

# CRS Report for Congress

## The U.S. Commission on Civil Rights: History, Funding, and Current Issues

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# The U.S. Commission on Civil Rights: History, Funding, and Current Issues

## Summary

The Civil Rights Act of 1957 was enacted to investigate issues concerning the civil rights of American citizens. Among other provisions, the act provided for creation of a United States Commission on Civil Rights (Commission) as an independent, executive, bipartisan, fact-finding agency. The mission of the Commission was to inform both the President and Congress on implementation of civil rights protections. Currently, the Commission is composed of eight members: four members are appointed by the President and two each by the President pro tempore of the Senate and the Speaker of the House on the recommendations of the Majority and Minority Leaders in each chamber. No more than four members at any one time can be of the same political party. Since 1957, the Commission has been reauthorized a number of times, most recently in 1994.

According to some observers, discrimination has become more subtle since the establishment of the Commission and continues to affect women and certain racial and ethnic minorities, resulting in inequalities that affect income, job status, and educational attainment. These advocates believe that the Commission's mandate allows it to support special legislative measures to overcome these socioeconomic inequalities. Opponents of this view, however, contend that the purpose of civil rights laws is to ensure equality of opportunity, not to guarantee actual socioeconomic equality among racial and ethnic groups and between the sexes. They state that when the Commission seeks "group preferences and benefits," it becomes more of an advocate for special interests rather than an impartial monitor of legal equality.

For several decades, tensions have increased among advocates of these fundamentally different approaches to addressing the issue of civil rights. When determining whether or on what occasion it is appropriate to consider race, gender, or other factors in forming policy, the issue of civil rights triggers strong beliefs and emotions, making it extremely difficult to reach a consensus on the Commission. As a consequence, some allege that the process for appointing members to the Commission has become a major tool in controlling debate on civil rights and molding public policy on the issue, leading to partisanship that interferes with the agency's effectiveness.

The Civil Rights Commission Amendments Act of 1994 (P.L.103-419), which expired September 30, 1996, was the last time Congress statutorily reauthorized the Commission. However, Congress has appropriated about \$9 million each fiscal year since 1995 for the agency. This CRS report will be updated to reflect any legislative activity.

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# The U.S. Commission on Civil Rights: History, Funding, and Current Issues

## Introduction

For some 50 years, the U.S. Commission on Civil Rights (Commission) has conducted fact-finding investigations of issues relating to the civil rights of citizens. During these years, it has investigated written complaints of violations of citizens' civil rights, held numerous hearings, evaluated federal laws and policies concerning discrimination or denial of equal protection of the laws, published many reports, and prepared public service advertisements on various civil rights issues. The Commission has never had enforcement power; it refers complaints it receives to the appropriate federal, state, or local governmental agency for remedy. In recent years, the Commission has investigated, among other issues, affirmative action, employment discrimination, environmental justice, racial/ethnic profiling, felon voting rights, the 2000 presidential election, migrants' civil rights along the Southwest border, reauthorization of the Individuals with Disabilities Education Act, the effectiveness of Historically Black Colleges and Universities, and anti-Semitism on college campuses.

Presently, the United States Commission on Civil Rights is composed of eight commissioners: four appointed by the President and two each appointed by the President pro tempore of the Senate and the Speaker of the House on the recommendations of the Majority and Minority Leaders in each chamber. The political affiliation of appointees is as follows: Republican — Gerald A. Reynolds (Chairman), Abigail Thernstrom (Vice Chair), Peter N. Kirsanow, and Ashley L. Taylor, Jr.; Democratic — Arlan D. Melendez and Michael Yaki; and Independent — Gail Heriot and Todd F. Gaziano.<sup>1</sup>

Issues surrounding the Commission today include the status of its authorization, adequacy of funding, management concerns, and allegations of partisanship. This report provides a history of the establishment of the Commission, including its funding, legislation expanding its authorities, and the philosophical differences concerning civil rights that have evolved during the past few decades that affect the agency's independence and effectiveness.

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<sup>1</sup> See [<http://www.usccr.gov/cos/cos.htm>].

