy that school desegregation is required only upon proof of discrimination, and that racial balance is not required. It relies on the courts to conduct a case-by-case inquiry into each case of alleged discrimination, to determine in each instance whether discrimination exists and what the appropriate remedy may be. It stresses that the remedies applied must be reasonable, and that the welfare of children must be placed first.

This amendment mandates on the Department of Justice and the Department of Health, Education, and Welfare the Supreme Court's own mandate to the Federal court system—that transportation must not be allowed to risk the health or safety of children, or to harm the educational process itself.

And in addition we have enacted the Emergency School Aid Act, signed into law in June of 1972. The act was designed to provide $2 billion over 2 years to help school districts with the problems of desegregation. It was designed to provide extra teachers and counselors, to help school districts adopt team teaching, individualized instruction and other innovative education techniques, to provide desperately needed bilingual education and other special help.

The Emergency School Aid Act—which received bipartisan support and the President's commitment of funding at the level of $1.5 billion over 2 years—promised real help to hard-pressed school systems. Sadly, the administration changed its position, delaying implementation, impounding funds provided for the first year, and sharply reducing funding thereafter. Less than $300 million of the promised $1.5 billion has been made available to school systems to date. And, largely as a result of this reduced commitment, the act has proved far less useful than we had hoped.

Once again, the pending bill attempts to provide constructive leadership within the scope of constitutional requirements. It repeats and extends the Scott-Mansfield amendment, and it extends the Emergency School Aid Act for an additional 3 years, with the hope that more adequate funding can be achieved.

Mr. President, I wish to make my own position clear. I have consistently voted against the use of Federal authority to coerce racial balance. I have strongly supported legislation—like the Scott-Mansfield amendment—which stresses our concern for the health and safety of children, and for placing their educational interest first. I have supported financial assistance to reduce student-teacher ratios and in other ways to ease the transition.

But I am convinced that we will do irreparable damage if we retreat from the twin principles of nondiscrimination in public education, and judicial independence to interpret the mandates of our Constitution. The Congress cannot by statute reverse a constitutional ruling laid down by the Supreme Court. I believe the Congress should not attempt to do so. And so I have opposed amendments which fly in the face of constitutional decisions.

The pending amendments amount to an official endorsement of continued discrimination in our public schools. They amount to an undeserved vote of "no confidence" in the Supreme Court. Almost certainly unenforceable and without effect, they amount to negative leadership of the least defensible kind.

Anybody who has visited a community which is undergoing a desegregation order is aware of the pain, difficulty, and often the unpopularity of such orders. I think we all wish it were not necessary, and sometimes we might even object to an order on the grounds of practicality and the rest. But what is at stake in these amendments, what is at stake in this debate today, and what has always been at stake in these debates over the years, is not differences over how it should be done, but a difference over whether it should be done, whether we are going to endorse a principle of discrimination in this land.

I do not think that this great Senate, which time and time again has provided leadership to move forward in the field of human rights, should stand here this afternoon and accept an amendment which, stripped to its essentials, says one thing—"We endorse discrimination in this land." I will have no part of it.

2

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, SECOND SESSION

Vol. 120 WASHINGTON, THURSDAY, MAY 16, 1974 No. 69

Senate

DISCRIMINATION IN THE MIDDLE AND UPPER LEVELS OF MANAGEMENT

Mr. MONDALE. Mr. President. More than a year ago the Department of Labor's Office of Federal Contract Compliance issued the following guidelines:

Members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavic groups, continue to be excluded from executive, middle-management, and other job levels because of discrimination based upon their religion and/or national origin. These guidelines are intended to remedy such unfair treatment.

In this country today, there are precious few women and minority group members at the middle and upper levels of management—the executive suite—in business and industry. Less obvious but no less true, there are discouragingly few representatives of these Southern and Eastern European ethnic groups at these same management levels.

Polish, Italian and other Slavic ethnic groups are beginning to take a hard look at their own participation in the American dream. They are finding that they are a long way from "having made it." They are asking questions and looking for data relating to their condition.

The Federal policy toward their condition consists only of the Department of Labor guidelines. But the guidelines are merely guidelines. They are not a regulation in the sense that specific requirements are spelled out with sanctions for violations. The guidelines exhort business and industry to look at their executive suite personnel practices. They apply to those doing business as contractors or subcontractors with the Federal Government. No affirmative action plans are required.

Issued more than a year ago (41 C.F.R. part 60–50), the guidelines require "affirmative action" in areas dealing with upgrading, layoff, termination training, recruitment, transfer, and demotion of all ethnic employees. Special attention is to be given job opportunities at the middle and executive management job levels.

I have not made a formal inquiry of the Department of Labor to inquire what progress its Office of Federal Contract Compliance has made in implementing the guidelines. Informally, I have learned that OFCC has no statistical data for evaluative purposes, notwithstanding the fact that more than a year has passed since the guidelines were promulgated. I have been told that OFCC is asking the various Federal compliance agencies to report on activities under 60–50. Mr. President, I would very much be interested in the results of this survey. I have also made inquiries that suggest there is some evidence to doubt the sincerity of the Government in carrying out this policy—a policy which, by the way, I heartily endorse.

Evidence also is mounting that the record of America's business and industry in sharing internally positions of power with all groups is a sorry one. An ethnic-sponsored study recently documented ethnic participation—or lack of it—in some of Chicago's large corporations. The study looked at the executive suites of 106 of Chicago's largest corporations to see how many Italians, Poles, blacks, and Latins were members of the boards of directors or corporation officers. These 4 groups represent nearly 34 percent of the 7 million Greater Chicago Metropolitan area. Less than 3 percent—36 directors of a total of 1,341—and less than 4 percent—52 officers of a total of 1,355—were black, Latin, Polish or Italian. Indeed, more than half—55—of the corporations had no one from these groups as directors or officers.

The study was undertaken by the Institute of Urban Life, a Chicago firm headed by Edward Marciniak. It was prepared for the National Center for Urban Ethnic Affairs, a Washington-based nonprofit organization founded and headed by Msgr. Geno Baroni.

A journalist, Charles N. Conconi, heard about the results and decided to take a look behind the statistics. He interviewed a number of people including Anthony J. Fornelli, a well-known and successful Chicago attorney, son of Italian immigrant parents. Said Fornelli when he saw the study results:

If we are such a large percentage of the national population, why do we have such a small percentage of the top jobs, Either we are a minority in numbers or a minority in thought. Either business is ignoring an untapped vast resource or there is a conscious effort to exclude. The statistics say something is wrong. I think the decision is conscious. I feel there is a consious effort to exclude at hiring. Can you believe that the four groups have been excluded without a conscious effort? . . .

Conconi looked behind the Italian representation figures, for they were the greatest. He found that one Italian was a member of nine boards, thus skewing the figures. Also the Admiral Corp. is owned by Italian Americans.

Conconi's article appeared in an excellent Italian-American newspaper, Fra Noi, published in Chicago and edited by Rev. Paul Asciolla, S.C.

Mr. President, I ask permission that the executive suite study and the Conconi article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibits 1 and 2.)

Mr. MONDALE. Mr. President, generally, this pattern of exclusion exists and persists. But there are bright spots. William Carmell, manager of equal employment opportunities programs for Union Carbide Corp., has written a magazine article on the executive suite. Carmell's perception of the rising aspirations of ethnic groups is surely on target. Writing in the winter issue of Business and Society Review (No. 8), he titles his article "White Ethnics: Here Comes the New Minority."

Carmell says ethnics have been satisfied in the past at the lower echelons of corporate management. Today, however, they are insisting that the corporate world must "recognize that ethnics too have experienced some difficult problems in adjusting to life and business in the United States," and the discrimination they have suffered must also be rectified. If they are ignored, ethnics will go on believing—

That their past and present difficulties have been totally neglected while the problems of others have at least begun to be addressed. This resentment and frustration can well lead to the same kinds of confrontations that minorities and women have sometimes felt compelled to initiate in order to gain equal employment opportunity.

Carmell wonders if the Federal Government is really very serious about enforcing its own guidelines. At the corporate end of Federal compliance, he detects little emphasis on the guidelines from Washington. But, then, he believes that many corporate managers also do not perceive the problem with regard to ethnics. Some are hostile, determined to accept no responsibility, particularly equal opportunity managers. The irony, he says, is that the success of programs for women and minorities depends in part on the cooperation of the ethnics already on the work force of business organizations. The article details some positive actions that corporations can pursue in making way for the upward mobility of ethnics in their organizations.

Mr. President, I ask permission that the article be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. MONDALE. Mr. President, there are in America today more than 40 million people who identify themselves as ethnic—people of southern, middle and eastern European ancestry and cultural heritage. They are integral to the fabric of American life and culture. They are good citizens. They are hard working, frugal, patriotic, and the representatives of rich and varied cultures and lifeways that add so much to our pluralistic national life. But they have been long suffering too.

They are asking today with increasing frequency and articulateness what their stake in the American dream is. The promise of equal opportunity for all is the heart of the American dream. The pursuit of equal justice for every American—black, brown, Indian, or ethnic—is essential to the preservation of our national character.

