The original documents are located in Box 67, folder "1976/10/19 S2278 Civil Rights Attorney's Fees Awards Act of 1976" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
OCT 19 1976

8/10/19/76 Statement disapproved

THE WHITE HOUSE

WASHINGTON

October 18, 1976

ACTION

Last Day: October 19

Posted 10/20/76

archives 10/20/76

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: S. 2278 - The Civil Rights Attorney's Fees Awards Act of 1976

Attached for your consideration is S. 2278, sponsored by Senator Tunney.

The purpose of the bill is twofold:

1. It would grant discretionary authority to Federal courts to award reasonable attorney's fees to prevailing parties in suits brought to enforce the various federal civil rights acts enacted between 1866 and 1964.

2. It would authorize the courts to award attorney's fees to a prevailing defendant in a suit brought by the Internal Revenue Service charging violation of the Internal Revenue Code, where the court finds that the IRS proceeded in "bad faith".

As originally introduced, the enrolled bill provided only for the awarding of attorney's fees in civil rights cases arising out of pre-1964 legislation (attorney's fees provisions for prevailing parties are already specifically provided for in all major civil rights legislation enacted since 1964). The bill was amended in the Senate at the last minute to include suits under the tax code, after an attempt to kill the bill through a filibuster failed.

There is unanimous agreement among your advisers that the provisions granting Federal courts discretion to award reasonable attorney's fees in civil rights cases are meritorious and should be enacted. However, the Department of the Treasury has expressed strong opposition to the provision authorizing attorney's fees in tax cases. Treasury maintains that these provisions are vague, both as to the scope of coverage and as to what persons are

entitled to relief, and that their enactment will encourage increased litigation and adversely affect the administration of the Internal Revenue laws.

A detailed discussion of the provisions of the bill appears in the OMB enrolled bill report at Tab A.

Agency Recommendations

The Department of the Treasury recommends disapproval of the bill.

The Departments of Health, Education and Welfare, Transportation, and Housing and Urban Development recommend approval.

The Department of Justice has no objection to your approval of the bill.

OMB recommends approval of the bill.

Staff Recommendations

Jack Marsh and Max Friedersdorf recommend approval of the bill.

Counsel's Office (Lazarus) recommends approval of the bill and states:

> "Treasury's comments regarding the tax amendment included in this bill would appear to be substantially overdrawn. In this regard, it should be borne in mind that the tax amendment (1) applies only to civil actions and proceedings--a very small percentage of the contact between the U.S. and taxpayers concerning the Internal Revenue Code; and (2) as the legislative history makes clear, in awarding fees to prevailing defendant taxpayers, courts must apply the same standard for awards under other statutes covered by the bill, i.e., the action must have been frivolous and vexatious and brought for harrassment purposes. Our information is that virtually no pending or future lawsuit could result in any fees award whatsoever."

Bill Seidman recommends approval "with strong recommendation that the signing statement should indicate that we will seek a change in the tax provisions which are very bad and will increase litigation."

Alan Greenspan recommends approval and states:

> "Regarding the provision authorizing the discretionary award of attorney's fees to prevailing parties in civil actions or proceedings instituted by the IRS, we concur with Treasury's concern over several potential ambiguities that may arise in application of the legisation. However, we

"do not foresee court litigation burdens. The provision may deter a few U.S. cases, which, while not unfounded, rest on sufficiently uncertain foundations that their prosecution could have greater costs (including defendants costs) than successful resolution would warrant. Furthermore, although out-of-court settlements may become less favorable to the IRS, there is no firm basis to predict that the IRS and defendants will fail to reach as many settlement agreements under the new attorneys fee provision."

While I recognize that the provisions of the bill authorizing attorney's fees in tax cases are undesirable, I do not believe they warrant your disapproval of an otherwise highly desirable measure. This bill has considerable visibility within the civil rights community and disapproval of it would no doubt result in substantial unfavorable public comment. I recommend you approve the bill.

RECOMMENDATION

Sign S. 2278 at Tab B.

Approve signing statement at Tab C which has been cleared by Doug Smith.

Approve _____ Disapprove

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 15 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2278 - The Civil Rights Attorney's Fees Awards Act of 1976
Sponsor - Sen. Tunney (D) California

Last Day for Action

October 19, 1976 - Tuesday

Purpose

To give Federal courts discretion to award attorney's fees to prevailing parties in suits to enforce all civil rights statutes and to prevailing private parties in suits brought by the Government charging a violation of the Internal Revenue Code.

Agency Recommendations

Office of Management and Budget	Approval (Signing statement attached)
Department of Health, Education, and Welfare	Approval
Department of Transportation	Approval
Department of Housing and Urban Development	Approval, but defers to Treasury on tax provision
Department of Justice	No objection
Administrative Office of the United States Courts	No objection
United States Commission on Civil Rights	No comment
Department of the Treasury	Disapproval

Discussion

S. 2278 would grant discretionary authority to Federal courts to award reasonable attorneys' fees to prevailing parties, defendants or plaintiffs, except for the United States, in suits to enforce the Federal civil rights acts which Congress has passed since 1866. The Senate Judiciary Committee report makes clear that prevailing defendants in such cases could be awarded litigation costs in cases where the plaintiff's suit was "clearly frivolous, vexacious or brought for harassment purposes." In this connection, we note that over 50 statutes authorize the award of attorneys' fees; some require it. The enrolled bill would leave the award to the discretion of the court, presumably guided by evolving standards in case law.

Similarly, courts would also be authorized to award such fees to prevailing parties in Government suits charging a violation of the Internal Revenue Code. Extension of the bill's coverage to the tax code was offered on the floor as an amendment by Senators Allen (D-Alabama), Helms (R-North Carolina), Thurmond (R-South Carolina) and Scott (R-Virginia). The amendment was accepted by a vote of 72-0. Earlier the House conferees on H.R. 10612 (the Tax Reform Act of 1976 which you approved on October 4, 1976) voted not to accept a similar provision in that bill.

S. 2278 passed the Senate by a vote of 57-15 and the House by 306-68.

Civil Rights

Enforcement of most Federal civil rights statutes depends largely upon suits by private citizens, many of whom are indigent, alleging unlawful discriminatory practices against them by a government entity, business, union or other person. Usually, the relief available to successful plaintiffs is injunctive or declaratory relief; monetary damages are generally not within the scope of the statutory remedy. Consequently, plaintiffs in civil rights cases must often absorb the cost of litigation, unless free legal services have been provided them.

Prior to a recent Supreme Court case, the Alyeska Pipeline Service Corp. v. Wilderness Society, 421 U.S. 240 (1975), a number of lower courts had awarded attorneys' fees to prevailing plaintiffs in civil rights cases on the theory that civil rights plaintiffs act as "private attorneys general" in eliminating racial discrimination. Although the Alyeska case involved only environmental concerns, the Supreme Court barred attorney fee awards in all cases, including civil rights cases, when such awards were not authorized in the statute under which a given suit was brought.

Currently, only Titles II and VII of the Civil Rights Act of 1964, which prohibit discriminatory practices in public establishments and in voter registration, respectively, and the Voting Rights Act of 1965, as amended in 1975, authorize the discretionary award of attorneys' fees to prevailing private litigants in suits under these statutes. Civil rights enforcement areas affected by S. 2278 would include:

-- equal employment opportunity;

-- property transactions;

-- official government acts, e.g., racial segregation in schools, poll taxes in State and local elections, and discrimination on account of political affiliation in public employment;

-- public or private conspiracies to deprive individuals of equal protection of the laws;

-- public or private educational institutions; and

-- administration of Federal assistance funds.

Internal Revenue Code

S. 2278 would also authorize the court to award attorneys' fees to the prevailing defendant in any suit brought by the Internal Revenue Service (IRS) charging violation of the Internal Revenue Code. The purpose of this provision is to compensate the defendants in suits brought by the IRS which are found to be without merit. In constructing a legislative history for this provision, Senator Tunney (D-California), the bill's sponsor, stated, "the purpose of the amendment is not to discourage meritorious suits by the IRS, but to discourage frivolous or

harassing suits. The amendment would not apply to a situation where the Government is plaintiff on appeal since the Government did not bring the action in the first instance." Therefore, it does not appear to be Congress' intent that this provision would be applicable to suits against IRS.

Agency Views

The Department of the Treasury, in its attached views letter, strongly objects to the provision affecting IRS and recommends that you not approve the enrolled bill. Treasury states that the provision is defective on several grounds:

-- The scope of civil actions covered is unclear, because it would apply to both civil suits and proceedings initiated by the IRS. For example, it could apply to administrative summons issued by IRS to collect an outstanding tax or denial of a formal claim for refund. Although a civil action may not have been filed by IRS, a plaintiff taxpayer could argue that the Government instituted a "proceeding" by its administrative action. Similarly, "There is the additional question whether the definition of civil action could be expanded to include a disciplinary action against an employee of the Internal Revenue Service where the charge is based on a violation of the Internal Revenue laws", e.g., a charge of malfeasance.

-- Who is a "prevailing party" is unclear. Many disputes could arise because most tax cases involve numerous issues with different results on each.

-- The "bad faith" test (frivolous, harassing suits) suggested in the Senate colloquy will interject a different factual issue for decision by the court after trial of the principal case.

-- Partial relief is already available for the taxpayer who decides to litigate; attorneys' fees incurred in tax litigation are deductible for Federal income tax purposes.

-- The provision would encourage increased litigation adversely affecting the administration of the Internal Revenue laws; most cases are currently settled without the necessity for trial.

The Department of Justice advises that while it has no objection to approval of the bill, if "the tax litigation provision stood alone, we would vigorously recommend a veto." Justice shares the concerned expressed by Treasury that this provision would have a very serious adverse effect on the settlement of tax controversies and could lead to a material increase in the number of tax cases which will be litigated. However, Justice notes that the sponsors of this amendment indicated during debate that a standard similar to the "bad faith" test (suits which are "frivolous, vexatious, or brought for harassment purposes") would be applied to cases involving enforcement of the Internal Revenue laws. Senator Kennedy likewise stated:

> "Congress merely intends to protect citizens from becoming victims of frivolous or otherwise unwarranted law suits...In general, the taxpayer would have to show bad faith on the part of the Government in bringing suit against him in order for fees to be allowed... Enactment of this amendment should in no way be understood as implying that Congress intends to discourage the Government from initiating legitimate law suits under the tax laws."

In this regard, the Department of Justice advises, in its attached views letter:

> "If the courts interpret the tax litigation attorney fee provision in this fashion, it should have little or no application as the government does not bring suits for the purpose of abusing legal process or harassing taxpayers. As a precedent, however, the measure is nevertheless highly undesirable and may lead to an expansion of attorney fee provisions in the tax field and in other areas."

Finally, Secretary Coleman, who volunteered his views on this bill, states that the tax provision "is subject to the same strict test in its application that the Courts have already applied in distinguishing prevailing plaintiffs from defendants: there must be a legal determination of harassment and bad faith on the part of the government in order for a 'fee shifting' provision to apply to a prevailing defendant. ... Since this provision, therefore, only enacts into statute what is clearly the common law already, this does not afford any reason to disapprove the statute."

Recommendation

With respect to civil rights litigation, we believe that the enrolled bill is essentially remedial legislation to accommodate the Supreme Court's ruling in the Alyeska case by reinstating discretionary authority for the courts to award attorneys' fees to the prevailing parties in such cases, thereby facilitating full enforcement of civil rights laws. We would have preferred a bill that contained uniform standards affecting both defendant and plaintiffs equally.

Although we believe that the legislative intent regarding the enrolled bill's authorization for the award of attorneys' fees in tax cases which may be instituted by the Government is clear, the construction of the provision is ambiguous. It is not clear whether formal suits filed by the Government or administrative actions, such as proceedings before an IRS hearing examiner or the mere formal denial of a tax refund, would trigger eligibility for the eventual award of attorneys' fees.

In addition, we believe the discretion which would be given the courts is quite broad, because there is little or no case law that provides judicial guidance for determining the extent to which a non-Government party prevails in a multi-issue tax case.

The inclusion of the provision affecting IRS establishes an unfortunate precedent for authorization of the award of attorneys' fees in areas in which a sufficient basis has not been established; whether or not such a provision will benefit the public generally or is in fact necessary to judicious resolution of tax cases has yet to be demonstrated or examined.

These concerns notwithstanding, we believe that the provision authorizing attorneys' fees for civil rights cases is important and necessary legislation to improved enforcement of Federal civil rights statutes. Because the scope and impact of the provision affecting tax cases is unclear, the effect of the provision may well engender establishment of undesirable precedents in future litigation; if this occurs, the Administration should submit remedial legislation to the 95th Congress.

