

shall be designed such that, to the extent practicable, the percentage of the International Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.”.

### SEC. 3. ACKNOWLEDGEMENT OF INVESTMENT RISK.

Section 8439(d) of title 5, United States Code, is amended by striking out “Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund or the Fixed Income Investment Fund described in paragraphs (1) and (3),” and inserting in lieu thereof “Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund, the Fixed Income Investment Fund, the International Stock Index Investment Fund, or the Small Capitalization Stock Index Investment Fund, defined in paragraphs (1), (3), (5), and (10),”.

### SEC. 4. EFFECTIVE DATE.

This Act shall take effect on the date of enactment of this Act, and the Funds established under this Act shall be offered for investment at the earliest practicable election period (described in section 8432(b) of title 5, United States Code) as determined by the Executive Director in regulations.

#### SECTION-BY-SECTION ANALYSIS

The proposed legislation would add two new investment funds to those currently offered by the Thrift Savings Fund: a Small Capitalization Stock Index Fund and an International Stock Index Investment Fund.

Section 1 of the proposed legislation designates its title as the “Thrift Savings Investment Funds Act of 1995.”

Section 2 of the proposed legislation makes changes to section 8438 of title 5, U.S.C., which are necessary to authorize the addition of the two new investment funds. The legislation generally tracks the language currently found in section 8438 with respect to the Common Stock Index Investment Fund, to which the two new funds bear the greatest resemblance. Like that fund, the two new funds are required to be index funds which invest in indices that represent certain defined sectors of the equity markets.

Subsection (1) of section 2 adds the two new funds to the list of definitions found in subsection (a) of section 8438.

Subsection (2)(A) of section 2 makes changes necessary to add the two new funds to the list of those the Federal Retirement Thrift Investment Board is authorized to establish by subsection (b)(1) of section 8438. This is consistent with the statutory treatment of the current investment funds. That is, the Board is given the responsibility to choose indices and establish investment funds that fall within the parameters for each fund as set forth in the statute.

Subsection (2)(B) of section 2 adds two new paragraphs to section 8438(b) which describe the parameters of the two new investment funds.

New paragraph (3) of section 8438(b) describes the requirements for the Small Capitalization Stock Index Investment Fund. Under subparagraph (A) of paragraph (3), the Board must choose a commonly recognized index that represents the market value of the United States equity markets, but excluding that portion of the equity markets represented by the common stocks included in the Common Stock Index Investment Fund. It is intended, therefore, that the Small Capitalization Stock Index Investment Fund will be designed to replicate the performance of an index representing small

capitalization stocks not held in the Common Stock Index Investment Fund. Subparagraph (B) of paragraph (3) requires the Board to invest the fund in a portfolio designed to replicate the performance of the index established in subparagraph (A).

New paragraph (4) of section 8438(b) describes the requirements for the International Stock Index Investment Fund. Under subparagraph (A) of paragraph (4), the Board must choose a commonly recognized index that is a reasonably complete representation of the international equity markets. The term “international equity markets” excludes the United States equity markets, which are represented by the other funds. Subparagraph (B) of paragraph (4) requires the Board to invest the fund in a portfolio designed to replicate the performance of the index established in subparagraph (A).

Section 3 of the proposed legislation amends section 8439(d) of title 5, U.S.C., to add a reference to the two new investment funds in the section requiring that each Thrift Savings Plan participant who invests in one of the enumerated funds sign an acknowledgement stating that he or she understands that the investment is made at the participant's own risk, that the Government will not protect the participant against any loss on such investment, and that a return on the investment is not guaranteed by the Government. As is the case with the Common Stock Index Investment Fund and the Fixed Income Investment Fund, the Small Capitalization Stock Index Investment Fund and the International Stock Index Investment Fund each carry the risk that an investment therein may lose value. Therefore, it is appropriate to require the participant to sign the same acknowledgement of risk statement prior to investing in either of these funds.

Section 4 provides that the amendments made by this legislation will become effective immediately. The additional funds will be offered to participants for investment in the soonest practicable TSP election period as determined by the Executive Director in regulations. By law, election periods are conducted every six months. The Board has recently determined to develop an entirely new computer software system, entailing uncertain lead times for procurement decisions and development processes. The new system's development will dictate the timeframe for the offering of new funds, which will be coordinated with its implementation.

By Mr. DODD (for himself, and Mr. LIEBERMAN):

S. 1082. A bill to require the Secretary of the Treasury to mint coins in commemoration of the bicentennial of the Old State House of Connecticut; to the Committee on Banking, Housing, and Urban Affairs.

#### THE CONNECTICUT OLD STATE HOUSE COMMEMORATIVE COIN ACT

Mr. DODD. Mr. President, today I am pleased to introduce the Connecticut Old State House Bicentennial Commemorative Coin Act.

The Old State House sits in the very center of Hartford, CT, and it is one of the single most important buildings in the entire State. It stands as a shining example of 18th century architecture and has been designated a Registered National Landmark by the Secretary of the Interior. In May 1996, the Old

State House will celebrate its 200th birthday.

The Old State House is steeped in tradition and history. It is on this site that the Colony of Connecticut was actually founded. In May 1796, the State House opened its doors, and it was there that General Washington first met Comte de Rochambeau to begin the Yorktown strategy to end the Revolutionary War.

The Old State House served as a seat of government until 1878, and numerous historical figures have visited the building, including Mark Twain, Harriet Beecher Stowe, Lafayette, and Presidents Monroe, Jackson, Johnson, Ford, Carter, and Bush.