That is why I am intensely interested in sharing the information I have gathered. I know that management positions in this country are largely determined at two points: recruitment or selection and promotion. Who gets recruited? Who gets promoted? Corporate America hopefully will begin reviewing its practices in this regard.

I intend to return again to this subject, and to watch carefully Federal efforts in carrying out stated policies. Perhaps, tougher regulations may be in order.

I ask permission that the guidelines be printed at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 4.)

EXHIBIT 1

MINORITY REPORT: THE REPRESENTATION OF POLES, ITALIANS, LATINS AND BLACKS IN THE EXECUTIVE SUITES OF CHICAGO'S LARGEST CORPORATIONS

The question "How many are there?" has become one of the most provocative and unsettling questions being raised on all levels of American society. It reflects the national preoccupation with evaluating the success

or failure of various ethnic groups in gaining their share in the American system for distributing income and power. Thus, in just a matter of a few years questions regarding a person's race or ethnic background, once felt to have no public relevance and even considered illegitimate, now not only are being asked but even require answers by law. Companies with government contracts are now required to file reports indicating their utilization rate of Blacks, Latins, American Indians, Eskimos, and women. In January, 1973, the U.S. Department of Labor, Office of Federal Contract Compliance, issued new guidelines to cover discrimination against persons because of religion or ethnic origin. These guidelines said:

"Members of varous religious and ethnic groups, primarily but not exclusively of Eastern, Middle, and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavic groups continue to be excluded from executive middle management, and other job levels because of discrimination based upon their religion and/or national origin. These guidelines are intended to remedy such unfair treatment.[1]

What the guidelines in effect recognize is that, despite the powerful American rhetoric which emphasizes individual achievement, power and affluence in reality still flow along group lines, and that an individual's religious or ethnic affiliation may in fact still be an obstacle to his advancement.

The purpose of this study was to investigate the extent to which members of the Polish, Italian, Latin, and Black communities have penetrated the centers of power and influence in Chicago-based corporations. This was done by determining how many Poles, Italians, Latins, and Blacks either serve on the board of directors or occupy the highest executive positions in Chicago's largest corporations.

In focusing on Poles, Italians, Latins, and Blacks, this study selected a combination of minority groups which at this point in time is historically signficant. The 1960's saw the rise of group consciousness among Blacks and Latins, and their relentless pursuit of parity with other groups in the U.S. This process released the latent consciousness of other groups, such as Poles and Italians, who are becoming increasingly aware that like Blacks and Latins, they may not be sharing equally in the affluence of American society.

Thus, although this study originated at the request of leaders of the Polish American Congress, Illinois Division, and the Joint Civic Committee of Italian-Americans in Chicago, they were more than willing to see the study expanded to include Blacks and Latins. In the Chicago metropolitan area, where nearly 35 percent of the seven million population is either Polish, Italian, Latin, or Black, such a perception of mutual concerns could have a positive influence on the future of group relations and thus on the very shape and tone of life in the city and suburbs.

The corporations reviewed in this study were identified by combining the *Chicago Daily News* and *Chicago Tribune* lists of the Chicago area's largest corporations in 1972. Among the thousands of corporations based in the Chicago area, 106 were identified as the largest industrial firms, retailers, utilities, transportation companies, banks, and savings and loan institutions. More than half of them (66 per cent) were included in *Fortune* magazine's 1972 list of the largest 500 industrial corporations or *Fortune's* lists of the largest non-industrial firms in the U.S. These 106 corporations, therefore, comprise the top layers of the economic and financial power structure of Chicago and of the nation. It was the top management of these corporate giants and their boards of directors who were scrutinized in order to determine the representation of Poles, Italians, Latins, and Blacks.

Information about directors and officers was taken directly from the 1972 annual report of each corporation. The number of directors of all 106 corporations totaled 1341; the number of officers, 1355. For the purposes of this study, honorary board members were not included, nor were officers of less than vice-presidential rank such as assistant vice-presidents, assistant secretaries, or assistant treasurers. Where a firm was controlled by a holding company, only the directors and officers of the holding company were counted. An officer who also was a member of the board of directors of the same firm was counted twice, once as a director, again as officer.

FINDINGS AND CONCLUSIONS

Thirty-six, or less than three per cent, of the 1341 directors were Polish,[2] Italian, Latin, or Black. Fifty-two, or less than four per cent, of the 1355 officers were Polish, Italian, Latin, or Black. These four groups make up approximately 34 per cent of the metropolitan area's population. When translated into individual percentages, the findings indicate that 0.3 per cent of all directors were Polish, 1.9 per cent Italian,[3] 0.1 per cent Latin, and 0.4 per cent Black. Out of all officers, 0.1 per cent were Polish, 2.9 per cent Italian, 0.1 per cent Latin, and 0.1 per cent Black. (See Table I.)

TABLE I.—REPRESENTATION OF SELECT ETHNIC GROUPS IN THE CHICAGO METROPOLITAN AREA[1] POPULATION AND ON THE BOARDS OF DIRECTORS AND AMONG THE OFFICERS OF THE 106 LARGEST CHICAGO AREA CORPORATIONS.

	Percent of area population[2]	Directors		Officers	
		Number	Percent	Number	Percent
Poles	6.9	4	0.3	10	0.7
Italians	4.8	26	1.9	39	2.9
Latins	4.4	1	.1	2	.1
Blacks[3]	17.6	5	.4	1	.1
All other	66.3	1,305	97.3	1,303	96.2
Total	100.0	1,341	100.0	1,355	100.0

[1] The "area population" refers to the Chicago metropolitan area: the 6 counties of Cook, Kane, Will, DuPage, Lake and McHenry, whose population in 1970 was 6,979,000.

[2] The percentages of area population was prepared by Michael E. Schiltz, director of Loyola University's Graduate Program in Urban Studies. For Poles, Italians, and Latins, the estimates include 1st, 2d, and 3d generations, based on U.S. Bureau of Census data.

[3] The black population is based on 1970 data from the U.S. Census Bureau.

How does one make a judgment about such information? How can it be used to evaluate the extent to which Poles, Italians, Latins, and Blacks have entered the executive suites of Chicago's major corporations? Are Poles, Italians, Latins and Blacks equitably represented there?

To answer such questions the executive suite data was compared to the population of each of the four groups in the Chicago metropolitan area. This comparison provides a rough but fair guide for determining whether each group has achieved parity or whether it is underrepresented.[4]

If one compares (Table I) the percentage of officers and directors whose backgrounds are Polish, Italian, Latin, or Black to the percentage distribution of these four groups in the population, it becomes clear that all four groups were grossly underrepresented on the boards of directors and in the executive positions of Chicago's major corporations. Thus, although Poles make up 6.9 per cent of the metropolitan population, only 0.3 per cent of the directors are Polish. Italians make up 4.8 per cent of the population, but only 1.9 percent of the directors are Italian. Blacks comprise 17.6 per cent of the population yet only 0.4 per cent of the directors are Black. Latins are 4.4 per cent of the population yet only 0.1 per cent of the directors are Latin. The same general pattern holds if one compares the percentages of officers who are Polish, Italian, Latin, or Black to the percentage distribution of these four groups in the population.

As a matter of fact, Poles, Latins, and Blacks were virtually absent from the upper echelons of Chicago's largest corporations. 102 out of the 106 corporations had no directors who were Polish; 97 had no officers who were Polish. Only one corporation had a Black officer and only two had Latin officers. While the Italians were more numerous in the executive suite than the other three groups, 84 corporations out of 106 still had no directors who were Italian and 75 had no officers who were Italian. Finally, 55 out of the 106 corporations had no Poles, Italians, Latins, or Blacks, either as directors or as officers. (See Table II).

TABLE II.—NUMBER OF CORPORATIONS, OF THE 106 EXAMINED, WHICH HAD NO DIRECTORS OR OFFICERS WHO WERE POLES, ITALIANS, LATINS, OR BLACKS[1]

	Number of corporations without director	Number of corporations without officer
Poles	102	97
Italians	84	75
Latins	105	104
Blacks	101	105

[1] 55 of the 106 corporations had no Poles, Italians, Latins, or blacks either as directors or as officers.

Other significant patterns emerge from the data. Poles and Italians do better in their representation in executive positions than they do as board members. The opposite is true of Blacks, whose major source of representation comes from appointments to boards of directors rather than from holding top executive positions. No Poles were located among the public utilities and banks reviewed in this study, either as directors or as officers. As for Italians, 16 were associated with banks or savings and loan institutions. However, there were no Italians in the executive suites of the utilities.[5] On the other hand, three out of the five corporations with Black directors were public utilities. The number of Latins was not large enough to yield any significant pattern.

Hopefully, this study of four ethnic groups in the corporate structure of metropolitan Chicago will be extended to include their representation in major civic groups such as public boards and commissions, influential private agencies and associations, foundations, and social clubs. Similar studies of other ethnic groups such as Czechs, Greeks, Lithuanians, etc, should be conducted in the Chicago area. Given the lack of adequate research on American ethnic groups, similar surveys should be undertaken in other large cities.