A signing statement is attached indicating both your support for the civil rights provision and your concern with the clause affecting tax cases.

James T. Lynn
Director

Enclosures

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

OCT 08 1976

Dear Sir:

This is in response to your request for the views of the Treasury Department on enrolled bill S. 2278, "The Civil Rights Attorney's Fees Awards Act of 1976." The Treasury Department is strongly opposed to the following provisions of the bill:

> "***in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code,***the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs."

It is clear that our self-assessment system depends upon the public's perception of the fact that our tax laws are being administered in a fair and even-handed manner. The concept of fairness to the public, however, also requires vigorous enforcement so that no individual taxpayer will be in a position arbitrarily and improperly to fail to pay his taxes to the detriment of all other taxpayers. It is in this context that the enrolled bill would cause material damage to the continuing viability of our self-assessment system and to the operation of the Federal court system in the tax field.

This Department specifically points out the following defects in the legislation.

1. The meaning of the phrase "civil action by or on behalf of the United States" is unclear. Does this mean a suit by the Government to collect an outstanding tax or to enforce an administrative summons? Or does it include a refund suit filed in the District Court or the Court of Claims or a petition filed in the U.S. Tax Court as the result of statutory notice of deficiency? Ordinarily, Tax Court and refund suits are properly considered to be brought by the taxpayer. However, in the context of this bill, the argument might be made that the Government instituted the action by sending a statutory notice of deficiency or by denying a formal claim for refund. There is the additional question whether the definition of civil action could be expanded to include a disciplinary action against an employee of the Internal Revenue Service where the charge is based on a violation of the Internal Revenue laws.

2. Who is "the prevailing party" in the litigation covered by the bill? Most tax cases involve numerous issues to be decided by the court. Is the prevailing party one who wins one issue or the most important issue or the most issues, or is it the party who prevails with respect to the largest portion of the money sued for? Endless disputes could arise under this provision.

3. What is a "reasonable fee"? Is it based on the time spent by the attorney, the difficulty of the question involved, or the amount involved in the case? Any one of these can run into large sums and still not directly represent the value of the attorney's services. Furthermore, how is the reasonable fee to be determined? Will there have to be a second hearing after the completion of the first and principal case for the sole purpose of fixing fees? Finally, if Senator Kennedy's "bad faith" test is in fact adopted in practice (see Congressional Record S. 17050-51, September 29, 1976), another and altogether different factual issue will be interjected for decision by the court after trial of the principal case.

4. It would appear to be unfair to the Government to allow attorney's fees to be charged to the United States and not charged to the other side when the United States is the prevailing party.

5. Under current law, attorney's fees are not normally awarded the prevailing party in litigation either against the Government or between private parties. It is inappropriate to adopt a special rule for tax cases, particularly when the rule is drawn without regard to need. For example, attorney's fees could be awarded under the bill to a corporate taxpayer with substantial liquid assets.

6. This bill will constitute a strong precedent for the principle that the Government should be required to pay attorney's fees to the prevailing party in all types of litigation with the United States. Indeed, Senator Morgan announced as much immediately following the passage of the bill (see Congressional Record S. 17053, September 29, 1976).

7. Certain relief is already provided for the taxpayer who decides to litigate. Attorney's fees incurred in tax litigation are deductible for Federal income tax purposes. Moreover, the Tax Court has

adopted a small claims procedure for cases involving less than $1,500. About 25 percent of the 18,245 docketed Tax Court cases pending on June 30, 1976 involved small claims. Typically, the taxpayer in these cases will appear pro se.

8. The bill will adversely affect the administration of the Internal Revenue laws. At present the handling and control of revenue litigation by the Government is possible only because the vast majority of cases are settled without the necessity of trial. Neither the District Courts, the Court of Claims nor the Tax Court could possibly hear all the tax cases which are filed and, indeed, there is no need for them to hear all such cases. Tax litigation is now largely settled in conferences prior to trial without the need for the courts' intervention. This bill would encourage trials in order to force the Government to pay the taxpayer's attorney's fees. The taxpayer may have nothing to lose by forcing the case to trial and he would have much to gain if his gamble paid off. Increased tax litigation can only mean increased delay and congestion in the courts to the disadvantage of all taxpayers and to the United States.

For the reasons set forth above, the Treasury Department strongly urges that the President not approve S. 2278.

Sincerely yours,

Charles M. Walker

Charles M. Walker
Assistant Secretary

Director, Office of Management and Budget
Attention: Assistant Director for
Legislative Reference, Legislative
Reference Division
Washington, D.C. 20503

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

October 12, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill, S. 2278, "The Civil Rights Attorney's Fees Awards Act of 1976."

The bill would amend Section 722 of the Revised Statutes (42 U.S.C. 1988) to provide that the court in its discretion may allow to the prevailing party a reasonable attorney's fee as costs in certain types of litigation. In July, 1976, this office advised your staff that the Department had no objection to an earlier version of this legislation in which the types of litigation were limited to actions or proceedings to enforce Sections 1977, 1/ 1978, 2/ 1979, 3/ 1980, 4/ and 1981 5/ of the Revised Statutes and Title VI of the Civil Rights Act of 1964 (federally funded programs). S. 2278, as passed by the Congress, added to list of qualifying actions (1) suits under Title IX of P.L. 92-318, the Educational Amendments Act of 1972, relating to the prohibition of sex discrimination under educational programs receiving federal assistance, and (2) civil actions or proceedings by or on behalf of the United States to enforce, or charging a violation of, a provision of the Internal Revenue Code. We have no objection to the inclusion of suits under Title IX of the Educational Amendments Act of 1972. However, the provision relating to tax litigation will be troublesome.

1/ 42 U.S.C., Section 1981, equal rights under law.
2/ 42 U.S.C., Section 1982, property rights of citizens.
3/ 42 U.S.C., Section 1983, civil actions for deprivation of rights.
4/ 42 U.S.C., Section 1985, conspiracy to interfere with civil rights.
5/ 42 U.S.C., Section 1986, conspiracy to interfere with civil rights, action for neglect to permit.

The report of the Senate Judiciary Committee on S. 2278 states (S. Rep. No. 94-1011, p. 5) that citizens instituting civil rights actions are in the nature of "private attorneys general" attempting to vindicate Congressional policy and in that capacity "such a party, if unsuccessful [should], be assessed his opponent's fee only where it is shown that his suit was clearly frivolous, vexatious, or brought for harassment purposes." The sponsors of the internal revenue amendment to S. 2278 indicated during debate (122 Cong. Rec. S17049-17051 (daily ed., Sept. 29, 1976)) that a similar standard was to be applied to cases involving enforcement of the internal revenue laws. Senator Kennedy likewise stated (122 Cong. Rec. S17051):

> Congress merely intends to protect citizens from becoming victims of frivolous or otherwise unwarranted lawsuits.

If the courts interpret the tax litigation attorney fee provision in this fashion, it should have little or no application as the government does not bring suits for the purpose of abusing legal process or harassing taxpayers. As a precedent, however, the measure is nevertheless highly undesirable and may lead to an expansion of attorney fee provisions in the tax field and in other areas.

We share the concern expressed by the Treasury Department that this enactment will have a very serious adverse effect on the settlement of tax controversies. We also anticipate that it will materially increase the number of tax cases which will be litigated.

Whether the positive factors of this bill outweigh the adverse implications is a close case, but on balance the Department expresses no objection to Executive approval of the bill. The Department feels compelled to point out, however, that if the tax litigation provision stood alone, we would vigorously recommend a veto.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann
Assistant Attorney General

C

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 15 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2278 - The Civil Rights Attorney's Fees Awards Act of 1976
Sponsor - Sen. Tunney (D) California

Last Day for Action

October 19, 1976 - Tuesday

Purpose

To give Federal courts discretion to award attorney's fees to prevailing parties in suits to enforce all civil rights statutes and to prevailing private parties in suits brought by the Government charging a violation of the Internal Revenue Code.

Agency Recommendations

Office of Management and Budget	Approval (Signing statement attached)
Department of Health, Education, and Welfare	Approval
Department of Transportation	Approval
Department of Housing and Urban Development	Approval, but defers to Treasury on tax provision
Department of Justice	No objection
Administrative Office of the United States Courts	No objection
United States Commission on Civil Rights	No comment
Department of the Treasury	Disapproval

STATEMENT BY THE PRESIDENT

I am approving S. 2278, a bill which would give courts discretion to award attorney's fees to prevailing parties in suits to enforce Federal civil rights statutes, and to prevailing private parties in suits brought by the Government charging violation of the Internal Revenue Code.

Traditionally, parties seeking enforcement of basic legislation regarding human rights are those least able financially to afford counsel. It has long been recognized by the courts and the Congress that plaintiffs, who bring actions to enforce important policies such as those reflected in the civil rights laws, act not for themselves alone but as "private attorneys general" enforcing the law through the courts.

Attorney's fee provisions for prevailing parties in civil rights cases are now included in all major civil rights legislation enacted since 1964. Because of a 1975 Supreme Court decision, such attorney's fees are not available in civil rights cases covered by pre-1964 legislation.

The purpose and effect of the civil rights provision of S. 2278 is clear and laudable: to provide the remedy of reasonable attorney's fees to prevailing parties who are acting in the national interest as "private attorneys general" in enforcing the civil rights laws.

However, the provision in this bill authorizing the discretionary award of attorney's fees to prevailing parties in civil actions or proceedings instituted by the Internal Revenue Service is vaguely worded, unclear in it implications and could cause an increase in unnecessary litigation involving IRS. This provision was added at the last minute by the Congress without benefit of hearings; it should have been examined carefully in the context of the actual benefit which would be conferred upon the public.

I intend to seek corrective legislation, deleting this provision, early next year.

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

October 18, 1976

MEMORANDUM FOR JAMES M. CANNON

FROM: ALAN GREENSPAN

You have asked for comments on S. 2278 -- The Civil Rights Attorneys Act -- from the Council of Economic Advisers.

We endorse the provision that would give courts discretion to award attorney's fees to prevailing parties in suits to enforce civil rights statutes. The result of discrimination against legitimate plaintiffs in Federal civil rights suits in some cases could leave them without access to sufficient resources to prosecute their complaint. This legislation will help to remedy that situation.

Regarding the provision authorizing the discretionary award of attorney's fees to prevailing parties in civil actions or proceedings instituted by the IRS, we concur with Treasury's concern over several potential ambiguities that may arise in application of the legislation. However, we do not foresee significant problems regarding the provision's impact on court litigation burdens. The provision may deter a few U. S. cases which, while not unfounded, rest on sufficiently uncertain foundations that their prosecution could have greater costs (including defendants costs) than successful resolution would warrant. Furthermore, although out-of-court settlements may become less favorable to the IRS, there is no firm basis to predict that the IRS and defendants will fail to reach as many settlement agreements under the new attorneys fees provision. On balance, we believe that the signing statement prepared by OMB provides the proper endorsement given those considerations. We endorse both provisions of the bill providing that OMB's statement is used.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

OCT 8 1976

Dear Mr. Lynn:

This is in response to your request for a report on S. 2278, an enrolled bill "The Civil Rights Attorney's Fees Awards Act of 1976".

In summary, because the enrolled bill would encourage the enforcement of civil rights statutes through private actions, and because it would bring uniformity to the practice of Federal courts in allowing attorney's fees in civil rights cases, we recommend that the enrolled bill be approved.

The bill would allow the award of attorney's fees to prevailing parties, other than the United States, in certain civil rights cases. The types of cases that would be covered include those brought under sections 1977-1981 of the Revised Statutes (42 U.S.C. 1981-1983, 1985-1986) which prohibit the denial of civil and constitutional rights by private and official action (as well as conspiracies to deny such rights), title IX of the Education Amendments of 1972 (prohibiting discrimination on the basis of sex in Federally-assisted education programs and activities), and title VI of the Civil Rights Act of 1964. The bill would also allow the award of attorney's fees to defendants who prevail in suits brought by the United States under the Internal Revenue Code.

Section 718 of the Education Amendments of 1972 (42 U.S.C. 1617) permits the award of attorney's fees in civil rights cases which pertain to elementary and secondary education. There is, however, no express statutory authorization allowing attorney's fees to be awarded in other civil rights cases. The enrolled bill would allow attorney's fees to be awarded in all such cases including those brought

against institutions of higher education, State-operated public schools, or health and social service recipients of Federal funds.