Since 1979, the Old State House has become a thriving landmark—a cultural and historical mecca for tourists and residents alike. Years of wear and tear have taken their toll on this magnificent structure, however, and a complete restoration project is ongoing. The Old State House hopes to expand its educational, cultural, and recreational services once it finishes a complete renovation.

Underway are plans to make the entire landmark accessible to the handicapped and the elderly. A full center and museum of Connecticut history will be created on-site, and there is to be a park and outdoor market adjacent to the Old State House.

The new Old State House is set to be rededicated on its 200th birthday in May 1996, when it will once again become a meeting place and focal point for the city of Hartford and the entire New England community.

The bill I am introducing today would authorize the issuance of 700,000, \$1 silver coins, which would be emblematic of the Old State House and its role in the history of the city of Hartford, the State of Connecticut, and the United States. Funds raised through the sale of the coins would be spent on both the construction, renovation and preservation of the Old State House and on the educational programs about its historic significance.

This cost-neutral bill would raise up to \$7 million to help underwrite the cost of the Old State House project. I urge my colleagues to join me in cosponsoring this bill and help preserve a piece of history.

By Mr. THOMAS:

S. 1083. A bill to direct the President to withhold extension of the WTO Agreement to any country that is not complying with its obligations under the New York Convention, and for other purposes; to the Committee on Finance.

#### THE NEW YORK CONVENTION COMPLIANCE ACT

• Mr. THOMAS. Mr. President, I introduce the New York Convention Compliance Act of 1995, a bill designed to protect the investments of U.S. companies overseas.

The New York convention refers to the Convention on the Recognition and Enforcement of Foreign Arbitral

Awards, a multilateral international treaty drafted in New York in 1958 which the United States joined in 1970. Binding arbitration clauses are frequently used in international business contracts to provide prompt and inexpensive dispute resolution. Signatories to the convention commit themselves to enforcing judgments of foreign arbitration panels in their domestic courts. Failure to enforce an arbitration judgment, unless based on one of the defenses specified under the convention, in my opinion raises an obligation on the part of the offending signatory to satisfy the debt at issue.

Arbitration clauses such as those governed by the convention are especially important in countries without a tradition of adhering to the rule of law. There, if a conflict arises triggering arbitration a neutral third-country forum provides for a resolution free from the possible xenophobic biases of local courts and the vagaries of an unresponsive judiciary.

One case in particular of which I am aware illustrates why adherence to the convention is so important to stable international trade. On June 4, 1988, Ross Engineering Co. of Florida, entered into an agreement with the Shanghai Far East Aero-technology Import & Export Co. [SFAIC] pursuant to which the latter was to manufacture industrial batteries for Ross' subsidiary Revpower with machinery, equipment, raw materials and engineering expertise supplied by Revpower. Some time afterwards, SFAIC breached two provisions of the agreement and effective January 1990 Revpower notified SFAIC that it was cancelling the agreement. Revpower then entered into negotiations with SFAIC to try to resolve the dispute, with no success.

Having exhausted its attempts to salvage the agreement, Revpower filed an arbitration claim against SFAIC with the Stockholm Chamber of Commerce as provided in the agreement. Despite foot-dragging and dilatory tactics on the part of SFAIC, on July 13, 1993, a unanimous arbitral panel ruled in Revpower's favor and granted it an award of US \$6.6 million plus interest from 1991. SFAIC has refused to honor the award, however, despite its binding agreement to do so. Attempts to satisfy the judgment in the Shanghai Intermediate People's Court have proved similarly futile, the Court refusing to abide by its own regulations and take up the case. Attempts by Secretary Brown, Secretary Christopher, the USTR, myself, Senator CONNIE MACK, and countless others to try to get the Chinese to live up to their obligations under the convention have proved similarly fruitless. When asked directly by our Ambassador to China whether China would honor it, Minister Wu Yi replied flatly, "No."

While relatively small in the scheme of the full United States-Sino trade relationship, Revpower's award—which has now grown to almost \$9 million—

means a great deal to that company and its investors. More importantly, perhaps, I believe that it means a great deal more for the large number of other American and foreign firms that do business in China. Most, if not all, of those companies have arbitration clauses in their contracts with the Chinese identical to the one that Revpower had. If, as Revpower's experience suggests, foreign companies cannot rely on these clauses to resolve disputes effectively and equitably, then they and a stable business environment are all at risk. I have heard this concern voiced by a growing number of United States businessmen, and not just in relation to China but in several other countries not presently members of the WTO.

Mr. President, I invite my colleagues to join me in supporting this bill, and thereby recognize the close relationship between a country's respect for the rule of law and international treaty obligations and the prospects for its successful participation in the fledgling WTO.

Yet while on one hand these countries fail to honor the convention, on the other they clamor for accession to the World Trade Organization [WTO]. But Mr. President, how can they be relied upon to uphold the responsibilities incumbent on members if they have shown themselves unwilling to live up to the terms of the convention? WTO members have a profound and direct interest in ensuring that fellow members fulfill their voluntarily-assumed obligations under both the convention and GATT. Arbitration clauses such as those contemplated by the convention are one of the pillars of international commerce and trade. Its observance should be one of the minimum requirements for any nation seeking to become a full and equal partner in the international trade regime. This bill would provide, therefore, that before the United States will support membership for a particular country in the WTO, the President must certify that the petitioning country is living up to its obligations under the convention.●

By Mr. THURMOND (for himself and Mr. HOLLINGS):

S. 1084. A bill to provide for the conveyance of the C.S.S. *Hunley* to the State of South Carolina, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE C.S.S. "HUNLEY" CONVEYANCE ACT OF 1995

Mr. THURMOND. Mr. President, I rise today to introduce legislation that would provide for the conveyance of the Civil War submarine, the C.S.S. *Hunley*, to the State of South Carolina.