As such studies accumulate, the result may be a national profile for each of America's ethnic groups showing precisely the extent to which each of them share in the power and affluence of the nation. In the process the nation will learn to what extent the American corporation is a "truly public institution bound to the same criteria of selection that today affect government service—freedom from bias, and the requirement at the same time to represent and reflect all parts of the American population."[6]

A NOTE ON METHOD

Trying to determine ethnic origin is a hazardous enterprise. In order to make this study as accurate as possible, knowledgeable leaders from the Polish, Italian, and Latin communities were asked to identify ethnic names by studying the lists of directors and officers in each annual report. In cases of doubtful ethnic origin the individual's office was contacted directly. Each corporation having no apparent representation from any of the four ethnic communities was informally contacted to double check the preliminary findings. In regard to Blacks, all available studies were utilized and persons familiar with the Black community were consulted. Also helpful were several lawyers and business leaders who were generally knowledgeable about many of the corporations studied. If there are any errors in the final tally for each group, the margin of error would not be sufficiently great to invalidate the findings of this study.

A manual describing in full the method used is being prepared by the author and will be distributed through the National Center for Urban Ethnic Affairs in Washington and the Institute of Urban Life in Chicago.

FOOTNOTES

[1] 60–50.1 of Chapter 60, Title 41, Code of Federal Regulations.

[2] In referring to Poles, Italians, Latins, or Blacks, the author means Americans who are of Polish, Italian, Latin (Spanish-speaking background), or Black ancestry.

[3] One person of Italian background serves on nine different boards. If he were to be counted only once, the percentage of directors who are Italian would be reduced from 1.9 per cent to 1.3 per cent.

[4] What should serve as an equitable norm, and how to apply it, is, of course, open to discussion. One can anticipate increasing public discussion of the matter as more groups pursue group gains.

[5] An Italian, however, does serve as an officer of the two subsidiaries of one of the utilities.

[6] Nathan Glazer and Daniel P. Moynihan, *Beyond the Melting Pot*, 1963, p. 208.

THE 106 CHICAGO-BASED CORPORATIONS

Abbott Laboratories, Admiral, Allied Mills, Allied Van Lines, American Bakeries, American Hospital Supply, American National, Amsted Industries, Baxter Laboratories, Beatrice Foods, Bell Federal, Bell & Howell.

Borg-Warner, Brunswick, Bunker Ramo, Carson Pirie Scott, CECO, CENCO, Central National Bank, CFS Continental, Chemetron, Citizens Bank Park Ridge, Chicago Bridge and Iron, Chicago-Milwaukee.

Chicago and North Western, Chicago, Rock Island and Pacific, Combined Insurance, Commonwealth Edison, Consolidated Foods, Continental Illinois Corporation, CNA Financial, De Soto, Donnelley (R.R.) & Sons, Drovers National Bank, Exchange National Bank.

First Chicago, First Federal, FMC, General American Transportation, Goldblatt Brothers, Gould, Harris Bankcorp, Hart, Schaffner & Marx, Heller (Walter E.) International, Hilton Hotels.

Home Federal, Household Finance, Illinois Bell Telephone, Illinois Central Industries, Illinois Tool Works, Interlake, Inland Steel, International Harvester, International Minerals & Chemical, Jewel, Kemperco.

Kraftco, Lakeview Trust, LaSalle National Bank, Libby, McNeill and Libby, Marcor, Maremont, Marleman, Marshall Field, Masonite, McDonald's, McGraw-Edison, Morton-Norwich Products, Motorola, Nalco Chemical.

National Boulevard Bank, National Can, National Tea, Northern Illinois Gas, Northern Indiana Public Service, Nortrust, Northwest Industries, Northwestern National Bank, Outboard Marine, People's Gas.

Pioneer Trust, Pullman, Quaker Oats, St. Paul Federal, Santa Fe Industries, Searle (G. D.), Sears Bank & Trust, Sears, Roebuck, Signode, Spector Industries, Square D, Standard Oil (Indiana).

Sunbeam, Swift, Talman Federal, Trans Union, UAL, U.S. Gypsum, UNICOA, Universal Oil Products, Walgreen, Ward Foods, Washington National, Wieboldt Stores, Wrigley (William) Jr., Zenith Radio.

EXHIBIT 2

[From Fra Noi, January 1974]

ETHNIC MINORITIES STILL HAVEN'T MADE IT!

(By C. N. Conconi)

Little did the black militants of the 1960s realize that their calls for "Black Power" and "Black Is Beautiful" would awaken the more established ethnic groups into wistful thoughts of "Italian Power" or "Polish Is Beautiful."

But no one but campaigning politicians paid much attention to the white urban ethnic minorities and only then to call up fears about "crime in the streets" or "busing."

When Martin Luther King Jr. brought the Civil Rights Movement to always-volatile Chicago in 1966 to march for open housing, he walked into a white ethnic wall of rage that staggered his previously steady momentum.

Blacks faced an unexpected new enemy. It wasn't the racist "Mississippi Rednick" or the "Georgia Cracker."

It was, instead, the Northern Urban Ethnic who couldn't understand why they weren't leaving him and his neighborhoods alone.

While the Chicago ethnics sounded the first angry protest, their frustration and rage was soon echoed in other northern cities. Real or imagined, it was the urban white ethnic who was feeling the brunt of social change—it was his neighborhoods that were being threatened and his children who were being bussed.

"It was these urban ethnics," argued Msgr. Geno Baroni, president of the National Center for Urban Ethnic Affairs in Washington, "who became the whipping boys. The ethnics objected and were unfairly labeled the enemy, the racist."

Baroni said the "ethnics were objecting that 'you liberals are beating up on us, but your kid isn't in a lousy school like ours is. You help the blacks and call us racists, but we need help too!' "

With all the programs for social change in the 1960s, Baroni points out, there wasn't one program for urban ethnics, who "are still a significant percentage of the cities. They live the problems of the city every day and are still there and don't go home to the suburbs when the demonstrations are over."

The answer to depolarization, Baroni said, is not asking the white ethnic:

"What's wrong with you, you dumb racist hard hat?" but in the convergent issues and common concerns that all minorities share. Many ethnics believe that blacks are being moved ahead at their expense. The trust is that neither are in the power structure."

While neither Baroni nor any of the Chicago white urban leaders would ever argue that the ethnics are worse off than blacks, the Polish and Italian groups in Chicago have presented evidence that they believe will shatter the myth that they have made it.

An alliance of Poles and Italians, two large Chicago ethnic minorities, financed a study of the executive suites of 106 of the major corporations headquartered in the city and found, in essence, that any black or ethnic one meets in the executive suite is probably there as part of the clerical or cleaning crews.

What he isn't likely to be is a member of the Board of Directors or a corporate officer. The executive suite is clearly still the domain of the WASP.

In Chicago, where the political parties often ethnically balance the election slates, the impact of the Executive Suite Study—conducted by a Mundelein College of Chicago professor for the Institute of Urban Life—is expected to fall on corporate desks with a menacing thud.

The study, conducted by Dr. Russell Barta, looked into the executive suites of 106 of Chicago's largest corporations to see how many Italians, Poles, Blacks and Latins were members of the boards of directors or corporation officers.

More than half of the firms, or 66 per cent, had been included in Fortune Magazine's 1972 list of the 500 largest firms in the United States.

Although the study was financed by a Polish Italian coalition and was designed for only those groups, Barta requested that Latins and Blacks be included.

"If this country is going to hold together it is because of some understanding between black and ethnic groups that make up the bulk of the city's population," Barta explained. "It is more necessary now than ever before to bring blacks and ethnics together. There was no argument when I suggested including Blacks and Spanish."

An intense, concerned man who talks with the carefulness of a professor accustomed to lecturing to note-taking students, Barta said the results of his study were far worse than he expected.

Barta found that while the four groups studied represented nearly 34 per cent of the seven million Greater Chicago Metropolitan Area population, only 36 directors—less than three per cent of the total of 1,341 directors—and 52 officers—less than 4 per cent of the total of 1,855 officers—were Polish, Italian, Black, or Latin.

A more dramatic fact was that 55 of the 106 corporations had no Poles, Italians, Latins or Blacks as either directors or officers.

In fact, Poles, Latins, and Blacks were virtually absent from the upper echelons of Chicago's largest corporations—102 of the 106 firms had no Polish director and 97 had no Polish officers. Only one corporation had a black officer and two had Latin officers.

While Italians had better representation in the executive suite, 84 corporations had no directors and 75 had no officers. The Italian statistics were misleading because the Admiral Corporation, one of the firms studied, is Italian American owned and operated; and because of Dr. John Rettaliata, the former president of the Illinois Institute of Technology, who is a member of 9 of the 103 boards.

Barta pointed out that if Rettaliata were to be counted once, the percentage of Italian directors would be reduced from 1.9 per cent to 1.3 per cent.