While there is some possibility that the enrolled bill would promote an increase in litigation, including litigation against the United States and thereby increase the workload and costs for government agencies having civil rights responsibilities, it also seems likely that the bill would enlist private litigants in efforts to enforce provisions of law which this Department and other agencies are responsible for enforcing. Thus, the bill would reduce the pressure for expansion of the enforcement bureaucracy of the Federal government and shift that burden to the private sector. We believe the advantages of this prospect far outweigh the relatively small increase in litigation costs that may be incurred by Federal agencies.

Although this Department remains firmly committed to the enforcement of the civil rights statutes for which it is responsible, the increasing demands on the limited number of personnel available for this task makes it impossible for us to bear the entire responsibility for this enforcement. To whatever extent the bill would shift this responsibility to private litigants, the Department's enforcement burden may be reduced commensurately.

It should also be noted that the enrolled bill would not encourage frivolous litigation. Attorney's fees could be awarded only to successful litigants, and the award of attorney's fees, and the amount thereof, is within the discretion of the court. Given these facts, we think it unlikely that the bill would result in an increase in unwarranted or malicious lawsuits.

For the foregoing reasons, we recommend that the enrolled be approved.

Sincerely,

Marjorie Lynch

Under Secretary

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

October 14, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is to give you formally my views on S. 2278, an enrolled bill, "The Civil Rights Attorney's Fees Awards Act of 1976"

> To amend Revised Statutes section 722 (42 U.S.C. 1988) to provide for the award of counsel fees for the prevailing party, other than the United States, in the discretion of the Court in cases brought pursuant to certain statutory provisions.

The enrolled bill would amend the Civil Rights Act of 1866, Revised Statutes section 722, to provide for the award of counsel fees to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes, Title IX of Public Law 92-318, the Internal Revenue Code and Title VI of the Civil Rights Act of 1964.

Actions Brought Pursuant to the Civil Rights Act of 1866

Section 2 of the bill would amend Revised Statutes section 722 (42 U.S.C. 1988) of the Civil Rights Act of 1866 to provide counsel fees for prevailing parties at the discretion of the Court for actions brought to enforce the provisions of the Act. Sections 1977, 1978, 1979, 1980, and 1981 of the 1866 Act respectively (1) provide for and protect equal rights by giving to all citizens the full and equal benefit of all laws, (2) guarantee the property rights of all citizens, (3) ensure legal redress and liability for deprivation of rights secured by the Constitution and laws, (4) vest jurisdiction to review all proceedings arising hereunder in the Supreme Court and (5) protect against conspiracies to interfere with civil rights.

As you know, these statutes were passed by Republican Administrations and still afford the basis for relief against unconstitutional action based upon race. See e.g., Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968). These provisions have traditionally been used by Blacks, Mexican Americans, Puerto Ricans, American Indians, and other minority groups to bridge the equality gap by enforcing national policies favoring equality in housing, employment, public accommodations, quality of medical care and a host of other fundamental rights.

Traditionally, the parties seeking enforcement of these basic human rights vindicating policies that Congress have found to be of the highest priority are those least able financially to afford counsel. It has long been recognized by the Courts and the Congress that plaintiffs, who bring actions to enforce important Congressional policies such as those reflected in the civil rights laws, act not for themselves alone but act as "private attorneys general" enforcing the law through the Courts. Newman v. Piggie Park Enterprises, Inc. 390 U.S. 400, 402 (1968). (Also see list of attorney's fee provisions in Congressional enactments since 1870, 94th Congress, 2d Session, S.R. 94-1011 at p. 3.)

Attorney's fee provisions for prevailing parties in civil rights cases are not a new remedy. Both Congress and the Federal courts have traditionally recognized the appropriateness and effectiveness of this remedy in enabling private parties to enforce the civil rights laws. All major civil rights legislation enacted since 1964 now include an attorney's fee provision. The standard in this bill, S. 2278, is the same as in the post-1964 legislation: a party who seeks to enforce these rights who is successful "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust". Newman, supra, at 402.

Federal courts had bridged the gap between the post-1964 civil rights statutes with attorney's fee provisions and the 1866 Act with no attorney's fee remedy by using their inherent equity powers to award attorneys fees to prevailing parties at their discretion. Knight v. Anciello, 453 F.2d 852 (1st Cir. 1972), Lee v. Southern Home Sites Corp., 444 F.2d 143 (5th Cir. 1971), see list of cases in Alyeska Pipeline Co. v. Wilderness Society, 421 U.S. 270, Fn. 42 (1975).

However, on May 12, 1975 the Supreme Court in Alyeska, supra, held that only Congress could authorize the award of attorney's fees ("it is not for us to invade the legislature's province . . ." Alyeska, supra, at 271) and that although fees are desirable in a variety of circumstances, courts simply do not have the authority to fashion a rule. As a result of Alyeska, attorney's fees became unavailable in civil rights cases which seek to enforce fundamental rights similar to those protected by post-1964 statutes in which fees are available. Thus, the bill merely provides the same counsel fee provisions for pre-1964 civil rights legislation which is in all post-1964 civil rights legislation.

Minority groups, therefore, across the country welcomed the passage of S. 2278 because it filled a gap created by the Alyeska decision. Civil rights litigants have been hard-pressed for funds when they litigate against discriminators who are frequently financially affluent. The Committee reports in both Houses make an overwhelming case which demonstrates that existing legislation is not sufficient to enable the economically disadvantaged litigants, whose civil rights are often violated, legally to enforce and protect these rights. In order for this provision to be operative, the civil rights litigant must first win in order to prevail and, even then, his attorney's fee is fixed at the discretion of the judge.

The purpose and effect of this provision of S. 2278 is clear and laudable: to provide the remedy of reasonable attorney's fees to prevailing parties who are acting in the national interest as "private attorneys general" in enforcing the civil rights laws.

Attorney's Fees in Actions Brought Pursuant to Title IX of Public Law 92-318 and Title VI of the Civil Rights Act of 1964

Title IX of the Education Act of 1972 prohibits discrimination on the basis of sex and Title VI of the Civil Rights Act of 1964, on the basis of race and national origin "in any education program or activity receiving federal financial assistance." Their enforcement provision is found in Revised Statutes section 722, the provision amended by this bill.

These provisions are major civil rights provisions and the counsel fee remedy is not new in either Act. Other sections in each of these Acts have provisions similar to the one passed here. (Title VII, section 706 (k),Civil Rights Act of 1964, and Title VII, section 718, Educational Amendments of 1972.)

Internal Revenue Code Proceedings

This provision which allows the Court in its discretion to award attorney's fees to the prevailing party in a suit brought by the United States pursuant to the Internal Revenue Code imposes quite a different legal standard from the "private attorneys general" standard applicable to prevailing parties in civil rights litigation.

The amendment, in its effect on cases brought pursuant to the Internal Revenue Code, applies solely to prevailing defendants to provide protection against harassment. The sponsor of the bill, Mr. Tunney (D-Ca.) expressed the intent of the amendment as follows:

> Mr. TUNNEY. Mr. President, as initial sponsor of S. 2278, I would like to make clear my understanding of the intent of this amendment, which I support.
>
> Essentially, it would apply to a situation where a taxpayer is harrassed by the IRS. In such a case, a court has discretion to award reasonable attorneys' fees to the defendant. The standard to be applied is the one the courts have adopted with respect to prevailing defendants, as described in the Senate report.
>
> The purpose of this amendment is not to discourage meritorious lawsuits by the IRS, but to discourage frivolous or harrassing lawsuits.
>
> The amendment would not apply to a situation where the Government is plaintiff on appeal since the Government did not bring the action in the first instance.
>
> (Cong. Record, Senate, 94th Congress, 2d Session at S. 17050.)

The legislative history further reveals that after this expression of the intent of the amendment which was sponsored by Messrs. Allen (D-Ala.), Helms (D-N.C.), Thurmond (D-S.C.), Scott (D-Va.), and Stone (D-Fla.), the Senate voted its adoption by a vote of 72 to 0.

The courts would be guided by well-settled judicial principles made clear by the applicable case law that a stricter test is used in awarding fees to prevailing defendants than to prevailing plaintiffs. Specifically, the existing case law requires that the defendant, in

order to receive a counsel fee, must show bad faith on the part of the government. He must show that the suit was unreasonable, frivolous, meritless, vexatious and brought for purposes of harrassment. Carrion v. Yeshiva University, 397 F. Supp 852, (S.D.N.Y.), aff'd 535 F.2d 722 (2d Cir. 1976); United States Steel Corp. v. United States, 519 F.2d 359, 364 (3d Cir. 1975).

The fundamentally different Congressional purposes served by the counsel fee provision as it affects prevailing parties in civil rights cases and defendants in tax cases was articulated by Senator Kennedy (D-Mass.):

> It should be clear, then, that a provision authorizing fee awards in tax cases has a fundamentally different purpose from one authorizing awards in lawsuits brought by private citizens to enforce the protections of our civil rights laws. In enacting the basic civil rights attorneys fees awards bill, Congress clearly intends to facilitate and to encourage the bringing of actions to enforce the protections of the civil rights laws. By authorizing awards of fees to prevailing defendants in cases brought under the Internal Revenue Code, however, Congress merely intends to protect citizens from becoming victims of frivolous or otherwise unwarranted lawsuits. Enactment of this amendment should in no way be understood as implying that Congress intends to discourage the Government from initiating legitimate lawsuits under the tax laws.
> (Cong. Record, Senate, 94th Congress, 2d Session, at S. 17051.)

The counsel fee provisions for prevailing parties in civil rights laws clearly reflect the Congressional intent to facilitate the enforcement of those laws, whereas similar fee provisions in cases under the internal revenue code are intended to protect defendants from vexatious and frivolous lawsuits brought to harass. The standard for prevailing defendants to receive counsel fees is a tough one and remains so under this provision.

On the basis of my analysis of the intent of Congress, the legislative history and the applicable case law, I recommend that the enrolled bill be signed by the President. The amendment making possible the award of counsel fees to defendants in certain cases brought pursuant to the Internal Revenue Code is subject to the same strict test

in its application that the Courts have already applied in distinguishing prevailing plaintiffs from defendants: there must be a legal determination of harassment and bad faith on the part of the government in order for a "fee shifting" provision to apply to a prevailing defendant.

In fact, I am sure that the courts, even without such a statute, would impose counsel fees on the government if it were shown, as required by the statute, that the government acted in bad faith and only to harass the defendant. (See e.g., Rude v. Buchalter, 286 U.S. 451, 459-60 (1932); Local 149, I.U.A.A. & A.I.W. v. American Brake Shoe Co., 298 F.2d 212, 214-15 (4th Cir.), cert. den., 369 U.S. 873 (1962); Cleveland v. Second National Bank & Trust Co., 149 F.2d 466 (6th Cir.), cert. den., 326 U.S. 775 (1945); Guardian Trust Co. v. Kansas City Southern Ry., 28 F.2d 233 (8th Cir. 1928); Carrion v. Yeshiva University, supra; cf. United States Steel Corp., v. United States, supra (fee sought against plaintiff under civil rights statute); Paddison v. Fidelity Bank, 60 F.R.D. 695, 699 (E.D. Pa. 1973) (Title VII suit in which defendant's petition for attorneys' fees against plaintiff was denied on ground that "(s)uch an award would normally be made to prevailing defendants only if the case had been unreasonably brought . . ."); Richardson v. Hotel Corp., of America, 332 F. Supp. 519 (E.D. La. 1971), aff'd, 468 F.2d 951 (5th Cir. 1972). Since this provision, therefore, only enacts into a statute what is clearly the common law already, this does not afford any reason to disapprove the statute.

I strongly urge the President to sign the bill.

Sincerely,

William T. Coleman, Jr.

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OCT 7 1976

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20403

Attention: Miss Martha Ramsey

Dear Mr. Frey:

Subject: S. 2278, 94th Congress
Enrolled Enactment

This is in response to your request for our views on the enrolled enactment of S. 2278, "The Civil Rights Attorney's Fees Awards Act of 1976".

The enrolled bill would empower courts, in their discretion, to award reasonable attorney's fees to the prevailing party (other than the United States) in any action or proceeding to enforce the civil rights provisions of sections 1981 - 1983, 1985 and 1986 of 42 U.S.C. or title IX of P.L. 92-318 (dealing with sex discrimination in education); or in any civil action or proceeding, by or on behalf of the United States, to enforce, or charging a violation of, a provision of the Internal Revenue Code, or title VI of the Civil Rights Act of 1964.

This Department strongly supports favorable Presidential action with regard to those provisions of the enrolled bill which would authorize attorney's fees in civil rights matters. The existence of such authority will go far toward assuring that the protections provided by these civil rights statutes are not rendered hollow because of the indigency of the aggrieved individual. We are concerned and do note, however, that the potential availability of low cost or free litigation may encourage the pursuit of unmeritorious claims. In our view, this potential disadvantage is not of sufficient magnitude to outweigh the substantial and significant benefits which will flow from this enactment.