On February 17, 1864, powered by a hand cranked propeller, the *Hunley* sank a frigate of the Union blockade, the U.S.S. *Housatonic*, by torpedoing a wooden spar loaded with 100 pounds of black powder into her side. This marked the first time in history that a warship had been destroyed by a submarine. The *Hunley* vanished following

its victory, possibly from leaks created by the force of the blast.

Over 131 years later, the *Hunley* has been found intact, lying on its side, and covered in silt off the coast of Charleston, S.C. There is no question that, when raised from its current resting place, this national treasure should be displayed in South Carolina. Not only should it be made available to the public as the earliest example of successful submarine warfare, but also because of its place in southern history. The *Hunley* serves as a memorial to the nine men who perished on board fighting passionately for what they believed.

This legislation simply transfers the title of the *Hunley* from the Federal Government to the State of South Carolina. It is my understanding that the State will develop a program to ensure that research can be conducted on this historical military relic and that it will be properly preserved, stabilized, and displayed.

Over 30 men died in service to the *Hunley*. With the exception of the nine crew members that went down on that fateful day, all are buried in Magnolia Cemetery in Charleston. The Palmetto State would also like the honor of burying these nine valiant men, with full distinction, next to their compatriots.

Mr. President, the C.S.S. *Hunley* has spent the last 131 years off the coast of South Carolina. Passing this legislation will make this Civil War treasure a proud and permanent part of our State.

I ask unanimous consent that the full text of this measure be printed in the RECORD.

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

S. 1084

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. CONVEYANCE OF C.S.S. HUNLEY TO STATE OF SOUTH CAROLINA.

(a) CONVEYANCE REQUIRED.—The President shall direct the appropriate Federal official to convey to the State of South Carolina, without consideration, all right, title, and interest of the United States in and to the C.S.S. *Hunley*, a sunken Confederate submarine located in a harbor in close proximity to Charleston, South Carolina.

(b) TERMS AND CONDITIONS.—The official under subsection (a) may require such terms and conditions in connection with the conveyance under that subsection as the official considers to be necessary to ensure the proper preservation of the C.S.S. *Hunley*.

By Mr. DOLE (for himself, Mr. McCONNELL, Mr. SIMPSON, Mr. KYL, Mr. BROWN, Mr. NICKLES, Mr. GRASSLEY, and Mr. SHELBY):

S. 1085. A bill to prohibit discrimination and preferential treatment on the basis of race, color, national origin, or sex with respect to Federal employment, contracts, and programs, and for other purposes; to the Committee on Governmental Affairs.

## THE EQUAL OPPORTUNITY ACT 1995

Mr. DOLE. Mr. President, earlier this year, I promised to introduce legislation to get the Federal Government out of the business of dividing Americans, and into the business of uniting Americans.

Today, I am fulfilling this commitment.

The Equal Opportunity Act of 1995, which I introduce today, stands for a simple proposition: The Federal Government should not discriminate against, nor should it grant preferences to, any individual because of that individual's race, color, ethnic background, or sex.

Whether it is employment, or contracting, or any other federally conducted program, our Government in Washington should work to bring its citizens together, not divide us. Our focus should be protecting the rights of individuals, not the rights of groups through the use of quotas, set-asides, numerical objectives, and other preferences.

Let me be frank. While I have questioned and opposed group preferences in the past, I have also supported them. That is my record, and I am not hiding from it.

But many of us who supported these policies never imagined that preferences would become a seemingly permanent fixture in our society. They were designed to be temporary remedies, targeted at specific problems suffered by specific individuals.

Unfortunately, during the past 25 years, we have seen the policies of preference grow, and grow, and grow some more. Pitting individual against individual, group against group, American against American.

For too many of our citizens, our country is no longer the land of opportunity—but a pie chart, where jobs and other benefits are often awarded not because of hard work or merit, but because of someone's biology.

We have lost sight of the simple truth that you do not cure discrimination with more discrimination.

I fully expect that the professional civil rights establishment in Washington will be out in force denouncing this initiative, defending the status quo, and claiming that we are somehow "turning back the clock" and unraveling decades of civil rights progress.

And no doubt about it, great progress has been made in the four decades since the civil rights revolution began with the landmark Brown versus Board of Education decision.

Countless young men and women of all races attend and graduate from our finest universities. Thousands of African-Americans have been elected to public office—in Congress, in State legislatures, as mayors of our Nation's largest cities, as Governor of Virginia. And Colin Powell has inspired us all, rising from the ranks of the ROTC to become our Nation's top military official, Chairman of the Joint Chiefs of Staff.

But for the millions of Americans who each day evade the bullets, send their kids to substandard schools, and wade through the dangerous shoals of our Nation's underclass, progress seems to be nothing more than a mirage. A mirage that fades away, leaving the stark realities of life behind.

And what are those realities?