"On the average, of course," Barta adds, "ethnics are better off than blacks, but they still haven't made it. These figures are hard to accept. The top layers of society are still closed."

A careful man, Barta frets over the probabilities. He explains how he double checked firms with no representation by calling directly to ask.

He is aware that he may have missed a few ethnics hiding behind innocuous Anglo-Saxon names, but feels they wouldn't change the percentages enough to make any difference.

The question of what is an ethnic and how many generations are required before an ethnic is no longer a hyphenated American bothers some of the people involved with the study and some corporate executives. The question also is raised about the ethnic Italian or Pole who does not consider himself an ethnic.

Barta realizes those questions will cause some controversy, but counters:

"We are tracing the mobility of groups. It makes no difference if they are third or fourth generation or have given up their ethnic identity. The measure of the progress they have made is still valid.

"What we have is a de facto class system where young people perceive that the top is closed to them and don't go into industry looking to go to the top."

Barta argues that it is good to be aware of imbalances and that ethnics, like blacks, have to go through the counting stage and ask: "How come?"

He believes the Executive Suite Study will raise hell because it emphasizes that "white" is a false, misleading category. "Who are the whites? Where in the hell are the Poles?" Barta asks. "We know more about tribes in Nigeria than we know about American ethnic groups and their economic patterns."

Why the ethnics are not better represented at the top brings responses that range from conscious discrimination to company tradition and the clubbishness of the executive suit where, boards especially, look for people with the same backgrounds.

It is generally agreed that Latins are too recent immigrants to have any impact yet and quietly admitted that some boards simply are not ready for blacks. When asked about the Poles and the Italians, the answers are more confused.

Barta's study went after the executive suite because it was felt the results would be significant, and for the obvious reason that it is easier to get such information since it is published in annual reports.

The tougher questions about hiring and promotion practices or learning how many blacks and ethnics are on the second management levels haven't been attempted because—while it is felt the key to the problem is there—no corporation is expected to cooperate with such an investigation.

That minority groups tend to go into the professions rather than into the corporate structure has been generally documented and even offered as an excuse as to why more blacks and ethnics are not seen at higher levels.

David Roth, Midwest director of the American Jewish Committee, said the Executive Suite Study didn't surprise him at all. The Jews in Chicago have conducted earlier studies with results showing that Jews are also not in the executive suite.

"The Poles and the Italians are groups that attempted to homogenize into the society," Roth said, "but the second and third generations are discovering that it takes more than time to become part of the mainstream."

Roth explained that the studies of the American Jewish Committee were prototypes for the Executive Suite Study and welcomed the decision of the ethnic minorities to publicly begin recognizing their ethnicity and demanding their share.

"Any pressure on the corporate structure to open up new jobs for ethnics, which may not be new jobs for seventh generation Presbyterians, helps everyone," Roth added.

"Jews and Blacks complaining are not enough alone. It is hard for government and the corporations to resist if a lot of groups are yelling for the jobs we have to have to survive—we are in the process of building a big enough umbrella that is tolerant of differences so no one has to change his name or join the same club."

Roth's arguments were echoed by Anthony J. Fornelli and Mitchell P. Kobelinski, the leaders of Chicago Polish Italian Conference who, after conducting studies of their own, decided to work together and finance an independent study that would have a broader impact.

Fornelli, a successful Chicago lawyer and the son of Italian immigrants, talks rapidly and in the style of a man who likes speech rhetoric:

"If we are such a large percentage of the national population, why do we have such a small percentage of the top jobs? Either we are a minority in numbers or a minority in thought. Either business is ignoring an untapped vast resource or there is a conscious effort to exclude. The statistics say something is wrong. I think the decision is conscious. I feel there is a conscious effort to exclude at hiring. Can you believe the four groups have been excluded without a conscious effort?"

Fornelli argues Italians need representation in the executive suites as examples for younger ethnics. "I am on my own because of a deep-rooted feeling I'd never make it in one of the corporations," he added.

The same problem, he said, continues over to politics. "With more than one million Italians in Illinois, Italians have never held a state executive elected position, never even had a candidate nominated by a major political party. With more than 600,000 Italians in the Chicago area, an Italian has never been elected to a county-wide office and never mayor.

"Chicago Democratic Congressman Frank Annunzio," he pointed out, "is the only Italian congressman between the Appalachians and the Rockies."

Mitchell P. Kobelinski, who had been president of the Illinois Polish National Alliance before President Nixon recenty appointed him to become one of the three directors of the Export-Import Bank in Washington, added the dimension of religious prejudice to the problems facing Poles and Italians.

Kobelinski, in his subcabinet post, has the highest job any Polish American holds in this Administration.

A vice chairman and a president of a Chicago community bank he helped organize Kobelinski, also the son of immigrants, is aware he received his present appointment because he is an ethnic.

Sitting in his spacious government-issue furnished office across Lafayette Square from the White House, Kobelinski pointed out that if someone has an Italian or Polish name it is obvious that he "is one of those Roman collar boys."

He said that religious prejudices against Catholics are more deeply seated than most people realize. "If I were a Presbyterian or Baptist or a Shriner with the same name it wouldn't bother them (corporate executives) nearly as much."

Poles are also very heavy in the professions, Kobelinski added, because there hasn't been much reason to go into the corporations. "Young Poles who don't change their names know that the name makes them somehow not quite American," he said.

Although Kobelinski believes the old prejudices are breaking down, he feels that a Polish American working in the corporate structure is in an unfair competitive position.

"Before he can get a break, he must not be just better, he must be outstanding," he said.

Kobelinski said the Executive Suite Study speaks for itself and shifts the burden of proof to the corporations. With the existing population percentages of the four minority groups represented in the study, he added, "It couldn't be coincidence. It must be design. You (corporations) prove to us you haven't been discriminating."

He believes his children will have the opportunity to reach the executive suite, but feels they are already aware that it won't be as easy for them as for someone with a non-ethnic name.

Most corporation executives, while surprised that the figures for Poles and Italians are so low, contend that situation is more the result of tradition rather than discrimination.

They point to firms like the Johnson Wax Corporation in Racine, Wisconsin, which at one time was made up primarily of Yale University alumni, or the Gillette Corporation, which was known in the 1950s as a corporation where most officers and board members were Shriners.

John M. Coulter, an official with the Chicago Association of Commerce and Industry, said that the boards and executives of Chicago-based corporations represent a significant number of members who are from outside the area, the bulk from the East.

Quite often, he added, they come from Ivy League and other Eastern schools.

Coulter, who is director of Merit Employment, Manpower and Development Training and Commercial Development for the Association, with a 5,000 firm membership, making it the largest Chamber of Commerce in the country and second largest in the world, said he doesn't believe there has been any conscious decision to keep ethnic minorities off any of the corporate boards in the city.

The Chicago Association of Commerce and Industry, ironically, with an 85 man board, has four blacks and no Poles, Italians or Latins; of the 16 officers, none are from the four groups.

"Most major corporations had some fairly rigid and strict identification in the past—a lodge, university, specific denomination, possibly an ethnic group," he said. "Boards tend to seek out people with like backgrounds even while trying to find the best men they can."

John Rettaliata, the successful exception, who is most frequently cited as an example of an ethnic who has made it, is one such man who gets around. The former president of the Illinois Institute of Technology is a member of 16 boards of directors, 9 of which were in the Executive Suite Study.

A third generation Italian from Baltimore with degrees from Johns Hopkins University, the 62-year-old Rettaliata was appointed to the first board in 1952.

"I have been on more boards than most people and longer than most people," Rettaliata argued. "I have never heard any discussions that 'we don't want him because of his ethnic background.' There is also no conscious effort to place minorities. We simply try to get the best man we can. There is no reason to get any other kind."

Sitting in his ultra-modern Banco di Roma office, where every item is decorator designed, purchased and positioned, Rettaliata said he was appointed to the boards on which he sits because he was qualified—ethnicity had nothing to do with it.

"I am an American. I don't look at myself as an American with an Italian name. My mother was Irish," Rettaliata explained. "It just happens that I carry my father's name."

Although Rettaliata reluctantly admitted that he found the number of ethnics on boards and as officers surprisingly low, he believes that anyone who is qualified "and is no crusader who will embarrass the company can become an officer or a board member. There is no reason why an ethnic can't go as far as anyone else."

On the Far South Side of the City of Chicago, Millard Robbins, a black owner of an insurance and mortgage business and the first and only black board member of People's Gas, points out that all the utilities now have a black board member.

"I was appointed to that board because they needed a black face somewhere," he explained. "I was fourth or fifth choice for the board job. They were scrambling looking for a black. I was fortunate to be standing in the right place when the others weren't available."

Expressing surpise that "Nixon's silent majority"—the Poles and Italians weren't better represented, Robbins said that everyone else's problem is still a little different from the black who has had zero quota.

"Poles or Italians can change their names and assimilate," he added.

Like most other ethnics, Robins believes that the absence of ethnics in the executive suite discourages young people who don't believe they can make it to the top because they don't see anyone there.