With regard to specific problems or concerns to which the provision of the enrolled bill authorizing the award of attorney's fees in cases brought by the United States under the Internal Revenue Code may give rise, we would defer to the Treasury Department.

Sincerely,

Robert R. Elliott

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 15 Time: 700pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Bill Seidman
Alan Greenspan

cc (for information): Robert Hartmann
Jeanne Holm
David Lissy
Paul Leach
Jack Marsh
Ed Schmults
Mike Duval
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 16 Time: noon

SUBJECT:

S.2278-The Civil Rights Attorneys Act

ACTION REQUESTED:

___ For Necessary Action

___ For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

_x_ For Your Comments

___ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

The tax provision is very bad + will increase litigation. Signing statement should indicate that we will seek a change. JWS

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE
WASHINGTON

the attached is second page of OMB draft signing statement. This was revised by Dick Parsons. Page 1 remained unchanged and was used for final typing purposes.

Judy Johnston 10/18

However, the provision in this bill authorizing the discretionary award of attorney's fees to prevailing parties in civil actions or proceedings instituted by the Internal Revenue Service is vaguely worded, unclear in its implications and could cause a considerable increase in unnecessary litigation involving IRS. This provision was added at the last minute by the Congress without benefit of hearings; it should have been examined carefully in the context of the actual benefit which would be conferred upon the public.

It is not clear, for example, whether formal suits filed by the Government or administrative actions, such as proceedings before an IRS hearing examiner or the mere formal denial of a tax refund, would trigger eligibility for the eventual award of attorney's fees.

If problems should develop in the application of this provision, the Administration will seek corrective legislation.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 15 Time: 700pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Bill Seidman (comments)
Alan Greenspan

cc (for information): Robert Hartmann (+ comm.)
Jeanne Holm
David Lissy
Paul Leach

Jack Marsh
Ed Schmults
Mike Duval (vets)
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 16 Time: noon

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S.2278-The Civil Rights Attorneys Act

ACTION REQUESTED:

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____ Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

October 5, 1976

Mr. James M. Frey
Office of Management and Budget
Assistant Director for
Legislative Reference
7201 New Executive Office Bldg.
Washington, D.C. 20503

Dear Mr. Frey:

Within the last two working days, your office, in accordance with OMB Circular A-19, has requested the views and recommendations of the Commission on Civil Rights on five enrolled bills. The enrolled bills are: H.R. 13367, the "State and Local Fiscal Assistance Amendments of 1976"; H.R. 12566, the "National Science Foundation Authorization Act, 1977"; S. 2278, the "Civil Rights Attorney's Fees Awards Act of 1976"; H.R. 11337, amendment of Title 13, United States Code to provide for a mid-decade census of population and for other purposes; and H.R. 1144 which amends the Internal Revenue Code of 1954 with respect to the tax treatment of social clubs and certain other membership organizations.

Although the Commission on Civil Rights appreciates the opportunity and recognizes its responsibility to comment on pending legislation related to its substantive jurisdiction, I must inform you that we cannot comply with your requests for views on the five enrolled bills. Several of the enrolled bills involve matters which have not been formally considered by the Commission and which cannot be considered by the Commission within the specified two-day reply period. Moreover, the Staff Director's absence from the office because of previously scheduled Commission business makes it impractical for the agency to comment within the specified period on those bills which involve matters of established Commission policy.

If you have any technical questions about the enrolled bills which appropriately can be answered by Commission staff, please contact me at 254-6626.

Sincerely,

JAMES J. LYONS
Acting Director
Congressional Liaison

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR
WILLIAM E. FOLEY
DEPUTY DIRECTOR

October 7, 1976

Mr. James M. Frey
Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D. C.

Dear Mr. Frey:

This is in response to your enrolled bill request of October 6, 1976, transmitting for views and recommendations S. 2278, cited as "The Civil Rights Attorney's Fees Awards Act of 1976."

This legislation was considered by the Judicial Conference at its April 1976 session, at which time the Conference agreed that the subject matter of the legislation is a question of public policy for the determination of the Congress. The Conference did suggest, however, that the Congress give careful attention to the impact of this legislation on the workload of the courts.

In the circumstances, no objection is interposed to executive approval of S. 2278.

Sincerely,

William E. Foley
Deputy Director

THE WHITE HOUSE

Sign

ION MEMORANDUM WASHINGTON LOG NO.:

October 15 Time: 700pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Bill Seidman
Alan Greenspan

cc (for information): Robert Hartmann
Jeanne Holm
David Lissy
Paul Leach
Jack Marsh
Ed Schmults
Mike Duval
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 16 Time: noon

SUBJECT:

S.2278-The Civil Rights Attorneys Act

ACTION REQUESTED:

____ For Necessary Action
____ Prepare Agenda and Brief
__x__ For Your Comments
____ For Your Recommendations
____ Draft Reply
____ Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

Sign

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MORANDUM WASHINGTON LOG NO.:

Date: October 15 Time: 700pm

FOR ACTION: Dick Parsons
Max Friedersdorf
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FROM THE STAFF SECRETARY

DUE: Date: October 16 Time: noon

SUBJECT:

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ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__x__ For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston ground floor west wing

I recommend veto - this will encourage law suits + add to burden on courts.

~~Attorney~~ If the President signs I recommend no signing statement; if veto I recommend a statement.

M. Duval

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

Rec. 10/16/76- 10:53 am sp

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 15 Time: 700pm

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Max Friedersdorf
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____ Draft Reply
____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

10/16 - Copy sent for researching. sp
10/16 - Researched copy returned. sp

approval of this will make Tunney a hero in Calif. I have no recommendation on the legal merits.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

Rec. 10/16/76 - 10:53 am gp

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 15 Time: 700pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Bill Seidman
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Jeanne Holm
David Lissy
Paul Leach
Jack Marsh
Ed Schmults
Mike Duval
Steve McConahey

FROM THE STAFF SECRETARY

4:00 to Rec 10/16 11:29 Gtm

DUE: Date: October 16 Time: noon

SUBJECT:

S.2278-The Civil Rights Attorneys Act

to DJS 10/16 11:50 Gtm

ACTION REQUESTED:

____ For Necessary Action
____ Prepare Agenda and Brief
__x__ For Your Comments
____ For Your Recommendations
____ Draft Reply
____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

SIGNING STATEMENT

I am approving S. 2278, a bill which would give courts discretion to award attorney's fees to prevailing parties in suits to enforce Federal civil rights statutes, and to prevailing private parties in suits brought by the Government charging violation of the Internal Revenue Code.

Traditionally, parties seeking enforcement of basic legislation regarding human rights are those least able financially to afford counsel. It has long been recognized by the courts and the Congress that plaintiffs, who bring actions to enforce important policies such as those reflected in the civil rights laws, act not for themselves alone but as "private attorneys general" enforcing the law through the Courts.

Attorney's fee provisions for prevailing parties in civil rights cases are now included in all major civil rights legislation enacted since 1964. Because of a 1975 Supreme Court decision, such attorney's fees are not available in civil rights cases covered by pre-1964 legislation.

The purpose and effect of the civil rights provision of S. 2278 is clear and laudable: to provide the remedy of reasonable attorney's fees to prevailing parties who are acting in the national interest as "private attorneys general" in enforcing the civil rights laws.

However, the provision in this bill authorizing the discretionary award of attorney's fees to prevailing parties in civil actions or proceedings instituted by the Internal Revenue Service is vaguely worded, unclear in its implications and could cause a considerable increase in unnecessary litigation involving IRS. This provision was added at the last minute by the Congress without benefit of hearings; it should have been examined carefully in the context of the actual benefit which would be conferred upon the public.

It is not clear, for example, whether formal suits filed by the Government or administrative actions, such as proceedings before an IRS hearing examiner or the mere formal denial of a tax refund, would trigger eligibility for the eventual award of attorney's fees.

If problems should develop in the application of this provision, the Administration will seek corrective legislation.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: OCT 16

Date: October 15 Time: 700pm

FOR ACTION: Dick Parsons
Max Friedersdorf
Bobbie Kilberg
Bill Seidman
Alan Greenspan

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Jeanne Holm
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FROM THE STAFF SECRETARY

DUE: Date: October 16 Time: noon

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S.2278-The Civil Rights Attorneys Act

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__x__ For Your Comments
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____ Draft Reply
____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

Approve

called 10/18 dd

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 15 Time: 700pm

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FROM THE STAFF SECRETARY

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REMARKS:

please return to judy johnston, ground floor west wing

10-16
Recommend approval.
Concur with signing statement.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 15 Time: 700pm

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DUE: Date: October 16 Time: noon

SUBJECT:

S.2278-The Civil Rights Attorneys Act

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please return to judy johnston,ground floor west wing

Recommend approval. Treasury's comments regarding the tax amendment included in this bill would appear to be substantially overdrawn. In this regard, it should be borne in mind that the tax amendment (1) applies only to civil actions and proceedings -- a very small percentage of the contact between the U. S. and taxpayers concerning the Internal Revenue Code; and (2) as the legislative history makes clear, in awarding fees to prevailing defendant taxpayers, courts must apply the same standard for awards under other statutes covered by the bill -- i.e., the action must have been frivolous and vexatious and brought for harrassment purposes. Our information is that virtually no pending or future lawsuit could result in any fees award whatsoever.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

(over)

As a technical matter, would suggest a deletion of the word "considerable" from the fifth line of the second page of the draft signing statement.

Ken Lazarus 10/18/76

DMB

SIGNING STATEMENT

I am approving S. 2278, a bill which would give courts discretion to award attorney's fees to prevailing parties in suits to enforce Federal civil rights statutes, and to prevailing private parties in suits brought by the Government charging violation of the Internal Revenue Code.

Traditionally, parties seeking enforcement of basic legislation regarding human rights are those least able financially to afford counsel. It has long been recognized by the courts and the Congress that plaintiffs, who bring actions to enforce important policies such as those reflected in the civil rights laws, act not for themselves alone but as "private attorneys general" enforcing the law through the Courts.

Attorney's fee provisions for prevailing parties in civil rights cases are now included in all major civil rights legislation enacted since 1964. Because of a 1975 Supreme Court decision, such attorney's fees are not available in civil rights cases covered by pre-1964 legislation.

The purpose and effect of the civil rights provision of S. 2278 is clear and laudable: to provide the remedy of reasonable attorney's fees to prevailing parties who are acting in the national interest as "private attorneys general" in enforcing the civil rights laws.

However, the provision in this bill authorizing the discretionary award of attorney's fees to prevailing parties in civil actions or proceedings instituted by the Internal Revenue Service is vaguely worded, unclear in its implications and could cause ~~considerable~~ increase in unnecessary litigation involving IRS. This provision was added at the last minute by the Congress without benefit of hearings; it should have been examined carefully in the context of the actual benefit which would be conferred upon the public.

I intend to seek corrective legislation, deleting this provision, early next year.

STATEMENT BY THE PRESIDENT

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Traditionally, parties seeking enforcement of basic legislation regarding human rights are those least able financially to afford counsel. It has long been recognized by the courts and the Congress that plaintiffs, who bring actions to enforce important policies such as those reflected in the civil rights laws, act not for themselves alone but as "private attorneys general" enforcing the law through the courts.

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The purpose and effect of the civil rights provision of S. 2278 is clear and laudable: to provide the remedy of reasonable attorney's fees to prevailing parties who are acting in the national interest as "private attorneys general" in enforcing the civil rights laws.

However, the provision in this bill authorizing the discretionary award of attorney's fees to prevailing parties in civil actions or proceedings instituted by the Internal Revenue Service is vaguely worded, unclear in it implications and could cause an increase in unnecessary litigation involving IRS. This provision was added at the last minute by the Congress without benefit of hearings; it should have been examined carefully in the context of the actual benefit which would be conferred upon the public.

I intend to seek corrective legislation, deleting this provision, early next year.

Calendar No. 955

94TH CONGRESS
2d Session

SENATE

REPORT
No. 94-1011

CIVIL RIGHTS ATTORNEYS' FEES AWARDS ACT

JUNE 29 (legislative day, JUNE 18), 1976.—Ordered to be printed

Mr. TUNNEY, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2278]

The Committee on the Judiciary, to which was referred the bill (S. 2278) to amend Revised Statutes section 722 (42 U.S.C. § 1988) to allow a court, in its discretion, to award attorneys' fees to a prevailing party in suits brought to enforce certain civil rights acts, having considered the same, reports favorably thereon and recommends that the bill do pass.