The reality is that the national assessment of educational progress has released its findings on the reading ability of America's graduating high school seniors for 1994. According to the study, only 12 percent of black high school graduates are proficient in reading. Fully 54 percent have below basic reading skills, which means they are condemned to 50 more years of life on the bottom rung of the economic ladder.

These children do not need preferences. They need schools that work.

The reality is that the U.S. Justice Department estimates that 1 out of every 21 black men in America today can be expected to be murdered, a death rate double that of U.S. soldiers during World War II.

Last week, 12-year-old Quinton Carter of Queens Village, New York, was shot dead in a dispute over 25 cents with a 16-year-old. The viciousness of this senseless act is no longer shocking to us because children killing other children in arguments over sneakers or other items of clothing have become all too commonplace.

These young men and women—the victims of violence—do not need preferences. They need more police, more protection from the scourge of crime, and laws that keep violent criminals behind bars.

And, Mr. President, the reality is that millions of children today are born into homes without fathers. In some neighborhoods, the out-of-wedlock birthrate has climbed to a staggering 80 percent. And study after study has concluded that children of single parents are far more likely than those in two-parent homes to fail in school, or to be a victim or perpetrator of crime.

Again, these children do not need preferences. They do not need a set-aside. They need homes, and families and communities that care.

Mr. President, it is time to stop making government policy by race because making government policy by race is a diversion from reality, an easy excuse to ignore the problems that affect all Americans, whatever their race or heritage may be.

We must begin by ending the ridiculous pretense of quota tokenism—special contracts, a set-aside there, a couple of TV stations, a seat or two in the Cabinet. This is a band-aid. A diversion. A corruption of the principles of individual liberty and equal opportunity upon which our country was founded.

This legislation may not be perfect. And it certainly will not solve all our problems. But it is a starting point—a

starting point in a national conversation, not just on the future of affirmative action, but on the future of American.

Mr. President, 12 years ago it was my privilege to serve as floor manager for the legislation marking Martin Luther King, Jr.'s birthday as a Federal holiday.

And in leading off the final debate on that bill, I said these words: "A nation defines itself in many ways; in the promises it makes and the programs it enacts; the dreams it enshrines or the doors it slams shut."

A nation also defines itself by how it treats its citizens. Does it divide them by focusing on the policies of the past? Or does it unite them by focusing on the realities of the present?

The choice is ours.

Mr. President, I ask unanimous consent that the full text of the Equal Opportunity Act, a section-by-section summary, and statements by Dr. William Bennett of Empower America; Milton Bins, chairman of the Council of 100; Linda Chavez of the Center for Equal Opportunity; and Brian Jones, president of the Center for New Black Leadership, be reprinted in the RECORD immediately after my remarks.

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

S. 1085

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Equal Opportunity Act of 1995".

#### SEC. 2. PROHIBITION AGAINST DISCRIMINATION AND PREFERENTIAL TREATMENT.

Notwithstanding any other provision of law, neither the Federal Government nor any officer, employee, or department or agency of the Federal Government—

(1) may intentionally discriminate against, or may grant a preference to, any individual or group based in whole or in part on race, color, national origin, or sex, in connection with—

(A) a Federal contract or subcontract;

(B) Federal employment; or

(C) any other federally conducted program or activity;

(2) may require or encourage any Federal contractor or subcontractor to intentionally discriminate against, or grant a preference to, any individual or group based in whole or in part on race, color, national origin, or sex; or

(3) may enter into a consent decree that requires, authorizes, or permits any activity prohibited by paragraph (1) or (2).

#### SEC. 3. RECRUITMENT AND ENCOURAGEMENT OF BIDS.

Nothing in this Act shall be construed to prohibit or limit any effort by the Federal Government or any officer, employee, or department or agency of the Federal Government—

(1) to recruit qualified women or qualified minorities into an applicant pool for Federal employment or to encourage businesses owned by women or by minorities to bid for Federal contracts or subcontracts, if such recruitment or encouragement does not involve using a numerical objective, or otherwise granting a preference, based in whole or in part on race, color, national origin, or sex,

in selecting any individual or group for the relevant employment, contract or subcontract, benefit, opportunity, or program; or

(2) to require or encourage any Federal contractor or subcontractor to recruit qualified women or qualified minorities into an applicant pool for employment or to encourage businesses owned by women or by minorities to bid for Federal contracts or subcontracts, if such requirement or encouragement does not involve using a numerical objective, or otherwise granting a preference, based in whole or in part on race, color, national origin, or sex, in selecting any individual or group for the relevant employment, contract or subcontract, benefit, opportunity, or program.

#### SEC. 4. RULES OF CONSTRUCTION.

(a) **HISTORICALLY BLACK COLLEGES AND UNIVERSITIES.**—Nothing in this Act shall be construed to prohibit or limit any act that is designed to benefit an institution that is a historically Black college or university on the basis that the institution is a historically Black college or university.

(b) **INDIAN TRIBES.**—Nothing in this Act shall be construed to prohibit or limit any action taken—

(1) pursuant to a law enacted under the constitutional powers of Congress relating to the Indian tribes; or

(2) under a treaty between an Indian tribe and the United States.

(c) **BONA FIDE OCCUPATIONAL QUALIFICATION, PRIVACY, AND NATIONAL SECURITY CONCERNS.**—Nothing in this Act shall be construed to prohibit or limit any classification based on sex if—

(1) sex is a bona fide occupational qualification reasonably necessary to the normal operation of the Federal Government entity or Federal contractor or subcontractor involved;

(2) the classification is designed to protect the privacy of individuals; or

(3)(A) the occupancy of the position for which the classification is made, or access to the premises in or on which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any Act or any Executive order of the President; or

(B) the classification is applied with respect to a member of the Armed Forces serving on active duty in a theatre of combat operations (as determined by the Secretary of Defense).