Walter H. Clark, the only black officer in the 106 corporations studied, is a vice president of the First Federal Savings and Loan Association of Chicago and is the first member of his race ever to advance so high in the firm. In fact, he was the first black hired in 1955.

Clark believes he earned his vice presidency even though he is aware being black may have helped. He does believe that being black held him back.

"There was never any complaint about my work here, but it was 10 years before I ever became an officer," he explained. "I am sure I was held back because of race. We had a change in top management in 1962 or 1963 that developed a different viewpoint. The new president was looking for people who could do the job and race didn't matter."

The results of the Executive Suite Study, Clark said, show that minority groups haven't been given the opportunity to advance. "It doesn't surpise me," he added. "We are seeing the results of years of discrimination."

Talking about his son, Clark said that because of his success at the bank his 15-year-old son doesn't have the attitude that he won't go to the top. "For the average black kid," he added, "the statistics don't show any bright spots."

In the expensive western suburb of Oak Brook, where many of the major corporations are building offices, Frank C. Casillas, a Mexican immigrant who couldn't speak English when his family moved to Gary, Indiana, is a vice president of the Bunker Ramo Corporation—with ambitions to someday become the president of a major firm.

He doesn't believe his ethnic background worked against him and feels that his engineering and computer programming and analyst skills and the successes he had with such major corporations as Standard Oil of Indiana, the Rand Corporation and General Electric prove that he earned his vice presidency.

The 47-year-old Casillas, whose mother couldn't speak English and whose father was a railroad laborer, won a scholarship to Purdue University and became a citizen during the Korean War, when he served as an Army Corps of Engineers Officer.

Every one of his six children, he explains, will go to college because that is the atmosphere that has been established in his home. Other young Latins, he fears, believe it is now possible to get to the top and are not trying. He feels the alternative is for young Latins to become successful in their own businesses.

As vice chairman of the executive committee of the President's Advisory Council for Minority business and through his work with the National Economic Development Corporation, Casillas works to help get minority members started in small businesses.

At the other end of the success picture is the hidden ethnic with the Americanized name.

Thirty-year-old Anthony Winfield Summers, whose Italian great grandfather changed the name from Summa upon coming to this country, believes that ethnicity is amusing but useful at times.

"I am a very practical guy," he explained. "I like to live well and make a good living. I see no reason to consider myself Italian. I never use it except for effect. If I am dealing with someone Italian like a clerk of court or some businessman and it is useful to me, I tell them I am Italian."

As a lawyer with the Chicago, Milwaukee Company, Summers believes that a name like Summers is helpful in front of a jury who can't guess what he is. "It's better not sticking out in front of a jury. It is the same as I never wear a vest, a flashy ring or watch when going before a jury. I like an innocuous name for the same reason."

Summers reflects an attitude that most ethnics oppose. They argue there should be no reason to either exploit or hide a foreign name.

The Executive Suite Study,, which promises to spread to other cities and to take in other groups, is expected to offer blacks and other ethnic minorities a converging issue that will break the key economic barriers in an ethnic power movement that respects differences while recognizing mutual problems and goals.

EXHIBIT 3

[From the Business and Society Review/ Innovation, Winter 1973–74]

WHITE ETHNICS: HERE COMES THE NEW MINORITY

(By William A. Carmell, Jr.)

(NOTE.—William Carmell is the Manager, Equal Employment Opportunity Programs for Union Carbide Corporation. He is a former staff associate of the late Robert Kennedy and is presently on the Advisory Committee of the New York Center for Ethnic Affairs.)

Much has been written in the last few years regarding equal employment opportunity as it pertains to minority groups and women. Federal statutes and regulations, particularly Title VII of the Civil Rights Act and Revised Order No. 4 issued by the Office of Federal Contract Compliance, Department of Labor, have done much to bring this issue to the forefront in the corporate community by enabling the government to both intervene in and monitor employment activities.

However, there is another side to this issue which has been little understood and gone relatively unnoticed while conscientious efforts on behalf of minority groups and women have been made. That is, equal employment opportunity (EEO) for ethnics has remained until now largely quiescent. It is unlikely that this will continue. Based on past experience with minority groups and women, it can be expected that during the 1970s this whole question will gain in importance as the result of pressure brought to bear by ethnics themselves on both government and business.

Some rumblings have already begun. The Office of Federal Contract Compliance (OFCC) has issued a new regulation effective February 20, 1973 entitled "Guidelines on Discrimination Because of Religion or National Origin." (Part 60–50, Title 41, Code of Federal Regulations.) These guidelines are applicable to government contractors and subcontractors and to contractors and subcontractors performing under federally assisted construction contracts. As a practical matter, most major corporations are affected, since almost all do business in one form or another with the federal government.

The guidelines cover "members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavik groups." In this article, the term "ethnics" refers to all of these groups.

To analyze the potential impact of these particular guidelines, it is important to study them in terms of what is required and what is not required. They do require that employers take affirmative action to insure that applicants are employed and that existing employees are treated without regard to religion or national origin. This affirmative action encompasses all aspects of the employment relationship including upgrading, demotion, transfer, recruitment, layoff or termination, compensation, and selection for training.

Further, employers must review their employment practices to determine whether members of various ethnic groups are receiving fair consideration for job opportunities. Special attention must be paid to executive and middle management jobs, although all job levels are within the scope of the guidelines. Based upon the findings of these employment practice reviews, employers also required to undertake some positive steps to remedy deficiencies. Finally, an employer must allow for the religious observances and practices of an employee or prospective employee unless the employer can show that it is unable to "reasonably accommodate" without "undue hardship in the conduct of the employer's business."

Those employers who do not comply with these requirements could be precluded from bidding on future government contracts and could have their present government contracts terminated or cancelled. This, then, is the first overt step by the federal government to potentially affect the profits of a corporation which discriminates on the basis of religion or national origin.

However, it is noteworthy that these guidelines omit certain features contained in earlier EEO regulations. Unlike Revised Order No. 4 covering minority groups and women, these guidelines do not require that ethnics be mentioned in current affirmative action plans. More importantly, they do not require the establishment of goals and timetables to remedy any underutilization of ethnics. The use of such goals with regard to minority people and women is, of course, a key requisite of Revised Order No. 4 and it has been this goal system which has gotten results.

There is then some confusion. On the one hand, the federal government appears finally to have recognized the problem of ethnics in employment, but on the other, it raises some doubts about the seriousness with which it intends to enforce its guidelines. At present, enforcement is occurring only within the context of individual complaints brought before the courts or with the Equal Employment Opportunity Commission. Although it is still early to make a definitive judgment, the OFCC, through the various federal compliance agencies, does not yet seem to be placing any great emphasis on the guidelines. That situation, of course, can change.

It should be mentioned in passing that enforcement of state and municipal statutes banning discrimination on the basis of religion or national origin also appears to be negligible outside the context of individual complaints. Nonetheless, the New York State Division of Human Rights has privately and informally expressed some greater interest in the problem of the ethnic and equal employment opportunity. As of this writing however, nothing formal has yet crystallized.

AN ETHNIC REVOLT?

While the mere publication of these new guidelines has begun to stir some interest inside the corporations, this has been and will likely continue to be a slow process for several reasons.

First, corporate managements generally do not perceive that there is a problem. In fact, they seem to feel that ethnics clearly have been given job opportunities in this country and that their overall success is evidence of America's greatness and the fulfillment of her promise.

Unfortunately, some corporate urban affairs and EEO officers are themselves either oblivious to the problems of ethnics or hostile to the idea of including these groups as part of their job responsibility. While this is understandable in some cases, it retards the opening up of EEO to ethnics, since it deprives ethnics of a spokesman who can sensitize management to their plight.

Also, it is ironic because the success of "traditional" EEO programs on behalf of minorities and women depends in part on the cooperation of ethnics already in the work force. In many instances, these ethnics are able to advance or hinder this traditional EEO effort. The chances of their supporting it will obviously increase if they feel their own needs are being simultaneously recognized. Thus, these two separate but related EEO efforts become intertwined. Success on behalf of minorities and women will be greater and will occur more quickly where ethnics are also afforded an equal opportunity.

Having said this, the issue then becomes deciding what the emerging ethnic wants. I am limiting this article to a strictly business context. While not presuming to be a spokesman for ethnic people, my conversations with ethnic leaders over the last two years have given me a good idea of their position.

When they immigrated into the United States, many ethnics did not understand the language, customs, laws, or mores of their new country. Frequently, there was no one to help them. While they generally were able to find jobs, and through hard work could earn a respectable livelihood, they did not easily rise above the lower echelons of corporate management. Of those who did, many changed their names and/or life styles in order to accomplish this objective.

Generally, most ethnics accepted this situation, and having heard of or experienced worse situations in the "old country," were initially quite satisfied with their lot. The recent social "revolution" initiated by

minority groups and subsequently joined by women began to change this acceptance. This revolution created and then accelerated an emerging awareness in the ethnic communities of their own plight and their own need to develop an identity and to gain acceptance from other Americans on that basis.