## Establishment of the Commission

### The Civil Rights Act of 1957

The Civil Rights Act of 1957 (P.L. 85-315), among other provisions, established the United States Commission on Civil Rights as an independent, executive, bipartisan, fact-finding agency. The Commission's purpose was to inform the President and Congress on the implementation of civil rights protections. With the advice and consent of the Senate, the President appointed six members to the Commission, with not more than three from the same political party.<sup>2</sup> The President selected the Chairman and Vice Chairman from among the members of the Commission. Any vacancy in the Commission did not affect its powers and was filled in the same manner and with the same limitation on party affiliations as an original appointment. Four members of the Commission constituted a quorum. There were no provisions on how to remove a commissioner from office.

Congress empowered the Commission to

- investigate allegations of citizens "in writing, under oath or affirmation," that they were denied the right to vote based on color, race, religion, or national origin;
- study and gather information on legal developments constituting a denial of the equal protection of the laws;
- assess federal laws and policies in the area of civil rights;
- submit interim reports to the President and Congress when the Commission or the President deemed appropriate; and
- report its final findings and recommendations to the President and Congress within two years.

Sixty days after submitting its final report and recommendations to Congress, the Commission was to cease to exist. The Commission was not given enforcement authority.

**Commission Administration.** For administrative purposes, the Commission was to have a full-time paid staff director, appointed by the President with the advice and consent of the Senate. Before submitting the nomination of a person for staff director, the President had to consult the Commission. The Civil Rights Act provided for the Commission to appoint other personnel it deemed advisable, in accordance with civil service and classification laws. It could constitute advisory committees within states composed of citizens of that state as well as consult with officials of state and local government and representatives of private organizations as it deemed prudent. The Commission was prohibited from accepting or using the services of voluntary or uncompensated personnel. The act provided for

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<sup>2</sup>The original Commission members were Chairman John A. Hannah, President of Michigan State University; Vice Chairman Robert G. Storey, Dean of the Southern Methodist University Law School; John S. Battle, former Governor of Virginia; Father Theodore M. Hesburgh, President of Notre Dame University; J. Ernest Wilkins, an Assistant Secretary of Labor; and Doyle E. Carleton, former Governor of Florida.

all federal agencies to cooperate fully with the Commission so that it could effectively execute its functions and duties. In carrying out the provisions of the Civil Rights Act of 1957, the Commission or any subcommittee of two or more members authorized by the Commission (of whom at least one had to be from each major political party) could hold hearings and act at such times and places as it considered wise. The Commission could subpoena witnesses for hearings, but the act prohibited the Commission from issuing subpoenas to witnesses who were found, resided, or transacted business outside the state in which a hearing was held.

## Reauthorizations and Modifications of the Commission

Since its creation in 1957, Congress reauthorized the Commission and modified its rules, procedures, and duties numerous times.

### Extension of 1959 and 1963

Between 1959 and 1963, Congress twice enacted legislation to extend the life of the Commission. In September 1959, it passed the Mutual Security Appropriation Act (P.L. 86-383) which included a rider that extended the Commission on Civil Rights for four additional years to November 8, 1963.<sup>3</sup> Again, in 1963, Congress amended the Civil Rights Act of 1957 by extending the Commission for one more year (P.L. 88-152).

### The Civil Rights Act of 1964

In passing the Civil Rights Act of 1964 (P.L. 88-352, Title V), Congress amended provisions of the Civil Rights Act of 1957 that related to the Commission on Civil Rights' rules of procedure and its duties.

**Rules of Procedure.** The act required the Commission to publish in the *Federal Register* the date, the place, and the subject of a hearing at least 30 days before a hearing was scheduled. In addition, the act required the Commission to state and publish in the *Federal Register*: descriptions of its central and field organization, including where and how the public could secure information or make requests; statements on how and the method by which its functions were channeled and determined; and rules it adopted. No one was subject to rules, organization, or procedures that were not published.

The act addressed the relationship between a witness and the Commission. It provided that a witness before the Commission was entitled to a copy of the Commission's rules and a witness compelled to appear had to be provided a copy of the Commission's rules at the time the subpoena was served. Witnesses appearing before the Commission had the right to counsel; counsel had the right to make objections on the record and to argue briefly the basis for such objections.

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<sup>3</sup> Congressional Quarterly Service, *Revolution in Civil Rights*, Washington, p. 42.