#### SEC. 5. COMPLIANCE REVIEW OF POLICIES AND REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the head of each department or agency of the Federal Government, in consultation with the Attorney General, shall review all existing policies and regulations that such department or agency head is charged with administering, modify such policies and regulations to conform to the requirements of this Act, and report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the results of the review and any modifications to the policies and regulations.

#### SEC. 6. REMEDIES.

(a) **IN GENERAL.**—In any action involving a violation of this Act, a court may award only injunctive or equitable relief (including but not limited to back pay), a reasonable attorney's fee, and costs.

(b) **CONSTRUCTION.**—Nothing in this section shall be construed to affect any remedy available under any other law.

#### SEC. 7. EFFECT ON PENDING MATTERS.

(a) **PENDING CASES.**—This Act shall not affect any case pending on the date of enactment of this Act.

(b) **PENDING CONTRACTS, SUBCONTRACTS, AND CONSENT DECREES.**—This Act shall not affect any contract, subcontract, or consent decree in effect on the date of enactment of this Act, including any option exercised under such contract or subcontract before or after such date of enactment.

#### SEC. 8. DEFINITIONS.

As used in this Act:

(1) **FEDERAL GOVERNMENT.**—The term "Federal Government" means the executive and legislative branches of the Government of the United States.

(2) **GRANT A PREFERENCE.**—The term "grant a preference" means use of any preferential treatment and includes but is not limited to any use of a quota, set-aside, numerical goal, timetable, or other numerical objective.

(3) **HISTORICALLY BLACK COLLEGE OR UNIVERSITY.**—The term "historically Black college or university" means a part B institution, as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)).

#### SECTION-BY-SECTION SUMMARY—THE EQUAL OPPORTUNITY ACT OF 1995

The purpose of this Act is to ensure that all Americans are treated equally by the Federal government in Federal employment, Federal contracting and subcontracting, and Federally-conducted programs. This Act furthers the cause of equal opportunity and non-discrimination by embracing the view that rights inhere in individuals, not in groups.

This Act endorses those Federal "affirmative action" programs that are designed to recruit broadly and widen the opportunities for competition, without guaranteeing the results of the competition or resorting to preferences on the basis of race, color, national origin, or sex. However, the Act would prohibit those Federal "affirmative action" programs that seek to divide Americans through the use of quotas, set-asides, timetables, goals, and other preferences.

Section 1. Short Title. Section 1 provides that the Act may be cited as the "Equal Opportunity Act of 1995."

Section 2. Prohibition against Discrimination and Preferential Treatment. Section 2 prohibits the Federal government or any officer, employee, or agency of the Federal government from intentionally discriminating against, or granting a preference to, any individual or group, in whole or in part, on the basis of race, color, national origin, or sex. This prohibition applies to Federal employment, contracting, subcontracting, and the administration of Federally-conducted programs. The use of race, color, national origin, or sex "in part" (i.e., as one factor) in a hiring or promotion decision, a contract or subcontract award, or a decision to admit a person to a Federal program, is forbidden by Section 2. When race, ethnicity, or sex is used as a so-called "plus" factor in determining the outcome of a decision, that is a preference.

Section 2 also explicitly prohibits the Federal government or any officer, employee, or agency of the Federal government from requiring or encouraging any Federal contractor or subcontractor intentionally to discriminate against, or grant a preference to, any individual or group, in whole or in part, on the basis of race, color, national origin, or sex.

As originally conceived, Executive order 11246 equated "affirmative action" with the principle of non-discrimination. Pursuant to Executive Order 11246, each Federal contractor is required to agree that it "will not

discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin" and that the contractor "will take affirmative action to ensure that applicants are employed . . . without regard to their race, color, religion, sex, or national origin." Unfortunately, bureaucratic implementation of the Executive Order over a period of years has converted it from a program aimed at eliminating discrimination to one which relies on it in the form of preferences. Section 2 aims not to overturn Executive Order 11246, but to restore its original meaning and purpose.

Section 2 also forbids the Federal government from entering into a consent decree that requires, authorizes, or permits any preferences otherwise forbidden by this Act.

Section 2(1)(c) applies to programs wholly administered by the Federal government. Nothing in Section 2, nor anything in this Act, affects programs or activities merely receiving Federal financial assistance. For example, Title IX of the Education Amendments of 1972, prohibiting discrimination in Federally-assisted education programs, is unaffected by this Act. In addition, this Act does not affect the Voting Rights Act or its enforcement.

Section 2 does not forbid preferences on any basis other than race, color, national origin, or sex. Thus, a preference in contracting based on economic criteria, the size of the company seeking the contracting business, veteran's status, or some other neutral social criteria is not forbidden by this Act, so long as every American has an equal opportunity to meet the criteria without regard to race, color, national origin, or sex.

In addition, Section 2 does not forbid state and local governments or private entities, including Federal contractors or recipients of Federal financial assistance, from voluntarily engaging in racial, ethnic, or gender preferences that are otherwise permitted by law. Moreover, nothing in this Act affects a court's remedial authority under any other statute. Although this Act aims at reforming only the executive and legislative branches of the Federal government, it should not be construed as expressing implicit approval of preferences granted by other entities or in remedial court orders.