The text of S. 2278 is as follows:

S. 2278

> Revised Statutes section 722 (42 U.S.C. Sec. 1988) is amended by adding the following: "In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980 and 1981 of the Revised Statutes, or Title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.".

PURPOSE

This amendment to the Civil Rights Act of 1866, Revised Statutes Section 722, gives the Federal courts discretion to award attorneys' fees to prevailing parties in suits brought to enforce the civil rights acts which Congress has passed since 1866. The purpose of this amendment is to remedy anomalous gaps in our civil rights laws created by the United States Supreme Court's recent decision in *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975), and to achieve consistency in our civil rights laws.

History of the Legislation

The bill grows out of six days of hearings on legal fees held before the Subcommittee on the Representation of Citizen Interests of this Committee in 1973. There were more than thirty witnesses, including Federal and State public officials, scholars, practicing attorneys from many areas of expertise, and private citizens. Those who did not appear were given the opportunity to submit material for the record, and many did so, including the representatives of the American Bar Association and the Bar Associations of 22 States and the District of Columbia. The hearings, when published, included not only the testimony and exhibits, but numerous statutory provisions, proposed legislation, case reports and scholarly articles.

In 1975, the provisions of S. 2278 were incorporated in a proposed amendment to S. 1279, extending the Voting Rights Act of 1965.

The Subcommittee on Constitutional Rights specifically approved the amendment on June 11, 1975, by a vote of 8–2, and the full Committee favorably reported it on July 18, 1975, as part of S. 1279. Because of time pressure to pass the Voting Rights Amendments, the Senate took action on the House-passed version of the legislation. S. 1279 was not taken up on the Senate floor; hence, the attorneys' fees amendment was never considered.

On July 31, 1975, Senator Tunney introduced S. 2278, which is identical to the amendment to S. 1279 which was reported favorably by this Committee last summer.

Shortly thereafter, similar legislation was introduced in the House of Representatives, including H.R. 9552, which is identical to S. 2278 except for one minor technical difference. The Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee has conducted three days of hearings at which the witnesses have generally confirmed the record presented to this Committee in 1973. H.R. 9552, the counterpart of S. 2278, has received widespread support by the witnesses appearing before the House Subcommittee.

Statement

The purpose and effect of S. 2278 are simple—it is designed to allow courts to provide the familiar remedy of reasonable counsel fees to prevailing parties in suits to enforce the civil rights acts which Congress has passed since 1866. S. 2278 follows the language of Titles II and VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a–3(b) and 2000e–5(k), and section 402 of the Voting Rights Act Amendments of 1975, 42 U.S.C. § 1973*l*(e). All of these civil rights laws depend heavily upon private enforcement, and fee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate the important Congressional policies which these laws contain.

In many cases arising under our civil rights laws, the citizen who must sue to enforce the law has little or no money with which to hire a lawyer. If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must have the opportunity to recover what it costs them to vindicate these rights in court.

Congress recognized this need when it made specific provision for such fee shifting in Titles II and VII of the Civil Rights Act of 1964:

> When a plaintiff brings an action under [Title II] he cannot recover damages. If he obtains an injunction, he does so not for himself alone but also as a "private attorney general," vindicating a policy that Congress considered of the highest priority. If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the Federal courts. Congress therefore enacted the provision for counsel fees—* * * to encourage individuals injured by racial discrimination to seek judicial relief under Title II." *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968).

The idea of the "private attorney general" is not a new one, nor are attorneys' fees a new remedy. Congress has commonly authorized attorneys' fees in laws under which "private attorneys general" play a significant role in enforcing our policies. We have, since 1870, authorized fee shifting under more than 50 laws, including, among others, the Securities Exchange Act of 1934, 15 U.S.C. §§ 78i(c) and 78r(a), the Servicemen's Readjustment Act of 1958, 38 U.S.C. § 1822(b), the Communications Act of 1934, 42 U.S.C. § 206, and the Organized Crime Control Act of 1970, 18 U.S.C. § 1964(c). In cases under these laws, fees are an integral part of the remedy necessary to achieve compliance with our statutory policies. As former Justice Tom Clark found, in a union democracy suit under the Labor-Management Reporting and Disclosure Act (Landrum-Griffin),

> Not to award counsel fees in cases such as this would be tantamount to repealing the Act itself by frustrating its basic purpose. * * * Without counsel fees the grant of Federal jurisdiction is but an empty gesture * * *. *Hall* v. *Cole*, 412 U.S. 1 (1973), quoting 462 F. 2d 777, 780–81 (2d Cir. 1972).

The remedy of attorneys' fees has always been recognized as particularly appropriate in the civil rights area, and civil rights and attorneys' fees have always been closely interwoven. In the civil rights area, Congress has instructed the courts to use the broadest and most effective remedies available to achieve the goals of our civil rights laws.[1] The very first attorneys' fee statute was a civil rights law, the Enforcement Act of 1870, 16 Stat. 140, which provided for attorneys' fees in three separate provisions protecting voting rights.[2]

Modern civil rights legislation reflects a heavy reliance on attorneys' fees as well. In 1964, seeking to assure full compliance with the Civil Rights Act of that year, we authorized fee shifting for private suits establishing violations of the public accommodations and equal employment provisions. 42 U.S.C. §§ 2000a–3(b) and 2000e–5(k). Since 1964, every major civil rights law passed by the Congress has included, or has been amended to include, one or more fee provisions.

[1] For example, the Civil Rights Act of 1866 directed Federal courts to "use that combination of Federal law, common law and State law as will be best adapted to the object of the civil rights laws." *Brown* v. *City of Meridian, Mississippi*, 356 F. 2d 602, 605 (5th Cir. 1966). See 42 U.S.C. § 1988; *Lefton* v. *City of Hattiesburg, Mississippi*, 333 F. 2d 280 (5th Cir. 1964).

[2] The causes of action established by these provisions were eliminated in 1894. 28 Stat. 36.

E.g., Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3612(c); the Emergency School Aid Act of 1972, 20 U.S.C. § 1617; the Equal Employment Amendments of 1972, 42 U.S.C. § 2000e–16(b); and the Voting Rights Act Extension of 1975, 42 U.S.C. § 1973*l*(e).

These fee shifting provisions have been successful in enabling vigorous enforcement of modern civil rights legislation, while at the same time limiting the growth of the enforcement bureaucracy. Before May 12, 1975, when the Supreme Court handed down its decision in *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240 (1975), many lower Federal courts throughout the Nation had drawn the obvious analogy between the Reconstruction Civil Rights Acts and these modern civil rights acts, and, following Congressional recognition in the newer statutes of the "private attorney general" concept, were exercising their traditional equity powers to award attorneys' fees under early civil rights laws as well.[3]

These pre-*Alyeska* decisions remedied a gap in the specific statutory provisions and restored an important historic remedy for civil rights violations. However, in *Alyeska*, the United States Supreme Court, while referring to the desirability of fees in a variety of circumstances, ruled that only Congress, and not the courts, could specify which laws were important enough to merit fee shifting under the "private attorney general" theory. The Court expressed the view, in dictum, that the Reconstruction Acts did not contain the necessary congressional authorization. This decision and dictum created anomalous gaps in our civil rights laws whereby awards of fees are, according to *Alyeska*, suddenly unavailable in the most fundamental civil rights cases. For instance, fees are now authorized in an employment discrimination suit under Title VII of the 1964 Civil Rights Act, but not in the same suit brought under 42 U.S.C. § 1981, which protects similar rights but involves fewer technical prerequisites to the filing of an action. Fees are allowed in a housing discrimination suit brought under Title VIII of the Civil Rights Act of 1968, but not in the same suit brought under 42 U.S.C. § 1982, a Reconstruction Act protecting the same rights. Likewise, fees are allowed in a suit under Title II of the 1964 Civil Rights Act challenging discrimination in a private restaurant, but not in suits under 42 U.S.C. § 1983 redressing violations of the Federal Constitution or laws by officials sworn to uphold the laws.

This bill, S. 2278, is an appropriate response to the *Alyeska* decision. It is limited to cases arising under our civil rights laws, a category of cases in which attorneys fees have been traditionally regarded as appropriate. It remedies gaps in the language of these civil rights laws by providing the specific authorization required by the Court in *Alyeska*, and makes our civil rights laws consistent.

It is intended that the standards for awarding fees be generally the same as under the fee provisions of the 1964 Civil Rights Act. A party seeking to enforce the rights protected by the statutes covered by S. 2278, if successful, "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968).[4]

[3] These civil rights cases are too numerous to cite here. See, e.g., *Sims* v. *Amos* 340 F. Supp. 691 (M.D. Ala. 1972), aff'd, 409 U.S. 942 (1972); *Stanford Daily* v. *Zurcher*, 366 F. Supp. 18 (N.D. Cal. 1973); and cases cited in *Alyeska Pipeline*, *supra*, at n. 46. Many of the relevant cases are collected in "Hearings on the Effect of Legal Fees on the Adequacy of Representation Before the Subcom. on Representation of Citizen Interests of the Senate Comm. on the Judiciary," 93d Cong., 1st sess., pt. III, at pp. 888–1024, and 1060–62.

[4] In the large majority of cases the party or parties seeking to enforce such rights will be the plaintiffs and/or plaintiff-intervenors. However, in the procedural posture of some cases. the parties seeking to enforce such rights may be the defendants and/or defendant-intervenors. See, e.g., *Shelley* v. *Kraemer*, 334 U.S. 1 (1948).

Such "private attorneys general" should not be deterred from bringing good faith actions to vindicate the fundamental rights here involved by the prospect of having to pay their opponent's counsel fees should they lose. *Richardson* v. *Hotel Corporation of America*, 332 F. Supp. 519 (E.D. La. 1971), aff'd, 468 F. 2d 951 (5th Cir. 1972). (A fee award to a defendant's employer, was held unjustified where a claim of racial discrimination, though meritless, was made in good faith.) Such a party, if unsuccessful, could be assessed his opponent's fee only where it is shown that his suit was clearly frivolous, vexatious, or brought for harassment purposes. *United States Steel Corp.* v. *United States*, 385 F. Supp. 346 (W.D. Pa. 1974), aff'd, 9 E.P.D. ¶ 10,225 (3d Cir. 1975). This bill thus deters frivolous suits by authorizing an award of attorneys' fees against a party shown to have litigated in "bad faith" under the guise of attempting to enforce the Federal rights created by the statutes listed in S. 2278. Similar standards have been followed not only in the Civil Rights Act of 1964, but in other statutes providing for attorneys' fees. E.g., the Water Pollution Control Act, 1972 U.S. Code Cong. & Adm. News 3747; the Marine Protection Act, Id. at 4249–50; and the Clean Air Act, Senate Report No. 91–1196, 91st Cong., 2d Sess., p. 483 (1970). See also *Hutchinson* v. *William Barry, Inc.*, 50 F. Supp. 292, 298 (D. Mass. 1943) (Fair Labor Standards Act).

In appropriate circumstances, counsel fees under S. 2278 may be awarded pendente lite. See *Bradley* v. *School Board of the City of Richmond*, 416 U.S. 696 (1974). Such awards are especially appropriate where a party has prevailed on an important matter in the course of litigation, even when he ultimately does not prevail on all issues. See *Bradley*, *supra; Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375 (1970). Moreover, for purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief. *Kopet* v. *Esquire Realty Co.*, 523 F. 2d 1005 (2d Cir. 1975), and cases cited therein; *Parham* v. *Southwestern Bell Telephone Co.*, 433 F. 2d 421 (8th Cir. 1970); *Richards* v. *Griffith Rubber Mills*, 300 F. Supp. 338 (D. Ore. 1969); *Thomas* v. *Honeybrook Mines, Inc.*, 428 F. 2d 981 (3d Cir. 1970); *Aspira of New York, Inc.* v. *Board of Education of the City of New York*, 65 F.R.D. 541 (S.D.N.Y. 1975).

In several hearings held over a period of years, the Committee has found that fee awards are essential if the Federal statutes to which S. 2278 applies are to be fully enforced.[5] We find that the effects of such fee awards are ancillary and incident to securing compliance with these laws, and that fee awards are an integral part of the remedies necessary to obtain such compliance. Fee awards are therefore provided in cases covered by S. 2278 in accordance with Congress' powers under, inter alia, the Fourteenth Amendment, Section 5. As with cases brought under 20 U.S.C. § 1617, the Emergency School Aid Act of 1972, defendants in these cases are often State or local bodies or State or local officials. In such cases it is intended that the attorneys' fees, like other items of costs,[6] will be collected either directly from the official, in his official capacity,[7] from funds of his agency or under his control, or from the State or local government (whether or not the agency or government is a named party).