With regard to business, ethnics are beginning to raise two major issues. First, the corporate world must recognize that ethnics too have experienced some difficult problems in adjusting to life and business in the United States. Second, ethnics too have suffered discrimination, though perhaps in more subtle and milder ways than minorities and women, and this must be rectified.

If no action is forthcoming, ethnics will continue to believe that their past and present difficulties have been totally neglected while the problems of others have at least begun to be addressed. This resentment and frustration can well lead to the same kinds of confrontations that minorities and women have sometimes felt compelled to initiate in order to gain equal employment opportunity.

Because of the new OFCC guidelines, because discrimination on the basis of religion and national origin may produce the kind of frustration which will result in confrontation, and because ethnic support is important for implementing a positive EEO program for minorities and women (something which is a "now" problem for companies), the business community is well advised to take some EEO action soon on behalf of ethnics.

LEARNING FROM PAST MISTAKES

There are a number of actions which corporations can undertake to ameliorate the frustrations of ethnics and help insure that they receive an equal opportunity in both employment and upward mobility.

First, corporations should identify and develop contacts with national ethnic leaders. In this way, a dialogue can begin which can hopefully lead to a better understanding between these two groups. It is important, of course, for corporations to learn firsthand of the everyday difficulties which still afflict ethnic communities. However, it is equally important that the ethnic communities understand some of the very real problems confronting the business community which affect its ability to act. Without this kind of understanding, unrealistic expectations can develop in terms of what business can accomplish and how quickly. This has been a pervasive problem where minorities and women have been involved.

I hasten to add that the identification of responsible national ethnic leadership is not a simple task. The ethnic movement is just becoming organized and is less developed than that of most minority groups and women's organizations.

The next step is the identification and development of contacts with local ethnic leaders in communities where the corporation has a business facility and where there are significant numbers of ethnics. In some cases national ethnic leadership may provide guidance in this regard. However, because the ethnic movement is in an early stage, this may not be satisfactory. In that case, community leaders, local clergymen, or ethnic employees themselves may identify those with whom to begin a dialogue. It is best to contact both national and local leadership whenever possible and to work on both levels. National ethnic leadership will be helpful in providing an overall view, while local ethnic leadership will have a better understanding of specific problems, aspirations, and frustrations of particular local ethnic communities, all of which might vary according to geography.

In order to facilitate equal employment opportunity for ethnics, corporations should develop and implement a formal program aimed at raising management awareness of the problems and frustrations existing in ethnic communities generally. This approach has been successful for OEO programs designed to aid minorities and women. Minorities and women, however, have often drawn attention to their problems through demonstrations and similar tactics—ethnics have not. Thus, the need to heighten management awareness, in terms of ethnic problems, makes a formal awareness program even more vital.

The budget for furthering equal employment opportunity for minorities and women must at least remain constant, if not be increased, at the same time that funding for ethnic programs occurs. The ethnic EEO program must be financed separately and not at the expense of other EEO programs. Corporate management must not inadvertently cause a confrontation between these groups over available corporate funds. In most instances, the discrimination problems of minorities and women have been greater than those of ethnics. This must be taken into account when corporations allocate funds to the various EEO programs.

A thorough analysis should be made of both the workforce of each corporate plant and the surrounding area in terms of ethnic mix. This is necessary to determine whether a reasonable proportion of the plant workforce is in fact made up of ethnics. Further, such an analysis should be made at all job levels. If there is a disproportionately small number of ethnics at middle- and upper-management levels, the company should identify those who are either presently promotable or who have the potential for promotion when openings do occur. Those who have the potential for promotion should be counselled and trained accordingly.

This presents the business community with a difficult problem: No records are kept about the ethnicity of an employee. Frequently, names have been changed, and direct inquiry to an employee about his or her ethnic background might be misunderstood and result in serious employee relations problems. Still, the use of names as indicators is the only practical, if incomplete, way to identify ethnics. As ethnics themselves see the advantages of an accurate survey, it is conceivable that they may make such information available themselves.

Special in-house training programs for English, especially business English, should be developed and introduced in plants located in heavily ethnic communities. This may help some of those already employed whose job progress has been limited by their inability to read or communicate effectively as well as potential employees.

Finally, the corporation should clearly communicate its EEO goals to all employees. It should be emphasized that the EEO effort on behalf of ethnics is not going to be at the expense of EEO programs for minorities and women. Corporate priorities should be indicated, and the serious problem of discrimination against minorities and women reacknowledged. The ethnic EEO program should be characterized as an edition, not a change in direction, to the overall corporate EEO effort.

EXHIBIT 4

CUEANJ—CENTER FOR URBAN ETHNIC AFFAIRS OF NEW JERSEY

NWECC—NORTH WARD EDUCATIONAL AND CULTURAL CENTER, INC.

Did you hear the latest joke about the ethnic worker who was denied a job?

The Government did . . . and it's not laughing.

Federal guidelines for equal employment opportunity now apply to white ethnics: Italians, Poles, Greeks, Slavic groups.

Discrimination against white ethnic minorities in recruitment, hiring, training, and promotion is no laughing matter; its illegal. To comply with EEO affirmative action guidelines, an employer must:

Analyze the ethnic composition of employee groups in all areas and at all levels of the company to determine the degree of white ethnic underutilization;

Design and implement specific and result-oriented goals, timetables, and affirmative action commitments to remedy any identifiable deficiencies in the company's equal employment opportunity objectives;

Communicate and make available to all employees and applicants the company's written affirmative action program; and

Comply in good faith with affirmative action requirements by applying every effort to recruit, hire, train, and promote qualified white ethnic and other minority group members.

[From the Federal Register, Jan. 19, 1973]

U.S. DEPARTMENT OF LABOR, OFFICE OF FEDERAL CONTRACT COMPLIANCE, WASHINGTON, D.C. (CHAPTER 60, OFFICE OF FEDERAL CONTRACT COMPLIANCE, EQUAL EMPLOYMENT OPPORTUNITY, DEPARTMENT OF LABOR)

PART 60–50—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

On December 29, 1971, notice of proposed rule making was published in the FEDERAL REGISTER (36 FR 25165) with regard to amending Chapter 60 of Title 41 of the Code of Federal Regulations by adding a new Part 60–30, establishing guidelines and interpretations of the Office of Federal Contract Compliance as to the requirements of Executive Order 11246, as amended, for promoting and insuring equal employment opportunity for members of various religious and ethnic groups who continue to encounter employment discrimination because of their religion and/or national origin. Interested persons were given 30 days in which to submit written comments regarding the proposal.

After consideration of all comments received, Chapter 60 of Title 41 of the Code of Federal Regulations is amended by adding a new Part 60–50, set forth below. The final version of the Office of Federal Contract Compliance's guidelines regarding religious and national origin discrimination is now issued as 41 CFR Part 60–50, rather than as 41 CFR Part 60–30, as formerly proposed, since the latter part has been reserved for other regulations.

Sec.

AUTHORITY: Sec. 201, E.O. 11246, 30 FR 12319, and E.O. 11375, 32 FR 14303.

§ 60–50.1 Purpose and scope.

(a) The purpose of the provisions in this part is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance regarding the implementation of Executive Order 11246, as amended, for promoting and insuring equal employment opportunities for all persons employed or seeking employment with Government contractors and subcontractors or with contractors and subcontractors performing under federally assisted construction contracts, without regard to religion or national origin.

(b) Members of various religious and ethnic groups, primarily but not exclusively of Eastern, Middle, and Southern European ancestry, such as Jews, Catholics, Italians, Greeks, and Slavic groups, continue to be excluded from executive, middle-management, and other job levels because of discrimination based upon their religion and/or national origin. These guidelines are intended to remedy such unfair treatment.

(c) These guidelines are also intended to clarify the obligations of employers with respect to accommodating to the religious observances and practices of employees and prospective employees.

(d) The employment problems of blacks, Spanish-surnamed Americans, orientals, and American Indians are treated under Part 60–2 of this chapter and under other regulations and procedures implementing the requirements of Executive Order 11246, as amended. Accordingly, the remedial provisions of § 60–50.2(b) shall not be applicable to the employment problems of these groups.

§ 60–50.2 Equal employment policy.

(a) *General requirements.* Under the equal opportunity clause contained in section 202 of Executive Order 11246, as amended, employers are prohibited from discriminating against employees or applicants for employment because of religion or national origin, and must take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their religion or national origin. Such action includes, but is not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(b) *Outreach and positive recruitment.* Employers shall review their employment practices to determine whether members of the various religious and/or ethnic groups are receiving fair consideration for job opportunities. Special attention shall be directed toward executive and middle-management levels, where employment problems relating to religion and national origin are most likely to occur. Based upon the findings of such reviews, employers shall undertake appropriate outreach and positive recruitment activities, such as those listed below, in order to remedy existing deficiencies. It is not contemplated that employers necessarily will undertake all of the listed activities. The scope of the employer's efforts shall depend upon all the circumstances, including the nature and extent of the employer's deficiencies and the employer's size and resources.