Section 3. Recruitment and Encouragement of Bids. Section 3 provides that nothing in the Act shall be construed to prohibit or limit any effort by the Federal government 1) to recruit qualified members of minority groups or women, so long as A) no numerical recruitment goals are set, and B) there is no preference granted in the actual award of a job, promotion, contract, or other opportunity, or 2) to require the same recruitment of its contractors and subcontractors, so long as the Federal government does not require numerical recruitment goals or preferences in the actual award of the benefit.

All affirmative steps required by Federal agencies of their contractors and subcontractors, otherwise authorized by law and consistent with this Act, remain lawful under this Act. For example, Federal agency requirements that contractors cast their recruiting nets widely remain valid, so long as such agencies do not require contractors to set numerical racial, ethnic, and gender objectives for recruitment and do not require actual hiring or other employment decisions to be made, in whole or in part, with regard to color, ethnicity, or sex. Consistent with these conditions, for example, Federal agencies can require a contractor to: send notices of its job opportunities to organizations, if available, with large numbers of minorities or women in their membership; include educational institutions with large numbers of

minorities and women among the educational institutions at which the contractor recruits; and spend a portion of the budget it uses to advertise its job opportunities with media outlets, if available, that are specially targeted to reach minorities and women.

Section 4. Rules of Construction. Section 4(a) provides that nothing in the Act shall be construed to prohibit or limit Federal assistance to a historically Black college or university on the basis that the institution is an historically black college or university.

Historically Black colleges and universities were founded as a response to the intentional exclusion of African-Americans from institutions of higher learning, both public and private. These institutions are open to students of all races on a non-discriminatory basis. Thus, Federal assistance to historically Black colleges and universities is not a "preference" for purposes of this Act.

Section 4(b) provides that nothing in this Act shall be construed to prohibit or limit any action taken (1) pursuant to a law enacted under the constitutional powers of Congress relating to the Indian tribes, or (2) under a treaty between an Indian tribe and the United States.

Section 4(c) provides that nothing in the Act shall be construed to prohibit or limit gender classifications that are bona fide occupational qualifications reasonably necessary to the normal operation of the Federal government entity or Federal contractor involved. The courts have determined that bona fide occupational qualifications may apply to jobs such as prison guards or occupations raising similar privacy concerns.

Section 4(c) also provides that nothing in the Act shall be construed to prohibit or limit gender classifications that (1) are designed to protect the privacy of individuals, (2) are adopted for reasons of national security, or (3) involve combat-related functions.

Section 5. Compliance Review of Policies and Regulations. Section 5 establishes a compliance review procedure: Within 1 year of the date of enactment, the head of each department and agency of the Federal government, in consultation with the Attorney General, must (1) review all existing policies and regulations for which the department or agency head is charged with administering, (2) modify those policies and regulations to conform to the requirements of this Act, and (3) report to the Committee on the Judiciary of the Senate and House of Representatives the results of the review and any modifications to the policies and regulations.

Section 6. Remedies. Section 6(1) outlines the remedies for those who have been aggrieved by violations of the Act. These remedies are limited to injunctive or equitable relief (including but not limited to back pay), a reasonable attorney's fee, and costs. Section 6(2) provides that nothing in this section shall be construed to affect any remedy available under any other law.

Section 7. Effect on Pending Cases. Section 7(a) provides that nothing in this Act affects any case pending on the date of enactment of this Act. Section 7(b) provides that nothing in this Act shall affect any contract, subcontract, or consent decree in effect on the date of enactment of this Act, including any option exercised under such contract or subcontract before or after such date of enactment.

Section 8. Definitions. Section 8(1) defines the term "Federal Government" to mean the executive and legislative branches of the Government of the United States.

Section 8(2) defines the term "grant a preference" to mean use of any preferential treatment and includes the use of a quota, set-aside, numerical goal, timetable, or other numerical objective.

"Numerical objectives" have an inherently coercive effect. They exert an inevitable pressure to take into consideration the characteristic which is the subject of the numerical objective. The degree of pressure or coercion turns in part on the consequences that may follow, or may reasonably be expected to follow, the failure to achieve the objective. When established or induced by the government, these consequences can include increased government scrutiny or the threat of it, more paperwork, on-site investigations, the inability to bid for a contract, or financial or other penalties.

Consequently, it is not enough to oppose "quotas," as if the label itself is the offending practice. It is the practice and mechanism of racial, ethnic, and gender preference, not its particular label in a given circumstance, that is objectionable.

Moreover, preferences can consist of other practices not tied to numerical objectives. For example, if a Federal agency were to advise its supervisors that proposing to hire a person not in a designated racial, ethnic, or gender group will subject that proposed hiring decision to closer scrutiny than the proposed hiring of a member of such designated groups, this act would be a preference.

Section 8(3) defines the term "historically Black college or university" to mean a Part B institution, as defined in section 322(2) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)).

#### WRITTEN STATEMENT OF WILLIAM J. BENNETT, THE EQUAL OPPORTUNITY ACT OF 1995

I congratulate Senator Dole and Congressman Canady for their introduction of "The Equal Opportunity Act of 1995."

This legislation is both significant and morally serious. It re-dedicates this country to the noble proposition that America ought to be a color-blind society. Racism and discrimination are still ugly stains on the American landscape, and where they occur, we need to use existing laws to stamp them out. Republicans need to be principled, not politically opportunistic, when addressing the issue of race. And race should never be used as a "wedge issue" in any campaign.