The Chairman or Acting Chairman of the Commission could punish breaches of order by censure and exclusion. The Chairman received requests to subpoena witnesses, and the Commission disposed of the requests. If the Commission determined that evidence or testimony at a hearing would defame, degrade, or incriminate a person, it could hear that evidence or testimony in executive session. A victim of such evidence or testimony also had an opportunity to appear before the Commission in executive session and to present witnesses. If the Commission revealed publicly the evidence or testimony and the identity of the person defamed, degraded, or incriminated, that person could appear as a voluntary witness or file a sworn statement in his defense and submit sworn statements of others. No evidence or testimony or summary of evidence or testimony could be released or used in public sessions without the Commission's consent. The penalty for releasing such evidence was a maximum fine of \$1,000 or imprisonment for no more than one year. The Commission decided if a witness could submit sworn written statements for inclusion in the record.

The Civil Rights Act of 1964 required a transcript of witness testimony at all hearings, whether public or executive sessions, of the Commission or any subcommittee of the Commission. The witnesses and the public could obtain transcript copies of public sessions at cost. Witnesses at an executive session were limited to inspecting the official transcript of testimony.

Concerning the pay of a commissioner, the act provided that a Commission member who was also employed by the U.S. government would not receive additional compensation but was entitled to travel expenses and per diem when the member was away from his usual place of residence.

***Commission Duties.*** The Civil Rights Act of 1964 added responsibilities for the Commission. Among other duties, the Commission was also to serve as a national clearinghouse for information regarding denials of equal protection of the laws based on race, color, religion, or national origin, including but not limited to the areas of voting, education, housing, employment, the use of public facilities, and transportation, or in the administration of justice. Also, the Commission was to investigate allegations of citizens, made in writing, under oath or affirmation, that they were illegally denied the right to vote, or accorded the right to vote, or that their votes were improperly counted, in federal elections because of fraud or discrimination in the way the election was conducted.

The Civil Rights Act of 1964 specifically provided that the Commission, its Advisory Committees or any person under its supervision or control were not authorized to inquire into or investigate the membership practices or internal operations of any fraternal organization, college or university fraternity or sorority, private club, or religious organization. It also required the Commission to submit a final report of its activities, findings, and recommendations to the President and Congress by January 31, 1968.

## **Additional Civil Rights Authorities, 1965-1978**

In the Older Americans Act of 1965 (P.L. 94-135), Congress prohibited unreasonable age discrimination in federally funded programs or activities. Within 18 months of enactment of the act, Congress required the U.S. Commission on Civil Rights to identify age discrimination in federally funded programs. In 1967, Congress extended the termination date of the Commission for four more years to January 31, 1973 (P.L. 90-198). In passing the Civil Rights Commission Act of 1978, Congress extended the termination date of the Commission to September 30, 1983 and expanded the Commission's jurisdiction to include discrimination based on age or handicap (P.L. 95-444). The Commission published a study on constitutional arguments on abortion in 1975.<sup>4</sup> Congress responded by including provisions in the 1978 Act that for the first time forbade the Commission, its Advisory Committees, or any person under its supervision or control to appraise, study or collect information about federal laws and policies or any other governmental authority on abortion.

## **Civil Rights Commission Authorization Act of 1979**

The Civil Rights Commission Authorization Act of 1979 (P.L. 96-81) authorized appropriations for the Commission for FY1980 and directed the Commission to appraise the laws and policies of the federal government to determine if Americans of eastern- and southern-European ethnic groups were denied equal protection of the laws, and to report its findings to Congress. The report had to include an analysis of the "adverse consequences of affirmative action programs encouraged by the federal government upon the equal opportunity rights of these Americans."

## **Early 1980s Debate Over the Commission's Independence**

Because the Commission was established to apprise the federal government when denials of constitutional rights occurred, it traditionally was believed that the Commission should be independent of the President and that its members should be protected from removal for political reasons. In 1982, a debate developed over the work of the Commission and the President's power over it. That year, President Ronald Reagan nominated Reverend B. Sam Hart to the Commission. Hart was opposed by some civil rights groups, including the National Urban League, NAACP Legal Defense Fund, National Organization for Women, Mexican-American Legal Defense Fund, and National Gay Task Force, because of his opposition to busing for school desegregation, the Equal Rights Amendment, and the concept of homosexual rights.<sup>5</sup> President Reagan eventually withdrew the nomination of Reverend Hart,<sup>6</sup> but

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<sup>4</sup> U.S. Commission on Civil Rights, *Constitutional Aspects of the Right to Limit Childbearing: a Report of the U.S. Commission on Civil Rights*, Washington, 1975.