[5] See, e.g., "Hearings on the Effect of Legal Fees," supra.

[6] *Fairmont Creamery Co.* v. *Minnesota*, 275 U.S. 168 (1927).

[7] Proof that an official had acted in bad faith could also render him liable for fees in his individual capacity, under the traditional bad faith standard recognized by the Supreme Court in *Alyeska*. See *Class* v. *Norton*, 505 F. 2d 123 (2d Cir. 1974); *Doe* v. *Poelker*, 515 F. 2d 541 (8th Cir. 1975).

It is intended that the amount of fees awarded under S. 2278 be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust cases and not be reduced because the rights involved may be nonpecuniary in nature. The appropriate standards, see *Johnson* v. *Georgia Highway Express*, 488 F. 2d 714 (5th Cir. 1974), are correctly applied in such cases as *Stanford Daily* v. *Zurcher*, 64 F.R.D. 680 (N.D. Cal. 1974); *Davis* v. *County of Los Angeles*, 8 E.P.D. ¶ 9444 (C.D. Cal. 1974); and *Swann* v. *Charlotte-Mecklenburg Board of Education*, 66 F.R.D. 483 (W.D.N.C. 1975). These cases have resulted in fees which are adequate to attract competent counsel, but which do not produce windfalls to attorneys. In computing the fee, counsel for prevailing parties should be paid, as is traditional with attorneys compensated by a fee-paying client, "for all time reasonably expended on a matter." *Davis*, *supra; Stanford Daily*, *supra*, at 684.

This bill creates no startling new remedy—it only meets the technical requirements that the Supreme Court has laid down if the Federal courts are to continue the practice of awarding attorneys' fees which had been going on for years prior to the Court's May decision. It does not change the statutory provisions regarding the protection of civil rights except as it provides the fee awards which are necessary if citizens are to be able to effectively secure compliance with these existing statutes. There are very few provisions in our Federal laws which are self-executing. Enforcement of the laws depends on governmental action and, in some cases, on private action through the courts. If the cost of private enforcement actions becomes too great, there will be no private enforcement. If our civil rights laws are not to become mere hollow pronouncements which the average citizen cannot enforce, we must maintain the traditionally effective remedy of fee shifting in these cases.

Changes in Existing Law Made by the Bill Are Italicized

REVISED STATUTES § 722, 42 U.S.C. § 1988

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty." *In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980 and 1981 of the Revised Statutes, or Title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.*

Cost of Legislation

The Congressional Budget Office, in a letter dated March 1, 1976, has advised the Judiciary Committee that: "Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 2278, a bill to award attorneys' fees to prevailing parties in civil rights suits.

"Based on this review, it appears that no additional costs to the government would be incurred as a result of the enactment of this bill."

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94-1558

THE CIVIL RIGHTS ATTORNEY'S FEES AWARDS ACT OF 1976

SEPTEMBER 15, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DRINAN, from the Committee on the Judiciary, submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 15460]

The Committee on the Judiciary, to whom was referred the bill (H.R. 15460) to allow the awarding of attorney's fees in certain civil rights cases, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

H.R. 15460, the Civil Rights Attorney's Fees Awards Act of 1976, authorizes the courts to award reasonable attorney fees to the prevailing party in suits instituted under certain civil rights acts. Under existing law, some civil rights statutes contain counsel fee provisions, while others do not. In order to achieve uniformity in the remedies provided by Federal laws guaranteeing civil and constitutional rights, it is necessary to add an attorney fee authorization to those civil rights acts which do not presently contain such a provision.

The effective enforcement of Federal civil rights statutes depends largely on the efforts of private citizens. Although some agencies of the United States have civil rights responsibilities, their authority and resources are limited. In many instances where these laws are violated, it is necessary for the citizen to initiate court action to correct the illegality. Unless the judicial remedy is full and complete, it will remain a meaningless right. Because a vast majority of the victims of civil rights violations cannot afford legal counsel, they are unable to present their cases to the courts. In authorizing an award of reasonable attorney's fees, H.R. 15460 is designed to give such persons effective access to the judicial process where their grievances can be resolved according to law.

STATEMENT

A. NEED FOR THE LEGISLATION

In *Alyeska Pipeline Service Corp* v. *Wilderness Society*, 421 U.S. 240 (1975), the Supreme Court held that federal courts do not have the power to award attorney's fees to a prevailing party unless an Act of Congress expressly authorizes it.[1] In the *Alyeska* case, the plaintiffs sought to prevent the construction of the Alaskan pipeline because of the damage it would cause to the environment. Although the plaintiffs succeeded in the early stages of the litigation, Congress later overturned that result by legislation permitting the construction of the pipeline. Nonetheless the lower federal courts awarded the plaintiffs their attorney's fees because of the service they had performed in the public interest. The Supreme Court reversed that award on the basis of the "American Rule": that each litigant, victorious or otherwise, must pay for its own attorney.

Although the *Alyeska* case involved only environmental concerns, the decision barred attorney fee awards in a wide range of cases, including civil rights. In fact the Supreme Court, in footnote 46 of the *Alyeska* opinion, expressly disapproved a number of lower court decisions involving civil rights which had awarded fees without statutory authorization. Prior to *Alyeska*, such courts had allowed fees on the theory that civil rights plaintiffs act as "private attorneys general" in eliminating discriminatory practices adversely affecting all citizens, white and non-white. In 1968, the Supreme Court had approved the "private attorney general" theory when it gave a generous construction to the attorney fee provision in Title II of the Civil Rights Act of 1964. *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968).[2] The Court stated:

> If (the plaintiff) obtains an injunction, he does so not for himself alone but also as a "private attorney general," vindicating a policy that Congress considered of the highest importance. *Id.* at 402.

However, the Court in *Alyeska* rejected the application of that theory to the award of counsel fees in the absence of statutory authorization. It expressly reaffirmed, however, its holding in *Newman* that, in civil rights cases where counsel fees are allowed by Congress, "the award should be made to the successful plaintiff absent exceptional circumstances." *Alyeska* case, *supra* at 262.

In the hearings conducted by the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, the testimony indicated that civil rights litigants were suffering very severe hardships because of the *Alyeska* decision. Thousands of dollars in fees were automatically lost in the immediate wake of the decision. Representatives of the Lawyers Committee for Civil Rights Under Law, the Council for Public Interest Law, the American Bar Association Special Committee on Public Interest Practice, and witnesses practicing in the field testified to the devastating impact of the case on litigation in the civil rights area. Surveys disclosed that such plaintiffs were the hardest hit by the decision.[3] The Committee also received evidence that private lawyers were refusing to take certain types of civil rights cases because the civil rights bar, already short of resources, could not afford to do so. Because of the compelling need demonstrated by the testimony, the Committee decided to report a bill allowing fees to prevailing parties in certain civil rights cases.

It should be noted that the United States Code presently contains over fifty provisions for attorney fees in a wide variety of statutes. See Appendix A. In the past few years, the Congress has approved such allowances in the areas of antitrust, equal credit, freedom of information, voting rights, and consumer product safety. Although the recently enacted civil rights statutes contain provisions permitting the award of counsel fees, a number of the older statutes do not. It is to these provisions that much of the testimony was directed.

B. HISTORY OF H.R. 15460

At the time of the Subcomittee hearings on October 6 and 8, and Dec. 3, 1975, three bills were pending which dealt expressly with counsel fees in civil rights cases: H.R. 7828 (same as H.R. 8220); H.R. 7969 (same as H.R. 8742); and H.R. 9552. H.R. 7828 and H.R. 9552 would allow attorney fees to be awarded in cases brought under specific provisions of the United States Code, while H.R. 7969 would permit such awards in any case involving civil or constitutional rights, no matter what the source of the claim. H.R. 7828 was stated in mandatory terms; H.R. 9552 and H.R. 7969 allowed discretionary awards. The Justice Department, through its representative, Assistant Attorney General Rex Lee of the Civil Division, expressed its support of H.R. 9552. Hearings held in 1973 by the Senate Judiciary Subcommittee on the Representation of Citizen Interests also highlighted the need of the public for legal assistance in this and other areas.

In August, 1976, the Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice concluded that a bill to allow counsel fees in certain civil rights cases should be reported favorably in view of the pressing need. On August 26, 1976, the Subcommittee approved H.R. 9552 with an amendment in the nature of a substitute because it was similar to S. 2278, which had cleared the Senate Judiciary Committee and was awaiting action by the full Senate. The amendment in the nature of a substitute sought to conform H.R. 9552 technically to S. 2278; no substantive changes were made. It was then reported unanimously by the Subcommittee.

On September 2, 1976, the full Committee approved H.R. 9552, as amended, with an amendment offered by Congresswoman Holtzman and accepted by the Committee. That amendment added title IX of Public Law 92-318 to the substantive provisions under which successful litigants could be awarded counsel fees. The Committee then

[1] The Court in *Alyeska* recognized three very narrow exceptions to the rule: (1) where a "common fund" is involved; (2) where the litigant's conduct is vexatious, harassing, or in bad faith; and (3) where a court order is willfully disobeyed.

[2] In *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972), the Supreme Court applied the "private attorney general" theory in according broad "standing" to persons injured by discriminatory housing practices under the Federal Fair Housing Act, 42 U.S.C. 3601-3619.

[3] See, *Balancing the Scales of Justice: Financing Public Interest Law in America* (Council for Public Interest Law, 1976), pp. 238, 364, D-2).

ordered that a clean bill be reported to the House. H.R. 15460, the clean bill, was introduced on September 8 and approved pro forma by the Committee on September 9, 1976.[4]

C. SCOPE OF THE BILL

H.R. 15460, the Civil Rights Attorney's Fees Awards Act of 1976, would amend Section 722 (42 U.S.C. 1988) of the Revised Statutes to allow the award of fees in certain civil rights cases.[5] It would apply to actions brought under seven specific sections of the United States Code.[6] Those provisions are: Section 1981, 1982, 1983, 1985, 1986, and 2000d et seq. of Title 42; and Section 1681 et seq. of Title 20. See Appendix B for full texts. The affected sections of Title 42 generally prohibit denial of civil and constitutional rights in a variety of areas, while the referenced sections of Title 20 deal with discrimination on account of sex, blindness, or visual impairment in certain education programs and activities.[7]

More specifically, Section 1981 is frequently used to challenge employment discrimination based on race or color. *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454 (1975).[8] Under that section the Supreme Court recently held that whites as well as blacks could bring suit alleging racially discriminatory employment practices. *McDonald* v. *Santa Fe Trail Transportation Co.*, ——— U.S. ———, 96 S. Ct. 2574 (1976). Section 1981 has also been cited to attack exclusionary admissions policies at recreational facilities. *Tillman* v. *Wheaton-Haven Recreation Ass'n, Inc.*, 410 U.S. 431 (1973). Section 1982 is regularly used to attack discrimination in property transactions, such as the purchase of a home. *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409 (1968).[9]

Section 1983 is utilized to challenge official discrimination, such as racial segregation imposed by law. *Brown* v. *Board of Education*, 347 U.S. 483 (1954). It is ironic that, in the landmark *Brown* case challenging school segregation, the plaintiffs could not recover their attorney's fees, despite the significance of the ruling to eliminate officially

[4] Apart from the addition of Title IX of Public Law 92–318, the only difference between H.R. 9552 and the clean bill (H.R. 15460) are technical, not affecting the substance, made on advice of the House Parliamentarian and staff and legislative counsel.

[5] The bill amends the Revised Statutes rather than the United States Code because Title 42 is not codified, and thus is not "the law of the United States."

[6] In accordance with applicable decisions of the Supreme Court, the bill is intended to apply to all cases pending on the date of enactment as well as all future cases. *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974).

[7] To the extent a plaintiff joins a claim under one of the statutes enumerated in H.R. 15460 with a claim that does not allow attorney fees, that plaintiff, if it prevails on the non-fee claim, is entitled to a determination on the other claim for the purpose of awarding counsel fees. *Morales* v. *Haines*, 486 F. 2d 880 (7th Cir. 1973). In some instances, however, the claim with fees may involve a constitutional question which the courts are reluctant to resolve if the non-constitutional claim is dispositive. *Hagans* v. *Lavine*, 415 U.S. 528 (1974). In such cases, if the claim for which fees may be awarded meets the "substantiality" test, *see Hagans, v. Lavine, supra; United Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966), attorney's fees may be allowed even though the court declines to enter judgment for the plaintiff on that claim, so long as the plaintiff prevails on the non-fee claim arising out of a "common nucleus of operative fact." *United Mine Workers* v. *Gibbs, supra* at 725.