(1) Internal communication of the employer's obligation to provide equal employment opportunity without regard to religion or national origin in such a manner as to foster understanding, acceptance, and support among the employer's executive, management, supervisory, and all other employees and to encourage such persons to take the necessary action to aid the employer in meeting this obligation.

(2) Development of reasonable internal procedures to insure that the employer's obligation to provide equal employement opportunity without regard to religion or national origin is being fully implemented.

(3) Periodically informing all employees of the employer's commitment to equal employment opportunity for all persons, without regard to religion or national origin.

(4) Enlisting the assistance and support of all recruitment sources (including employment agencies, college placement directors, and business associates) for the employer's commitment to provide equal employment opportunity without regard to religion or national origin.

(5) Reviewing employment records to determine the availability of promotable and transferable members of vairous religious and ethnic groups.

(6) Establishment of meaningful contacts with religious and ethnic organizations and leaders for such purposes as advice, education, technical assistance, and referral of potential employees.

(7) Engaging in significant recruitment activities at educational institutions with substantial enrollments of students from various religious and ethnic groups.

(8) Use of the religious and ethnic media for institutional and employment advertising.

§ 60–50.3 Accommodations to religious observance and practice.

An employer must accommodate to the religious observances and practices of an employee or prospective employee unless the employer demonstrates that it is unable to

reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. As part of this obligation, an employer must make reasonable accommodations to the religious observances and practices of an employee or prospective employee who regularly observes Friday evening and Saturday, or some other day of the week, as his Sabbath and/or who observes certain religious holidays during the year and who is conscientiously opposed to performing work or engaging in similar activity on such days, when such accommodations can be made without undue hardship on the conduct of the employer's business. In determining the extent of an employer's obligations under this section, at least the following factors shall be considered: (a) Business necessity, (b) financial costs and expenses, and (c) resulting personnel problems.

§ 60–50.4 Enforcement.

The provisions of this part are subject to the general enforcement, compliance review, and complaint procedures set forth in Subpart B of Part 60–1 of this chapter.

§ 60–50.5 Nondiscrimination.

The provisions of this part are not intended and shall not be used to discriminate against any qualified employee or applicant for employment because of race, color, religion, sex, or national origin.

Effective date. This part shall become effective on February 20, 1973.

Signed at Washington, D.C., this 17th day of January 1973.

J. D. HODGSON,
Secretary of Labor.
R. J. GRUNEWALD,
Assistant Secretary for Employment Standards.
PHILIP J. DAVIS,
Acting Director, Office of Federal Contract Compliance.

[FR Doc. 73–1288 Filed 1–18–73; 8:45 am]

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, SECOND SESSION

Vol. 120 WASHINGTON, THURSDAY, MAY 16, 1974 No. 69

Senate

By Mr. MONDALE (for himself and Mr. Hart):

S. 3512. A bill to amend the Federal Unemployment Tax Act so as to require States to extend to not more than 39 weeks the period for which an individual may receive regular unemployment compensation, to provide for Federal financing of one-half of the costs attributable to the extension of benefits so required, to provide minimum standards with respect to eligibility for such compensation, and to limit the use of waiting periods for the receipt of such compensation; and otherwise to extend and improve the Federal-State unemployment insurance system. Referred to the Committee on Finance.

Mr. MONDALE. Mr. President, I am today introducing legislation which provides for basic and comprehensive reform of the Federal-State unemployment insurance system. This legislation is cosponsored by the distinguished Senator from Michigan (Mr. HART). Specifically, this legislation makes six changes in present law.

First, the bill embodies a uniform, Federal standard providing for a maximum duration of unemployment compensation benefits of 39 weeks. The additional 13 weeks—weeks 27–39—which will be added to the 26 weeks now provided by most States, are financed through Federal-State cost sharing. The "trigger" for extended benefits is eliminated for weeks 27–39.

Second, the bill would enact Federal standards for eligibility for unemployment insurance benefits. A State may not require an employee to have in his base period for eligibility more than 20 weeks work for 39 weeks of unemployment insurance benefits.

Third, the bill embodies Federal standards for amounts of compensation. The weekly benefit amount of any eligible individual for a week of total unemployment must be an amount equal to a 66⅔ percent of such individual's average weekly wage or an amount equal to the maximum weekly benefit payable under State law, whichever is lesser. The State maximum weekly benefit amount must be no less than 100 percent of the statewide average weekly wage.

Fourth, the bill extends coverage to new categories of workers. Coverage is extended to agricultural workers, domestics, and State and local government employees.

Fifth, the waiting period, a noncompensable period of unemployment in which the worker must have been otherwise eligible for benefits, may be no longer than 1 week. If an eligible individual has received compensation for 3 or more weeks in his benefit year, compensation will be retroactively paid to such individual for the waiting period.

Sixth, the bill establishes a Special Advisory Commission on Unemployment Compensation.

Unemployment insurance is a Federal-State system, designed to provide temporary wage-loss compensation to workers as protection against the economic hazards of unemployment. Funds accumulated from taxes on wages during periods of employment permit payments of benefits to covered workers during periods of unemployment. At the same time as the unemployed worker is assisted financially while he is looking for work, the benefit payments help maintain purchasing power throughout the economy and cushion the shock of unemployment on the economy. In addition to helping the worker, the program is designed to help the entire economy by maintaining spendable income. By maintaining purchasing power, it acts as a stabilizing force in the economy, helping to prevent an economic downturn from gathering momentum and forcing further declines in consumer purchasing power. The benefits are countercyclical in effect and help to prevent unemployment from spreading and lasting a longer period.

As President Nixon noted in his address to Congress on April 12, 1973:

> A properly designed system of unemployment insurance should serve the dual purpose—of both helping to tide individual workers financially over the periods when they are without a job, and of stabilizing the economy as a whole by helping to make up for wage losses which would otherwise cut consumer purchasing power and accelerate business downturns.

Unfortunately, our present system, under which benefits were first payable in 1939, does not meet the criteria for an adequate design. The system has not kept pace with the dynamics of our economy and the growth in wage level. Too many people are still excluded from coverage. Of those who are covered, too many exhaust their right to benefits before they are able to find employment. Even when they are receiving benefits, too many workers receive benefit amounts which are inadequate when compared with rising wages.

Our unemployment compensation system came into effect as a result of congressional action in 1935. Just as Congress had a responsibility to develop a program and see that it was enacted into law, so too it has a responsibility for seeing that the program is modified to insure that its basic objectives continue to be met.

Considerable attention has recently been focused on the unemployment insurance system because of massive job losses due to the energy crisis. The Secretary of Labor recently estimated that more than one-half million jobs have been lost, directly or indirectly, as a result of energy shortages. This energy-crisis unemployment has lead to congressional efforts to provide for emergency unemployment benefits for workers who have lost their jobs as a result of this crisis. Also, general unemployment levels have already reached 5.2 percent this year, and, despite slight decreases in the overall level in the past 2 months, estimates of overall unemployment as high as 6 percent are still being made.

While I continue to support congressional efforts to deal with crisis unemployment, I believe that now is the time to take a long, hard look at the overall unemployment compensation system in this country. Comprehensive reform has long been needed, and now is the time to act.

DURATION

Maximum weeks of benefits vary from State to State. Most frequently, the maximum duration is 26 weeks. Only eight of the States entitle all claimants to the maximum; the rest vary the maximum duration with the amount of past earnings or employment. In 1969, these varying provisions resulted in 52 percent of all claimants exhausting benefits before receipt of 26 weeks of unemployment compensation. In 24 States, over 60 percent of all exhaustees had drawn benefits for less than 26 weeks. The average duration of benefits in some States is a mere 19 or 20 weeks, and, in other States, it is consistently 26 weeks or more. Experience under the temporary unemployment compensation programs of 1958 and 1961 and the Federal-State Extended Unemployment Compensation Act of 1970 (Public Law 91–373) indicate the need for a uniform standard for duration.

Our current unemployment insurance system provides a mechanism for paying benefits for up to 39 weeks. But the additional 13 weeks, above the basic 26-week period provided by most States, is contingent upon levels of unemployment throughout the entire State or the entire Nation. There is, however, no reason why an individual who is unable to find a job, or for whom an unemployment service is unable to find a job, should be penalized because most people around him have a job and, therefore, the trigger is not activated.

The Federal-State extended benefit program, established by Public Law 91–373, is designed to pay extended benefits to workers during periods of high unemployment. The program is financed equally from Federal and State funds and may become operative either in an individual State or in the entire country as the result of State or National "on" indicators. Unfortunately, the extended benefits program has proven a failure. The complicated separate National and State trigger mechanisms have denied extended benefits to hundreds of thousands of the long-term jobless. Under the triggers, the national extended benefits were shut off at the height of a recessionary period. Many of the State programs have triggered "off" with unemployment levels as high as 8, 10, or 12 percent in major labor market areas.