<sup>5</sup> Steven R. Weisman, "President Drops Nominee for Post on a Rights Panel," *The New York Times*, February 27, 1982, p. 1.

<sup>6</sup> Congressional Quarterly Almanac, *Civil Rights Commission*, 97<sup>th</sup> Congress, 2<sup>nd</sup> sess., 1982, (continued...)



in 1982 he also replaced two commissioners who had not intended to resign. Again, in 1983, he sought to replace three more commissioners who had been frequent critics of his Administration's civil rights policies. When some Senate opposition to replacing the commissioners developed, the President fired them rather than waiting until the Senate confirmed their replacements.<sup>7</sup> President Reagan's firing of the three commissioners triggered debate on the Commission's independence, who should appoint its members, and its mandate.

**Approaches to Civil Rights.** This debate revealed fundamental differences in approaches to addressing the issue of civil rights. Some Members of Congress and civil rights activists charged that President Reagan was undermining the Commission's traditional independence. Some members of the U.S. Commission on Civil Rights maintained that despite legal guarantees of equal opportunity, inequalities persisted between minority groups and women, on one hand, and white males on the other, in income, job status, and educational attainment. They believed that the Commission's mandate allowed it to support special legislative measures to overcome socioeconomic inequality because such inequality resulted from discrimination.<sup>8</sup> The Administration and its supporters argued that the federal government's role in enforcing civil rights should focus on discrimination against an individual rather than against groups of individuals who historically have been victims of discrimination. Further, according to this view, the U.S. Commission on Civil Rights mandate did not extend to seeing that equality of opportunity resulted in actual socioeconomic equality among racial and ethnic groups and between the sexes.<sup>9</sup> Supporters of President Reagan argued that in pressing for what they called group preferences and benefits, the Commission had become less an impartial monitor of legal equality and more an advocate of particular interests. Thus, in this view, the Commission politicized itself and consequently forfeited its traditional independence from the President.

## United States Commission on Civil Rights Act of 1983

Differing views of the Commission led to congressional proposals to allow the then-existing Civil Rights Commission to expire and to create a new Civil Rights Commission in the legislative branch. Eventually, Congress and President Reagan compromised on the issue. The United States Commission on Civil Rights Act of 1983 (P.L. 98-183) was enacted on November 30, 1983. This act, among other provisions, established a new, eight-member Commission. The life of the Commission was six years. Four members were appointed by the President and two

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<sup>6</sup> (...continued)  
vol. 38, p.21-A.

<sup>7</sup> Congressional Quarterly Almanac, *Civil Rights Commission Reconstituted*, 98<sup>th</sup> Congress, 2<sup>nd</sup> sess., 1983, vol. 39, pp. 293-294.

<sup>8</sup> U.S. Commission on Civil Rights. *Affirmative Action in the 1980s: Dismantling the Process of Discrimination*, (Washington: GPO, 1981), pp. 11-13; U.S. Commission on Civil Rights. *Civil Rights: A National, Not a Special Interest*, Washington: 1981, p. iii.

<sup>9</sup> U.S. Commission on Civil Rights, *Consultations on the Affirmative Action Statement of the U.S. Commission on Civil Rights*, vol. 1, (Washington: GPO, 1981), pp. 30-38.

each by the President pro tempore of the Senate and the Speaker of the House on the recommendations of the Majority and Minority Leaders in each chamber. No more than four members at any one time could be of the same political party. The President could remove a commissioner only for neglect of duty or malfeasance in office. Five commissioners constituted a quorum instead of four as previous Acts provided.

The act provided for the tenure of commissioners. Members of the new Commission served for six-year terms. The act, however, provided the following exception for the first appointments after its enactment. The President designated three-year terms for two of his appointees; two members appointed by the Senate and the House also served three-year terms. Four other members of the Commission — two appointed by the President and two members appointed by the Senate and the House — served terms of six years. No more than two persons of the same political party could be designated for three-year terms. A member appointed to fill a vacancy on the Commission served for the remainder of his predecessor's term. The President, with the concurrence of a majority of the Commission's members, designated a chairman and vice chairman from among Commission members. In the absence of the chairman, the vice chairman acted as chairman. The act provided that the powers of the Commission were not affected by any vacancy in the Commission and that a vacancy was to be filled in the same manner and with the same limitations regarding party affiliation as the original appointment.