[8] With respect to the relationship between Section 1981 and Title VII of the Civil Rights Act of 1964, the House Committee on Education and Labor has noted that "the remedies available to the individual under Title VII are co-extensive with the individual's right to sue under the provisions of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and that the two procedures augment each other and are not mutually exclusive." H.R. Rept. No. 92–238, p. 19 (92nd Cong. 1st Sess. 1971). That view was adopted by the Supreme Court in *Johnson* v. *Railway Express Agency, supra.*

[9] As with Section 1981 and Title VII, Section 1982 and Title VIII of the Civil Rights Act of 1968 are complementary remedies, with similarities and differences in coverage and enforcement mechanism. See *Jones* v. *Mayer Co., supra.*

imposed segregation. Section 1983 has also been employed to challenge unlawful official action in non-racial matters. For example, in *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966), indigent plaintiffs successfully challenged as unconstitutional the imposition of a poll tax in state and local elections. In *Monroe* v. *Pape*, 365 U.S. 167 (1961), a private citizen sought damages against local officials for an unconstitutional search of a private residence. See also *Elrod* v. *Burns*, —— U.S. ——, 96 S. Ct. 2673 (June 28, 1976) (discrimination on account of political affiliation in public employment); *O'Connor* v. *Donaldson*, 422 U.S. 563 (1975) (terms and conditions of institutional confinement).

Section 1985 and 1986 are used to challenge conspiracies, either public or private, to deprive individuals of the equal protection of the laws. See *Griffin* v. *Breckenridge*, 403 U.S. 88 (1971). The bill also covers suits brought under Title IX of Public Law 92–318, the Education Amendments of 1972, 20 U.S.C. 1681–1686. Title IX forbids specific kinds of discrimination on account of sex, blindness, or visual impairment in certain federally assisted programs and activities relating to education. Finally H.R. 15460 would also apply to actions arising under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d–2000d–6.[10]

Title VI prohibits the discriminatory use of Federal funds, requiring recipients to administer such assistance without regard to race, color, or national origin. *Lau* v. *Nichols*, 414 U.S. 563 (1974); *Hills* v. *Gautreaux*, —— U.S. ——, 96 S. Ct. 1538 (April 20, 1976); *Adams* v. *Richardson*, 480 F. 2d 1159 (D.C. Cir. 1973); *Bossier Parish School Board* v. *Lemon*, 370 F. 2d 847 (5th Cir.), *cert. denied*, 388 U.S. 911 (1967); *Laufman* v. *Oakley Building and Loan Co.*, 408 F. Supp. 489 (S.D. Ohio 1976).

D. DESCRIPTION OF H.R. 15460

As noted earlier, the United States Code presently contains over fifty provisions for the awarding of attorney fees in particular cases. They may be placed generally into four categories: (1) mandatory awards only for a prevailing plaintiff; (2) mandatory awards for any prevailing party; (3) discretionary awards for a prevailing plaintiff; and (4) discretionary awards for any prevailing party. Existing statutes allowing fees in certain civil rights cases generally fall into the fourth category. Keeping with that pattern, H.R. 15460 tracks the language of the counsel fee provisions of Titles II and VII of the Civil Rights Act of 1964,[11] and Section 402 of the Voting Rights Act Amendments of 1975.[12] The substantive section of H.R. 15460 reads as follows:

> In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes, title IX of Public Law 92–318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

[10] Title VI of the Civil Rights Act of 1964 is the only substantive title of that Act which does not contain a provision for attorney fees.

[11] 42 U.S.C. 2000a–3(b) (Title II); 42 U.S.C. 2000e–5(k) (Title VII).

[12] 42 U.S.C. 1973(e) (Section 402).

The three key features of this attorney's fee provision are: (1) that awards may be made to any "prevailing party"; (2) that fees are to be allowed in the discretion of the court; and (3) that awards are to be "reasonable". Because other statutes follow this approach, the courts are familiar with these terms and in fact have reviewed, examined, and interpreted them at some length.

1. Prevailing party

Under H.R. 15460, either a prevailing plaintiff or a prevailing defendant is eligible to receive an award of fees. Congress has not always been that generous. In about two-thirds of the existing statutes, such as the Clayton Act and the Packers and Stockyards Act, only prevailing plaintiffs may recover their counsel fees.[13] This bill follows the more modest approach of other civil rights acts.

It should be noted that when the Justice Department testified in support of H.R. 9552, the precedessor to H.R. 15460, it suggested an amendment to allow recovery only to prevailing plaintiffs. Assistant Attorney General Lee thought the phrase "prevailing party" might have a "chilling effect" on civil rights plaintiffs, discouraging them from initiating law suits. The Committee was very concerned with the potential impact such a phrase might have on persons seeking to vindicate these important rights under Federal law. In light of existing case law under similar provisions, however, the Committee concluded that the application of current standards to this bill will significantly reduce the potentially adverse affect on the victims of unlawful conduct who seek to assert their federal claims.

On two occasions, the Supreme Court has addressed the question of the proper standard for allowing fees in civil rights cases. In *Newman* v. *Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968) (per curiam), a case involving racial discrimination in a place of public accommodation, the Court held that a prevailing plaintiff "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust."

Five years later, the Court applied the same standard to the attorney's fee provision contained in Section 718 of the Emergency School Aid Act of 1972, 20 U.S.C. 1617. *Northcross* v. *Memphis Board of Education*, 412 U.S. 427 (1973) (per curiam). The rationale of the rule rests upon the recognition that nearly all plaintiffs in these suits are disadvantaged persons who are the victims of unlawful discrimination or unconstitutional conduct. It would be unfair to impose upon them the additional burden of counsel fees when they seek to invoke the jurisdiction of the federal courts. "If successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the federal courts." *Newman* v. *Piggie Park Enterprises, Inc.*, *supra* at 402.

Consistent with this rationale, the courts have developed a different standard for awarding fees to prevailing defendants because they do "not appear before the court cloaked in a mantle of public interest." *United States Steel Corp.* v. *United States*, 519 F.2d 359, 364 (3rd Cir. 1975). As noted earlier such litigants may, in proper circumstances, recover their counsel fees under H.R. 15460. To avoid the potential "chilling effect" noted by the Justice Department and to advance the public interest articulated by the Supreme Court, however, the courts have developed another test for awarding fees to prevailing defendants. Under the case law, such an award may be made only if the action is vexatious and frivolous, or if the plaintiff has instituted it solely "to harass or embarrass" the defendant. *United States Steel Corp.* v. *United States*, *supra* at 364. If the plaintiff is "motivated by malice and vindictiveness," then the court may award counsel fees to the prevailing defendant. *Carrion* v. *Yeshiva University*, 535 F.2d 722 (2d Cir. 1976). Thus if the action is not brought in bad faith, such fees should not be allowed. See, *Wright* v. *Stone Container Corp.* 524 F.2d 1058 (8th Cir. 1975); see also *Richardson* v. *Hotel Corp of America*, 332 F. Supp. 519 (E.D.La. 1971), *aff'd without published opinion*, 468 F.24 951 (5th Cir. 1972). This standard will not deter plaintiffs from seeking relief under these statutes, and yet will prevent their being used for clearly unwarranted harassment purposes.

With respect to the awarding of fees to prevailing defendants, it should further be noted that governmental officials are frequently the defendants in cases brought under the statutes covered by H.R. 15460. See, *e.g.*, *Brown* v. *Board of Education*, *supra*; *Gautreaux* v. *Hills*, *supra*; *O'Connor* v. *Donaldson*, *supra*. Such governmental entities and officials have substantial resources available to them through funds in the common treasury, including the taxes paid by the plaintiffs themselves. Applying the same standard of recovery to such defendants would further widen the gap between citizens and government officials and would exacerbate the inequality of litigating strength. The greater resources available to governments provide an ample base from which fees can be awarded to the prevailing plaintiff in suits against governmental officials or entities.[14]

The phrase "prevailing party" is not intended to be limited to the victor only after entry of a final judgment following a full trial on the merits. It would also include a litigant who succeeds even if the case is concluded prior to a full evidentiary hearing before a judge or jury. If the litigation terminates by consent decree, for example, it would be proper to award counsel fees. *Incarcerated Men of Allen County* v. *Fair*, 507 F.2d 281 (6th Cir. 1974); *Parker* v. *Matthews*, 411 F. Supp. 1059 (D.D.C. 1976); *Aspira of New York, Inc.*, v. *Board of Education of the City of New York*, 65 F.R.D. 541 (S.D.N.Y. 1975). A "prevailing" party should not be penalized for seeking an out-of-court settlement, thus helping to lessen docket congestion. Similarly, after a complaint is filed, a defendant might voluntarily cease the unlawful practice. A court should still award fees even though it might conclude, as a matter of equity, that no formal relief, such as an injunction, is needed. *E.g.*, *Parham* v. *Southwestern Bell Telephone Co.*, 433 F.2d 421 (8th Cir. 1970); *Brown* v. *Gaston County Dyeing Machine Co.*, 457 F.2d 1377 (4th Cir.), *cert denied*, 409 U.S. 982 (1972); see also *Lea* v. *Cone Mills Corp.*, 438 F.2d 86 (4th Cir. 1971); *Evers* v. *Dwyer*, 358 U.S. 202 (1958).

A prevailing defendant may also recover its fees when the plaintiff seeks and obtains a voluntary dismissal of a groundless complaint,

[13] 15 U.S.C. 15 (Clayton Act); 7 U.S.C. 210(f) (Packers and Stockyards Act).

[14] Of course, the 11th Amendment is not a bar to the awarding of counsel fees against state governments. *Fitzpatrick* v. *Bitzer*, ——U.S.——, 96 S.Ct. 2666 (June 28, 1976).

Corcoran v. *Columbia Broadcasting System*, 121 F.2d 575 (9th Cir. 1941), as long as the other factors, noted earlier, governing awards to defendants are met. Finally the courts have also awarded counsel fees to a plaintiff who successfully concludes a class action suit even though that individual was not granted any relief. *Parham* v. *Southwestern Bell Telephone Co.*, *supra*; *Reed* v. *Arlington Hotel Co., Inc.*, 476 F.2d 721 (8th Cir. 1973).

Furthermore, the word "prevailing" is not intended to require the entry of a *final* order before fees may be recovered. "A district court must have discretion to award fees and costs incident to the final disposition of interim matters." *Bradley* v. *Richmond School Board*, 416 U.S. 696, 723 (1974); see also *Mills* v. *Electric Auto-Lite Co.*, 396 U.S. 375 (1970). Such awards pendente lite are particularly important in protracted litigation, where it is difficult to predicate with any certainty the date upon which a final order will be entered. While the courts have not yet formulated precise standards as to the appropriate circumstances under which such interim awards should be made, the Supreme Court has suggested some guidelines. "(T)he entry of any order that determines substantial rights of the parties may be an appropriate occasion upon which to consider the propriety of an award of counsel fees. . . ." *Bradley* v. *Richmond School Board*, *supra* at 722 n. 28.

2. Judicial discretion

The second key feature of the bill is its mandate that fees are only to be allowed in the discretion of the court. Congress has passed many statutes *requiring* that fees be awarded to a prevailing party.[15] Again the Committee adopted a more moderate approach here by leaving the matter to the discretion of the judge, guided of course by the case law interpreting similar attorney's fee provisions. This approach was supported by the Justice Department on Dec. 31, 1975. The Committee intends that, at a minimum, existing judicial standards, to which ample reference is made in this report, should guide the courts in construing H.R. 15460.

3. Reasonable fees

The third principal element of the bill is that the prevailing party is entitled to "reasonable" counsel fees. The courts have enumerated a number of factors in determining the reasonableness of awards under similarly worded attorney's fee provisions. In *Johnson* v. *Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), for example, the court listed twelve factors to be considered, including the time and labor required, the novelty and difficulty of the questions involved, the skill needed to present the case, the customary fee for similar work, and the amount received in damages, if any. *Accord*: *Evans* v. *Sheraton Park Hotel*, 503 F.2d 177 (D.C. Cir. 1974); see also *United States Steel Corp.* v. *United States*, *supra*.

Of course, it should be noted that the mere recovery of damages should not preclude the awarding of counsel fees.[16] Under the anti-

[15] E.g., 7 U.S.C. 499g(b) (Perishable Agricultural Commodities Act); 15 U.S.C. 1640(a) (Truth-in-Lending Act); 46 U.S.C. 1277 (Merchant Marine Act of 1936); 47 U.S.C. 206 (Communications Act of 1934).