The triggers are also discriminatory. The triggers rule out of the extended benefits program those areas which may experience high levels of unemployment but which are not included in States which have a level of unemployment high enough to satisfy the "on" trigger. Similarly, individuals may have lost their jobs but do not receive extended benefits because they do not happen to live in an area where the aggregate level of unemployment has reached the specified level. And the 120 percent requirement, which requires not only the existence of an "on" trigger but also that unemployment be 20 percent greater than the corresponding period in the two prior years, has prevented the successful operation of the extended benefits program. Recently the Department of Labor revealed that 17 States had an insured rate of

unemployment in excess of 4 percent but could not pay extended benefits because they did not meet the dual trigger requirement of 4.0 percent insured unemployment and 20 percent greater unemployment than the corresponding period in the two prior years.

My bill would provide for a uniform, national maximum duration of 39 weeks. Triggers would be eliminated. And the duration of unemployment compensation payments would be uniform.

It must be remembered that requiring a uniform, maximum duration of 39 weeks does not mean that all employed workers will draw benefits for 39 weeks. If a suitable job is available after 3 weeks, the worker must accept it, or, under all State laws, he will be disqualified from receiving benefits. What it does mean is that, if the labor market does not provide a job for the individual during the 39 week period, he will not be required to shoulder the entire, difficult burden of unemployment. Our unemployment compensation system will provide him with benefits for at least the required 39 week period. In addition, of course, all qualifying requirements must be met.

ELIGIBILITY

There are no Federal standards for qualifying requirements for benefits. Under all State unemployment insurance laws, a worker's benefit rights depend on his experience in covered employment in a past period of time, called the "base period". The period during which the weekly rate and the duration of the benefits determined for a given worker apply to him is called his "benefit year." The qualifying wage or employment provisions attempt to measure the worker's attachment to the labor force. To qualify for benefits as an insured worker, a claimant must have earned a specified amount of wages or must have worked a certain number of weeks or calendar quarters in covered employment within the base period, or must have met some combination of wage and employment requirements.

Under the present State laws, the amount of work needed to qualify for benefits, like the duration of benefits, vary widely. In an attempt to make such requirements uniform, my bill provides that, as a qualifying requirement, the states may not require more than 20 weeks of employment, or the equivalent, as a prerequisite to the receipt of the maximum duration of benefits.

In some States, too long a period is required before a worker can qualify for benefits. Although this bill accepts the requirement that a worker must have demonstrated a past attachment to the labor force in order to be eligible for benefits, it precludes overly stringent qualifying requirements.

BENEFIT AMOUNT

Under all State laws, a weekly benefit amount—the amount payable for a week of total unemployment—varies with the worker's past wages within certain minimum and maximum limits. The period of past wages used, and the formulas for computing benefits from these past wages, vary greatly among the States. Although many States have statutory provisions which provide that the worker will receive 50 percent of his average weekly wage, this provision is qualified by a maximum level of benefits which is often set so low that it effectively undercuts the 50-percent guarantee. In fact, more than two-fifths of all workers now covered by the unemployment insurance system, find their benefits limited by State ceilings at a level below the half-pay ostensibly guaranteed them.

President Nixon, in July 1969, recognized this problem when in a message to Congress, he said:

> Up to now, the responsibility for determining benefit amounts has been the responsibility of the States. There are advantages in States having that freedom. However, the overriding consideration is that the objective of adequate benefits be achieved. I call upon the States to act within the next two years to meet this goal, thereby averting the need for Federal action.

Unfortunately, State efforts to guarantee adequate benefit levels were not readily forthcoming. Thus, in his message to Congress in April 1973, the President recognized the need for Federal action.

The purpose of the benefit amount requirement is to assure that the unemployment insurance system provides adequate benefits to the worker and provides the Nation with reasonably full protection against reduction in consumer purchasing power resulting from wage losses attributable to unemployment. Accordingly, this legislation would amend the Federal Unemployment Tax Act by adding a provision requiring that every eligible insured worker, when unemployed, must be paid a benefit equal to at least 66⅔ percent of his average weekly wage up to a State maximum which shall be at least 100 percent of the average weekly wage of covered workers in the State.

Here, too, it must be understood that requiring a State to provide a maximum dollar benefit amount equal to the average wage in covered employment in that State only means that more workers will not be cut off by the maximum benefit amount. It does not mean that any worker will receive either 100 percent of the average wage in the State or even 100 percent of his own wage when he is unemployed. My bill would merely assure most workers two-thirds of his wage. He would still lose one-third of his wage during periods of unemployment.

COVERAGE

Many unemployed persons are not eligible for unemployment compensation. In March 1974, about 40 percent, or 2 million, of the unemployed were not covered by the unemployment insurance system or were not eligible for benefits under its provisions. Frequently, the workers who are not covered are the poorest and the most needy workers in the country. This bill would extend coverage to three broad categories of workers: Agricultural workers, domestics, and employees of State and local governments. The 1973 manpower report of the President revealed that more than 1.3 million workers are employed as farm laborers or foremen; 1.4 million workers are employed as private household workers; and more than 10.6 million workers are employed by State and local governments.

State laws generally exclude agricultural labor from coverage. Farmworkers were excluded from the definition of employment in the original 1935 law on the grounds that it was not administratively feasible to apply the statutory scheme to them. The extension to agricultural enterprises of income and social security taxes, and the extension to farmworkers of income tax withholding, have removed lack of administrative feasibility as an objection to eliminating the original exclusion.

This bill would apply the Federal unemployment tax and the unemployment compensation system to farm employers who, during the current or preceding calendar year, employed four or more workers in each of 20 weeks or paid $5,000 in wages in a calendar quarter.

For a large number of businesses engaged in agriculture, the proposed extension of coverage will not be their first experience with unemployment insurance. Many of these firms are already covered under the Federal Unemployment Tax Act and under State laws because of their substantial nonfarm employment.

In his April 1973 message to Congress, President Nixon noted:

> I consider it of urgent importance that we act at once to extend unemployment insurance coverage to as many agricultural employees as can feasibly be accommodated in the system.

Almost all State unemployment insurance laws exclude those who perform domestic service from coverage. This legislation would cover those who perform domestic service for an employer who paid $225 in any calendar quarter for domestic service.

Although the Federal act requires that certain service for State hospitals and State institutions of higher learning be covered under State law, it continues to exclude from State coverage service performed for State and local governments or their instrumentalities. Most States provide some form of coverage for State and local workers. About one half of the States provide mandatory coverage for all State employees and permit election of coverage by municipalities or other local government units. This legislation would, with certain exclusions, mandate coverage of State and local government employees.

There is no reason why a worker who meets all other tests should be denied benefits because he happens to be a farm worker, a domestic worker, or an employee of a State or local government. These workers face the same insecurities as other workers. Their children are just as hungry as other children when their parents are unemployed. We now have the administrative know-how, the lack of which was long used as a basis for excluding these workers, to include such workers in our unemployment insurance system.

MISCELLANEOUS

The waiting period is a noncompensable period of unemployment in which the worker would have otherwise been eligible for benefits. Most States require a waiting period of total unemployment before the benefits are payable. This legislation would permit a waiting period of no longer than 1 week. If an eligible individual has received compensation for 3 or more weeks in a benefit year, compensation will be retroactively paid to such individual for the waiting period.

The rationale that the imposition of a waiting period permits administrative time to process and verify claims is questionable in light of modern procedures. If a waiting period is, in fact, necessary, such a waiting period is still permitted. However, because the first week of unemployment is as deserving of unemployment compensation benefits as any other week of unemployment, the period will be covered by benefits after the unemployed worker reaches his fourth week of unemployment. The retroactive payment for the waiting period will be particularly useful at this point, since many obligations will be coming due.

Finally, the legislation provides for the appointment of a Special Advisory Commission on Unemployment Compensation for the purpose of reviewing the Federal-State program of unemployment compensation and making recommendations for the improvement of the system. The Commission is to consider, among other things, the changes made by this legislation and make recommendations with respect to the relationship between unemployment compensation and other insurance programs. The Commission is to be appointed by the Secretary of Labor. It will consist of 12 persons who will be representatives of employers and employees in equal numbers, representatives of State and Federal agencies concerned with the administration of the unemployment compensation program, other persons with special knowledge, experience or qualifications with respect to such programs, and members of the public.

While this legislation does much to modernize our present unemployment insurance system, it is only a first step toward a comprehensive system which will provide every American who wants to work with employment and truly protect every American working man and woman who is unemployed through no fault of their own. Such a system might not deny benefits after 39 weeks, if the individual's unemployment is still not his own fault. It is interesting to note that Congress, in providing security for the railroad worker who becomes unemployed because of mergers or technological change, provided for benefits without limit. Similarly, there may be no good reason why an unemployment compensation system should not provide benefits to individuals who want to work even though they are unable to get the initial job which is now required as a prerequisite to the receipt of benefits.

What America needs above all is a system which will provide jobs for all people who want to work and give them economic security during periods when our system proves unable to provide employment. To accomplish this, a comprehensive system is needed which will provide incentives to private industry to provide jobs, expand programs for public service employment so that much of our needed public works can be accomplished, provide job training in needed job skills, and provide income maintenance based upon unemployment compensation when work is unavailable.

Minnesota Historical Society

www.mnhs.org