In addition, the act provided for the President, with the concurrence of a majority of the Commission, to appoint the staff director. Within the limits of its appropriations, the Commission could appoint personnel at the maximum rate for a GS-15, provided it observed civil service and classification laws. Although the Commission could continue to constitute as many advisory committees within states as it wanted, the act provided that it must constitute at least one advisory committee within each state. The Commission or any subcommittee of two or more members that was authorized by the Commission could hold hearings as it deemed advisable. A majority of the Commission or of members present at a meeting at which at least a quorum of five members was present must agree to holding a hearing. Each commissioner had the power and authority to administer oaths or take statements of witnesses under affirmation. The Commission could make rules and regulations necessary to carry out its mission.

The act also provided for employees of the previous Civil Rights Commission to be transferred to the 1983 Commission with all of their benefits. It provided for a commissioner who was not in the service of the U.S. Government to be paid at level IV of the Federal Executive Salary Schedule and for travel expenses and per diem. A commissioner who was already employed by the federal government served without pay but was compensated for travel expenses and per diem. The Commission was prohibited from accepting the services of uncompensated personnel.

## Part-Time Commission Provision of 1987; Reauthorization of 1989

Even after re-creation of the Commission on Civil Rights in 1983, the controversy surrounding the Commission continued. The House proposed to stop funding the agency in 1986, but reached a compromise with the Senate that made the Commission a part-time operation. Congress, in making the Commission part-time, cut the FY1987 appropriation for the Commission; placed restrictions on how the money could be spent; and limited the pay of commissioners, the number of employees they could hire, and the amount of money spent for consulting contracts (P.L. 99-591).<sup>10</sup> With enactment of the Civil Rights Reauthorization Act of 1989, Congress extended the Commission on Civil Rights for 22 months until September 30, 1991 (P.L. 101-180).<sup>11</sup>

## Civil Rights Reauthorization Act of 1991

For years, there were complaints that the Commission was not carrying out its fact-finding responsibilities; it was charged that only one report had been produced in two years. A criticism of the Commission was that it was spending too much time on divisive rhetoric. Others questioned whether the Commission was even needed. Civil rights spokesmen attributed the Commission's drop in production to the Reagan Administration's appointment of commissioners who opposed programs such as busing and affirmative action. The Chair of the Commission, Arthur Fletcher, however, pointed to the reduction in funding as a contributing factor to the Commission's drop in productivity.<sup>12</sup> Congress responded in 1991 by enacting the U.S. Commission on Civil Rights Reauthorization Act of 1991 (P.L. 102-167; H.R. 3350). Unlike previous Acts that allowed the Commission to submit reports to Congress and the President at the discretion of either the Commission, Congress or the President, this act *requires* the Commission to submit at least *one* annual report to the President and Congress that monitors federal civil rights enforcement efforts.

Although President George H. W. Bush requested that the Commission be reauthorized for 10 years at \$10 million for each fiscal year, Congress only extended it for three fiscal years to September 30, 1994. For FY1992, Congress authorized \$7.16 million for the agency and an additional \$1.2 million for relocation of the Commission's headquarters office. According to the law at that time, when the Commission was not authorized appropriations, it had to terminate its operation. During Senate consideration of S.Amdt. 1276 to H.R. 3350, Senator Simon stated that if no further legislation enacted a different level of appropriations for fiscal years 1993 or 1994, then the FY1992 authorization would remain in effect for each of those fiscal years. Such an arrangement enabled Congress to monitor the

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<sup>10</sup> Congressional Quarterly Almanac, 100<sup>th</sup> Congress, 1<sup>st</sup> sess., 1987, *Commerce, Justice, State Get 13.9 Billion*, vol. 43, (Washington) p. 430.

<sup>11</sup> Congressional Quarterly Almanac, 99<sup>th</sup> Congress, 2<sup>nd</sup> sess., 1986, *Commerce, Justice, State Get \$12.9 Billion*, vol. 42, (Washington) Congressional Quarterly, Inc., pp. 189-190.