That said, Republicans should be confident and unambiguous in articulating the case for a color-blind society and against race-based preferences. Counting by race is noxious. It has divided and balkanized this country. If we continue to count by race, hire by race, admit by race, and keep calling attention to race, we will divide by race. Since the implementation of preference programs, we have moved away from Martin Luther King, Jr.'s vision of a society where we are judged by the "content of our character" and not by the "color of our skin." It is time to return to the American ideal that we are one people. The best way to achieve a color-blind society is actually to be a color-blind society, in law and spirit.

The Dole-Canady legislation puts the federal government on the moral high ground on civil rights. If this legislation passes, the federal government can no longer engage in preferential-treatment practices that result in reverse discrimination. The federal government can no longer take race, gender, or ethnicity into account in its employment or contracting practices, or in the implementation of any federally-conducted program or activity. Instead, all people, regardless of race or gender, will be guaranteed justice and equal protection when dealing with the federal government.

There is still more work to be done. But the Dole-Canady bill is a very good start. It is consistent with American principles. This is important legislation; it deserves to be passed.

CENTER FOR EQUAL OPPORTUNITY,

July 26, 1995.

Hon. ROBERT DOLE,  
U.S. Capitol, Washington, DC.

DEAR SENATOR DOLE: After 25 years of racial and gender preferences for minorities and women, the time has come to begin treating Americans as individuals rather than as members of groups. Most Americans now reject the specious categorization and double standards so pervasive in public employment, government contracting, and university admissions. They want a return to the simple principle of non-discrimination embedded in the 1964 Civil Rights Act: "Nothing . . . shall be interpreted to require . . . preferential treatment [be granted] to any individual or any group because of the race, color, religion, sex, or national origin on such individual or group."

Americans have waited long enough for non-discrimination on the basis of race and sex to mean exactly what it says. Your longstanding commitment to colorblind equal opportunity provides me with great hope that we will soon see this day, and your bill is an important first step in this fight. I applaud your courage and know that you will continue to apply your leadership on this important issue.

Sincerely,

LINDA CHAVEZ.

STATEMENT OF MILTON BINS, CHAIRMAN,  
COUNCIL OF 100

The Council of 100, a national network of African American Republicans founded in 1974, applauds the leadership and measured approach taken by Sen. Bob Dole today in introducing the "Equal Opportunity Act of 1995." This act provides a unifying and coherent framework in which to foster inclusion and equal opportunity for all Americans without discriminating against any American on the basis of race, color, national origin or sex.

The long-delayed national conversation about the role of the federal government in promoting equal opportunity will now take place where it should: in the Congress of the United States. It is time for the American people to speak through their elected representatives as we build a new national consensus in support of inclusion, fairness and equal protection of the law.

A fair reading of the act will allay concerns that the legislation represents the "opening salvo" of a Republican-led assault on affirmative action, and is part of a plan to roll back the gains African Americans in particular have made over the past 30 years. Rather, its purpose is to remove a major roadblock—group preferences—that divide and Balkanize Americans along racial, ethnic and gender lines as we struggle to build an opportunity society for all of us.

The act calls for vigorous enforcement of nondiscrimination laws. It leaves in place remedies to redress discrimination available under any law, including the Civil Rights Act of 1964. It does not prohibit voluntary efforts such as minority outreach and recruitment. In fact, casting a wider net to increase the pool of qualified applicants is expressly encouraged. The act also exempts historically black colleges and universities in recognition of their unique role in fostering educational opportunities for all Americans.

The myopic fixation on past wrongs that can never be righted and on remedies that have had limited impact on expanding employment and business opportunities keep African Americans looking backwards. While we "cannot escape history," we do not have to be trapped by our history. As Frederick Douglass said, "We have to do with the past only as we can make it useful to the present

and to the future." We believe the future will belong to those who are prepared and who are willing to compete in a knowledge-based, global economy.

Today begins the hard work of formulating a new paradigm for equal opportunity for all Americans. The Council of 100 looks forward to working with Sen. Dole as he points us toward the future with the "Equal Opportunity Act of 1995."

CENTER FOR NEW BLACK LEADERSHIP,  
Washington, DC, July 27, 1995.

#### EQUAL OPPORTUNITY ACT OF 1995

Senator Dole's introduction of the Equal Opportunity Act of 1995 is an important first step in restoring the nondiscrimination principle to American civil rights law.

Racially preferential public policy is not only unfair to members of nonpreferred groups but also to many of its ostensible beneficiaries. When our public policy suggests that members of certain races, taken as an undifferentiated whole, are incapable of competing without the helping hand of the state, our leaders send a dangerously stereotypical message to the larger society.

To be sure, state-sanctioned categorization of people based upon race and gender may once have been a practical tool for remedying manifest disadvantage resulting from systematic exclusion of groups from the American mainstream. Today, however, race and gender are simply insufficient proxies for disadvantage. To suggest otherwise is disingenuous and destructive.

We can restore the moral foundation of civil rights policy in two ways. First, by confronting and punishing acts of discrimination where they exist. The acknowledgment that discrimination remains a factor of life for too many Americans must stiffen our resolve to deal with the problem constructively. However, such an acknowledgment need not inevitably lead to categorical racial and gender preference.