[16] Similarly, a prevailing party is entitled to counsel fees even if represented by an organization or if the party is itself an organization. *Incarcerated Men of Allen County* v. *Fair*, *supra*; *Torres* v. *Sachs*, 69 F.R.D. 343 (S.D.N.Y. 1975), aff'd. —— F.2d —— (2d Cir., June 25, 1976); *Fairley* v. *Patterson*, 493 F2d 598 (5th Cir. 1974).

trust laws, for example, a plaintiff may recover treble damages and still the court is required to award attorney fees. The same principle should apply here as civil rights plaintiffs should not be singled out for different and less favorable treatment. Furthermore, while damages are theoretically available under the statutes covered by H.R. 15460, it should be observed that, in some cases, immunity doctrines and special defenses, available only to public officials, preclude or severely limit the damage remedy.[17] Consequently awarding counsel fees to prevailing plaintiffs in such litigation is particularly important and necessary if Federal civil and constitutional rights are to be adequately protected. To be sure, in a large number of cases brought under the provisions covered by H.R. 15460, only injunctive relief is sought, and prevailing plaintiffs should ordinarily recover their counsel fees. *Newman* v. *Piggie Park Enterprises, Inc.*, *supra*; *Northcross* v. *Memphis Board of Education*, *supra*.

The application of these standards will insure that reasonable fees are awarded to attract competent counsel in cases involving civil and constitutional rights, while avoiding windfalls to attorneys. The effect of H.R. 15460 will be to promote the enforcement of the Federal civil rights acts, as Congress intended, and to achieve uniformity in those statutes and justice for all citizens.

Oversight

Oversight of the administration of justice in the federal court system is the responsibility of the Committee on the Judiciary. The hearings on October 6 and 8 and Dec. 3, 1975, focused on specific pending legislation. However, they did have an oversight purpose, as well, since the impact of the Supreme Court's *Alyeska* decision on the public and the related issue of equal access to the courts were subjects of the hearing.

Committe Vote

H.R. 15460 was reported favorably by a voice vote of the Committee on September 9, 1976. Twenty-seven members of the Committee were present.

Statement of the Committe on Government Operations

No statement has been received on the legislation from the House Committee on Government Operations.

Statement of the Congrssional Budget Office

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee estimates there will be no cost to the federal government.

[17] *Wood* v. *Strickland*, 420 U.S. 308 (1975); *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974); *Pierson* v. *Ray*, 386 U.S. 547 (1967).

CONGRESS OF THE UNITED STATES,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 7, 1976.

Hon. PETER W. RODINO,
Chairman, Committee on the Judiciary, U.S. House of Represenatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the Civil Rights Attorney's Fees Award Act of 1976, a bill to award attorney's fees to prevailing parties in civil rights suits to enforce Sections 1977, 1978, 1979, 1980 and 1981 of the Revised Statutes, Title IX of P.L. 92–318 or Title VI of the Civil Rights Act of 1964.

Based on this review, it appears that no additional cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M.RIVLIN,
Director.

INFLATIONARY IMPACT STATEMENT

The legislation will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 merely recites the short title of the legislation, "The Civil Rights Attorney's Fees Awards Act of 1976".

Section 2

Section 2 amends section 722 (42 U.S.C. 1988) of the Revised Statutes by adding at the end of that section the following language:

> In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, 1981 of the Revised Statutes, title IX of Public Law 92–318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailig party, other than the United States, a reasonable attorney's fee as part of the costs.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 722 OF THE REVISED STATUTES

SEC. 722. The jurisdiction in civil and criminal matters conferred on the district and circuit courts by the provisions of this Title, and of Title "CIVIL RIGHTS," and of Title "CRIMES," for the protection of all persons in the United States in their civil rights, and for their vindi-

cation, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. *In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes, title IX of Public Law 92–318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.*

APPENDIX A[1]

FEDERAL STATUTES AUTHORIZING THE AWARD OF ATTORNEY FEES

1. Federal Contested Election Act, 2 U.S.C. 396.
2. Freedom of Information Act, 5 U.S.C. 552(a)(4)(E).
3. Privacy Act, 5 U.S.C. 552a(g)(3)(B).
4. Federal Employment Compensation For Work Injuries, 5 U.S.C. 8127.
5. Packers and Stockyards Act, 7 U.S.C. 210(f).
6. Perishable Agricultural Commodities Act, 7 U.S.C. 499g (b), (c).
7. Agricultural Unfair Trade Practices Act, 7 U.S.C. 2305 (a), (c).
8. Plant Variety Act, 7 U.S.C. 2565.
9. Bankruptcy Act, 11 U.S.C. 104(a)(1).
10. Railroad Reorganization Act of 1935, 11 U.S.C. 205(c)(12).
11. Corporate Reorganization Act, 11 U.S.C. 641, 642, 643, and 644.
12. Federal Credit Union Act, 12 U.S.C. 1786(O).
13. Bank Holding Company Act, 12 U.S.C. 1975.
14. Clayton Act, 15 U.S.C. 15.
15. Unfair Competition Act (FTC), 15 U.S.C. 72.
16. Securities Act of 1933, 15 U.S.C. 77k(e).
17. Trust Indenture Act, 15 U.S.C. 77www(a).
18. Securities Exchange Act of 1934, 15 U.S.C. 78i(e), 78r(a).
19. Jewelers Hall-Mark Act, 15 U.S.C. 298 (b), (c) and (d).
20. Truth-in-Lending Act (Fair Credit Billing Amendments), 15 U.S.C. 1640(a).
21. Fair Credit Reporting Act, 15 U.S.C. 1681(n).
22. Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1918(a), 1989(a)(2).
23. Consumer Product Safety Act, 15 U.S.C. 2072, 2073.
24. Federal Trade Improvements Act (Amendments), 15 U.S.C. 2310(a)(5)(d)(2).
25. Copyright Act, 17 U.S.C. 1116.
26. Organized Crime Control Act of 1970, 18 U.S.C. 1964(c).
27. Education Amendments of 1972, 20 U.S.C. 1617.
28. Mexican American Treaty Act of 1950, 22 U.S.C. 277d–21.
29. International Claim Settlement Act, 22 U.S.C. 1623(f).
30. Federal Tort Claim Act, 28 U.S.C. 2678.
31. Norris-LaGuardia Act, 29 U.S.C. 107.
32. Fair Labor Standards Act, 29 U.S.C. 216(b).
33. Employees Retirement Income Security Act, 29 U.S.C. 1132(g).
34. Labor Management Reporting and Disclosure Act, 29 U.S.C. 431(c), 501(b).
35. Longshoremen and Harbor Workers Compensation Act, 33 U.S.C. 928.

[1] This list is compiled from information submitted to the Subcommittee by the Council for Public Interest La wand the Attorneys' Fee Project of the Lawyers' Committee for Civil Rights Under Law.

36. Water Pollution Prevention and Control Act, 33 U.S.C. 1365(d).
37. Ocean Dumping Act, 33 U.S.C. 1415(g)(4).
38. Deepwater Ports Act of 1974, 33 U.S.C. 1515.
39. Patent Infringement Act, 35 U.S.C. 285.
40. Servicemen's Group Life Insurance Act, 38 U.S.C. 784(g).
41. Servicemen's Readjustment Act, 38 U.S.C. 1822(b).
42. Veterans Benefit Act, 38 U.S.C. 3404(c).
43. Safe Drinking Water Act, 42 U.S.C. 300j–8(d).
44. Social Security Act (Amendments of 1965), 42 U.S.C. 406(b).
45. Clean Air Act (Amendments of 1970), 42 U.S.C. 1857h–2.
46. Civil Rights Act of 1964, Title II, 42 U.S.C. 2000a–3(b).
47. Civil Rights Act of 1964, Title VII, 42 U.S.C. 2000e–5(k).
48. Legal Services Corporation Act, 42 U.S.C. 2996e(f).
49. Fair Housing Act of 1968, 42 U.S.C. 3612(c).
50. Noise Control Act of 1972, 42 U.S.C. 4911(d).
51. Railway Labor Act, 45 U.S.C. 153(p).
52. Merchant Marine Act of 1936, 46 U.S.C. 1227.
53. Communications Act of 1934, 47 U.S.C. 206.
54. Interstate Commerce Act, 49 U.S.C. 8, 16(2), 908(b), 908(e), and 1017(b)(2).

APPENDIX B

STATUTES COVERED OR AMENDED BY H.R. 15460

1. Revised Statutes § 1977 (42 U.S.C. § 1981).

§ 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

R.S. § 1977.

2. Revised Statutes § 1978 (42 U.S.C. § 1982).

§ 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

R.S. § 1978.

3. Revised Statutes § 1979 (42 U.S.C. § 1983).

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

R.S. § 1979.

4. Revised Statutes § 1980 (42 U.S.C. § 1985).

§ 1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two of more persons in any State of Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one of more of the conspirators.

R.S. § 1980.

5. Revised Statutes § 198 (42 U.S.C. § 1986).

§ 1986. Same; action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and

any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

R.S. § 1981.

6. Revised Statutes § 722 (42 U.S.C. § 1988).

§ 1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

R.S. § 722.

7. Title IX of Public Law 92-318 (20 U.S.C. § 1681-1686), as amended.

§ 1681. Sex—Prohibition against discrimination; exceptions

(a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

Classes of Educational Institutions Subject to Prohibition

(1) in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

Educational Institutions Commencing Planned Change in Admissions

(2) in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change

which is approved by the Commissioner of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education, whichever is the later;

Educational institutions of religious organizations with contrary religious tenets

(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

Educational institutions training individuals for military services or merchant marine

(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

Public educational institutions with traditional and continuing admissions policy

(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex; and

Social fraternities or sororities; voluntary youth service organizations

(6) This section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of Title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age.

Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance

(b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison

with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

Educational Institution Defined

(c) For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such terms means each such school, college, or department.

§ 1682. Federal administrative enforcement; report to congressional committees

Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 1681 of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided*, *however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Public Law 92–318, Title IX, § 902, June 23, 1972, 86 Stat. 374.

§ 1683. Judicial review

Any department or agency action taken pursuant to section 1682 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 1682 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of Title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that Title.

Public Law 92–318, Title IX, § 903, June 23, 1972, 86 Stat. 374.

§ 1684. Blindness or visual impairment; prohibition against discriminaton

No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

Public Law 92–318, Title IX, § 904, June 23, 1972, 86 Stat. 375.

§ 1685. Authorty under other laws unaffected

Nothing in this chapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

Public Law 92–318, Title IX, § 905, June 23, 1972, 86 Stat. 375.

§ 1686. Interpretation with respect to living facilities

Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

Public Law 92–318, Title IX, § 907, June 23, 1972, 86 Stat. 375.

8. Title VI of the Civil Rights Act of 1964 (Publ. L. 88–352, as amended), (42 U.S.C. 2000d through d–6).

SUBCHAPTER V.—FEDERALLY ASSISTED PROGRAMS

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (Pub. L. 88–352, title VI, § 601, July 2, 1964, 78 Stat. 252.)

§ 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report. (Pub. L. 88–352, title VI, § 602, July 2, 1964, 78 Stat. 252.)

§ 2000d–2. Judicial review; Administrative Procedure Act.

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 1009 of Title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section. (Pub. L. 88–352, title VI, § 603, July 2, 1964, 78 Stat. 253.)

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency or labor organization except where a primary objective of the Federal financial assistance is to provide employment. (Pub. L. 88–352, title VI, § 604, July 2, 1964, 78 Stat. 253.)

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty. (Pub. L. 88–352, title VI, § 605, July 2, 1964, 78 Stat. 253.)

§ 2000–5. Prohibited deferral of action on applications by local educational agencies seeking federal funds for alleged noncompliance with Civil Rights Act.

The Commissioner of Education shall not defer action or order action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965, by the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress), or by the Cooperative Research Act, on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d–1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the commissioner; and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be in compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned. (Pub. L. 89–750, title I, § 182, Nov. 3, 1966, 80 Stat. 1209; Pub. L. 90–247, title I, § 112, Jan. 2, 1968, 81 Stat. 787).

§ 2000d–6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies

(a) Declaration of uniform policy.

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 and

section 182 of the Elementary and Secondary Education Amendments of 1966 dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964.

(d) Additional funds

It is the sense of the Congress that the Department of Justice and the Department of Health, Education, and Welfare should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States. (Pub. L. 91–230, § 2, Apr. 13, 1970, 84 Stat. 121.)

○

S. 2278

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

The Civil Rights Attorney's Fees Awards Act of 1976.

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 Civil Rights Attorney's Fees Awards Act of 1976".

SEC. 2. That the Revised Statutes section 722 (42 U.S.C. 1988) is amended by adding the following: "In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes, title IX of Public Law 92–318, or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.