<sup>12</sup> Congressional Quarterly Almanac, 102<sup>nd</sup> Congress, 1<sup>st</sup> sess., 1991, vol. 47, *Commission on Civil Rights Extended Three Years*, pp. 294-295.

Commission each year to determine if it was accomplishing its goals, but did not, as in the past, require the Commission to shut down prior to September 30, 1994. This final compromise reflected the concerns of some Members of Congress who wanted to closely monitor the Commission and those who felt that a short reauthorization would force the Commission to focus too much on its own survival.<sup>13</sup> According to the *Congressional Quarterly Almanac*, Commission officials were unhappy with the final provisions, believing they needed more money and a longer authorization to meet congressional goals.<sup>14</sup>

## Civil Rights Commission Amendments of 1994

The Civil Rights Commission Amendments Act of 1994 (P.L. 103-419) amended the U.S. Commission on Civil Rights Act of 1983. Among other provisions, it reauthorized the Commission until September 30, 1996. Although authorization for the Commission has expired, other provisions of P.L. 103-419 not only require that the Commission establish at least one advisory committee in each state but also require that one be established in the District of Columbia and for an advisory committee to be composed of citizens of that state or District. The 1994 Act amended the language of the 1983 Act, which set in place the original staggered term requirement and specified the manner in which an unexpired term was to be filled. The 1994 Act directs that “[t]he initial membership of the Commission shall be the members of the United States Commission on Civil Rights on September 30, 1994.”<sup>15</sup> The act further provides that “[t]he term of office of each member of the Commission shall be six years. The term of each member of the Commission in the initial membership of the Commission shall expire on the date such term would have expired as of September 30, 1994.”<sup>16</sup> Congress has not passed legislation to reauthorize the Commission on Civil Rights since 1994, although it has continued to appropriate funding for the agency.

## Issues

Since 1994, a number of concerns have surfaced regarding the Commission, including its authorization and funding, management, and members. In addition, the Government Accountability Office (GAO) has issued several reports on the Commission, which have been critical of its management. The following section reviews GAO reports on management issues, as well as concerns that have been raised about state advisory committees, and controversies involving Commission members. Congress may want to evaluate these concerns in its consideration of the Commission’s annual appropriations or any reauthorization legislation that it might consider.

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<sup>13</sup> U.S. Congress, *Congressional Record*, Vol. 137, Part 19, October 28, 1991, p. 28740.

<sup>14</sup> Congressional Quarterly Almanac, 102<sup>nd</sup> Congress, 1<sup>st</sup> sess., 1991, vol. 47, *Commission on Civil Rights Extended Three Years*, pp. 294-295.

<sup>15</sup> 108 Stat 4338.

<sup>16</sup> 108 Stat. 4338-4339.

## Authorization and Funding of the Commission

**Authorization of the Commission.** Since the Commission was last reauthorized in 1994, two bills have been introduced in Congress to reauthorize the agency — H.R. 3874, the Civil Rights Commission Act of 1996 (Canady) and S. 1990, Civil Rights Commission Reauthorization Act of 1996 (Brown). Both measures, among other provisions, would have extended the termination date of the Commission. H.R. 3874 would have reauthorized the U.S. Commission on Civil Rights by extending its termination date from 1996 to 2001, whereas S. 1990 would have extended the date to 1998. The House passed H.R. 3874, as amended, by voice vote on March 18, 1998. On March 19, 1998, H.R. 3874 was received in the Senate and on May 15, 1998 referred to the Subcommittee on Constitution, Federalism and Property Rights of the Committee on the Judiciary. No further action was taken on the bill. S. 1990 was referred to the Committee on the Judiciary's Subcommittee on Constitution, Federalism and Property Rights where it was approved and sent to the full committee for consideration. No further action was taken on S. 1990.

**Funding of the Commission.** Although the Commission has not been reauthorized for years, Congress has continued to appropriate funding for the agency. The **Appendix** provides funding requests and appropriations for the Commission from FY1959 through FY2009. As the appendix shows, since FY1995, appropriations for the Commission have remained at approximately \$9 million per year. As mentioned earlier in this report, some have criticized the level of appropriations for the Commission, attributing its drop in productivity, in part, to a lack of sufficient funding.