Instead, our leaders must deal forthrightly with the very real economic and cultural problems confronting many of America's poorest communities today. The tragic circumstances of the truly disadvantaged should be acknowledged and accommodated when appropriate. However, the suggestion that race and disadvantage are inextricably linked is insidious in its effect.

American public policy must move beyond the era of stereotypical racial and gender categories, toward an era that demands that similarly situated individuals, regardless of race or gender, compete under the same standard. Senator Dole's bill quite rightly moves us in that direction by removing federal policy from the thicket of racial and gender double standards.

BRIAN W. JONES,  
President.

INDEPENDENT WOMEN'S FORUM,  
July 27, 1995.

Hon. ROBERT J. DOLE,  
U.S. Senate, Washington, DC.

DEAR SENATOR DOLE: The Independent Women's Forum commends you and Congressman Canady for your action today. The Equal Opportunity Act of 1995 will insure an historic debate about how to expand the economy and create opportunities for all Americans. Preferences, set-asides, and quotas do not create jobs or opportunities—they create bitterness, division, hostility and disrespect. The Independent Women's Forum has long realized that, although women have benefited by so-called affirmative action, at many times it was at the expense of minorities, our brothers, husbands, and other loved ones. The time has come to rethink whether the social implications of

these programs have not done more damage than good. The Independent Women's Forum looks forward to engaging in this discussion.

Most respectfully,

BARBARA J. LEDEEN,  
Executive Director for Policy.

#### ADDITIONAL COSPONSORS

S. 143

At the request of Mrs. KASSEBAUM, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of S. 143, a bill to consolidate Federal employment training programs and create a new process and structure for funding the programs, and for other purposes.

S. 256

At the request of Mr. DOLE, the names of the Senator from Alabama [Mr. HEFLIN] and the Senator from North Dakota [Mr. DORGAN] were added as cosponsors of S. 256, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 284

At the request of Mr. DOLE, the names of the Senator from Michigan [Mr. ABRAHAM], the Senator from Missouri [Mr. BOND], and the Senator from Colorado [Mr. BROWN] were added as cosponsors of S. 284, a bill to restore the term of patents, and for other purposes.

S. 304

At the request of Mr. SANTORUM, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 304, a bill to amend the Internal Revenue Code of 1986 to repeal the transportation fuels tax applicable to commercial aviation.

S. 491

At the request of Mr. BREAUX, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 491, a bill to amend title XVIII of the Social Security Act to provide coverage of outpatient self-management training services under part B of the medicare program for individuals with diabetes.

S. 530

At the request of Mr. GREGG, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 530, a bill to amend the Fair Labor Standards Act of 1938 to permit State and local government workers to perform volunteer services for their employer without requiring the employer to pay overtime compensation, and for other purposes.

S. 581

At the request of Mr. FAIRCLOTH, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 581, a bill to amend the National Labor Relations Act and the Railway Labor Act to repeal those provisions of Federal law that require employees to pay union dues or fees as a condition of employment, and for other purposes.

S. 641

At the request of Mrs. KASSEBAUM, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 641, a bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

At the request of Mr. GRAHAM, his name was added as a cosponsor of S. 641, supra.

S. 885

At the request of Mr. MOYNIHAN, the names of the Senator from Washington [Mr. GORTON] and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of S. 885, a bill to establish United States commemorative coin programs, and for other purposes.

S. 1061

At the request of Mr. LEVIN, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of S. 1061, a bill to provide for congressional gift reform.

#### SENATE JOINT RESOLUTION 31

At the request of Mr. HATCH, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of Senate Joint Resolution 31, a joint resolution proposing an amendment to the Constitution of the United States to grant Congress and the States the power to prohibit the physical desecration of the flag of the United States.

#### SENATE RESOLUTION 133

At the request of Mr. HELMS the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Resolution 133, a resolution expressing the sense of the Senate that the primary safeguard for the well-being and protection of children is the family, and that, because the United Nations Convention on the Rights of the Child could undermine the rights of the family, the President should not sign and transmit it to the Senate.

#### AMENDMENT NO. 1859

At the request of Mrs. KASSEBAUM the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of Amendment No. 1859 proposed to S. 641, a bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

#### SENATE RESOLUTION 157—COM- MENDING SENATOR ROBERT C. BYRD FOR CASTING 14,000 VOTES

Mr. DASCHLE (for himself, Mr. DOLE, Mr. ROCKEFELLER, Mr. FORD, Mr. THURMOND, Mr. LOTT, Mr. INOUE, Mr. ABRAHAM, Mr. AKAKA, Mr. ASHCROFT, Mr. BAUCUS, Mr. BENNETT, Mr. BIDEN, Mr. BINGAMAN, Mr. BOND, Mrs. BOXER, Mr. BRADLEY, Mr. BREAUX, Mr. BROWN, Mr. BRYAN, Mr. BUMPERS, Mr. BURNS, Mr. CAMPBELL, Mr. CHAFEE, Mr. COATS, Mr. COCHRAN, Mr. COHEN, Mr. CONRAD, Mr. COVERDELL, Mr. CRAIG, Mr. D'AMATO, Mr. DEWINE, Mr. DODD, Mr. DOMENICI, Mr. DORGAN, Mr. EXON, Mr. FAIRCLOTH, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. FRIST, Mr. GLENN, Mr. GORTON, Mr. GRAHAM, Mr. GRAMM, Mr. GRAMS, Mr. GRASSLEY, Mr. GREGG, Mr.