For FY2009, the Bush Administration requests \$8.8 million for the U.S. Commission on Civil Rights, the same amount requested for FY2008 and \$300 thousand above the FY2008 enacted level of \$8.5 million for the Commission. For the Commission in FY2009, both the House Appropriations Committee-approved draft Commerce, Science, and Related Agencies Appropriations bill and the Senate Appropriations Committee-reported Commerce, Science, and Related Agencies Appropriations Act, 2009 would provide \$8.8 million.<sup>17</sup>

## Management of Commission — Government Accountability Office Reports

Since the mid-1980s, the Government Accountability Office (GAO)<sup>18</sup> has released several investigatory reports on the U.S. Commission on Civil Rights. A GAO report of 1986 that focused on personnel actions of the Commission found irregularities in the hiring of permanent and temporary staff, the appointment of consultants, and in the maintenance of personnel records.<sup>19</sup> Successive GAO reports

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<sup>17</sup> U.S. Congress, Senate Committee on Commerce, Justice, Science, and Related Agencies, report to accompany S. 3182, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 110-297, p. 108.

<sup>18</sup> Formerly known as the General Accounting Office.

<sup>19</sup> U.S. General Accounting Office, *The Operations of the U.S. Commission on Civil Rights*, (continued...)

continued to recommend improvements in management of the agency, including project management, financial activities, the contracting process, and the Commission's relationship with the State Advisory Committees (SACs). For FY1990 appropriations, Congress restricted how the Commission could spend funds on regional offices, monitoring of civil rights, contracts, and hiring staff, and directed GAO to determine if the Commission had complied with the restrictions. In 1992, GAO reported that the Commission had complied with provisions of the FY1990 Appropriations Act.<sup>20</sup>

**1997 Report.** Again, in 1997, GAO found the Commission could not provide important cost information on aspects of its operations such as regional offices, the process for referring complaints, public service announcements, and one project. In addition, key documents on the Commission's decision-making process were lost, misfiled, or nonexistent. To correct these managerial problems, GAO made two general recommendations — that the agency develop and document policies and procedures that assign responsibility for management functions to the staff director and other Commission officials, and provide mechanisms to hold them accountable for proper management of day-to-day operations of the Commission. Three specific recommendations GAO made to the Commission were to update the *Code of Federal Regulations* on the Commission's operations, update the Commission's internal guidance, and establish a management information system. Not all of the commissioners agreed with GAO's findings, but all of them agreed to implement its recommendations.<sup>21</sup>

**2003 Report.** More recently, Congress asked GAO to assess the Commission's financial activities, its project management procedures, and its contracting process. In its report of October 2003, GAO found that although the Commission had improved its operations, it still was not operating in a manner completely consistent with sound management principles. Specifically, GAO recommended an external audit of the Commission's financial statements because none had been conducted in 12 years. Furthermore, GAO found the project management procedures followed by commissioners and staff in planning, implementing, and reporting the results of approved projects did not allow commissioners to review many Commission reports before they were published. According to GAO, this significantly reduced commissioners' influence in shaping findings and recommendations of a report, and policy implications of civil rights issues. GAO was concerned about commissioner control over contracting procedures, as it found key documentation was missing on how the Commission

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<sup>19</sup> (...continued)

Report Abstract, March 29, 1986.

<sup>20</sup> U.S. General Accounting Office, *U.S. Commission on Civil Rights, The Commission has Complied with FY90 Appropriation Act Provisions*, May 1992, pp. 1-2.

<sup>21</sup> U.S. General Accounting Office, *U.S. Commission on Civil Rights, Agency Lacks Basic Management Controls*, GAO/T-HEHS-97-177, pp. 2, 11-12.

awarded contracts. Also, it reported that the Commission's contracting activities did not comply with established federal regulations.<sup>22</sup>

These findings were not unchallenged as Les Jin, then Commission staff director, observed that the Commission had significantly improved its management structure and operational oversight since GAO's 1986 and 1997 reports.<sup>23</sup> He stated that GAO misinterpreted the purpose and duties of commissioners. According to him, historically, the Commission's career civil servants researched and drafted reports and based conclusions on the facts; however, commissioners have the power to change this process. Mr. Jin also believed the Commission's contract practices were fundamentally sound, noting that any deficiencies that GAO found were not based on fraud, abuse, or managerial impropriety. Despite disagreeing with GAO findings, Jin stated that the Commission accepted and had already started to institute GAO's recommendations, but would not be able to implement all of them because of limited funding.<sup>24</sup> In its report of 2004, GAO found that the Commission still had not implemented three of the four recommendations for improving the agency's management and procurement practices.<sup>25</sup>

**2006 Report.** In 2006, GAO reported on the Commission's quality assurance policies for its products. GAO found that the Commission lacked policies for ensuring the objectivity of national products, reports, briefings, or hearings.<sup>26</sup> GAO reported that the agency lacked a policy for ensuring varied perspectives in its national office reports; neither did the Commission have a policy for determining when and how to select external reviewers. The GAO report compared the Commission's policy on using external reviewers with the National Academies and the Congressional Budget Office — agencies that use external reviewers to assess the completeness, balance, and objectivity of their reports. According to GAO, the guiding principle used by these agencies is "the more controversial the topic, the greater the number of reviewers they use."<sup>27</sup>

An Inspector General, retained by the Commission, and the staff director of the Commission recommended several procedures to address these concerns, including mandatory use of external reviewers (paid or unpaid) to certify that agency procedures were followed. Projects/reports can be assigned to different responsible project offices such as the Office of Civil Rights Evaluation, the Office of General Counsel, or others, which then would ensure that agency procedures are followed.

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<sup>22</sup> U.S. General Accounting Office, *U.S. Commission on Civil Rights, More Operational and Financial Oversight Needed*, GAO-04-18, Highlights, pp. 24.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, pp. 40-50.

<sup>25</sup> U.S. Government Accountability Office, *Management Could Benefit from Improved Strategic Planning and Increased Oversight*, GAO-05-77, Highlights.

<sup>26</sup> U.S. Government Accountability Office, *U.S. Commission on Civil Rights, The Commission Should Strengthen Its Quality Assurance Policies and Make Better Use of Its State Advisory Committees*, GAO-06-343, Highlights.

<sup>27</sup> *Ibid.* pp. 13-15.

Each responsible project office would then submit reports to the Commission for subsequent review and approval. The Office of the Staff Director would certify that input from program staff, regional offices, SACs and others was sought.<sup>28</sup>

## State Advisory Committees

The Civil Rights Act of 1957, as amended, requires the Commission to establish an advisory committee in each of the 50 states and the District of Columbia.<sup>29</sup> Each state committee has a charter, valid for a two-year term, which it uses as a basis for operation and for selecting its members. Members of a State Advisory Committee (SAC) are recommended by the regional director of their area, approved by the Commission staff director, and voted on by Commissioners. SAC members serve without compensation. They may be reimbursed for per diem subsistence allowance and travel expenses.<sup>30</sup> Citizens who volunteer to serve on the committee must be familiar with local and state civil rights issues. The Commission can renew a state advisory committee charter.<sup>31</sup>

The purpose of State Advisory Committees (SACs) is to

- inform the Commission on civil rights matters in their state, such as denial of the right to vote based on discrimination or fraud and denial of equal protection of the law; and advise the Commission concerning the preparation of reports to the President and the Congress;
- receive reports, suggestions, and recommendations from persons in both public and private sectors in each state; initiate and offer advice and recommendations to the Commission when requested; and
- observe open hearings or conferences that the Commission holds within a state.

SACs hold open forums, public meetings and formal hearings to obtain information on current civil rights issues in their states.<sup>32</sup> Collaborative reports involving more than one SAC have covered such topics as state enforcement of nondiscrimination requirements in educational programs, federal affirmative action efforts in mid-America, the burning of African-American churches in Alabama, the impact of federal immigration laws on communities in the southwest, participation of minority and women contractors in the northeast corridor, and energy and civil

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<sup>28</sup> Information received from U.S. Commission on Civil Rights, Chris Byrnes, Chief, Regional Programs Coordination Unit, September 23, 2008.

<sup>29</sup> P.L. 85-315.

<sup>30</sup> 45 CFR 703.9.

<sup>31</sup> GAO, U.S. Commission on Civil Rights, GAO-06-343, p. 9.

<sup>32</sup> [www.usccr.gov/pubs/sac/in04041/com.htm](http://www.usccr.gov/pubs/sac/in04041/com.htm); GAO, U.S. Commission on Civil Rights, GAO-06-343, p. 23



rights.<sup>33</sup> According to GAO, the Commission expects SACs to complete one project every two years, provided funding and staff permit. In addition, the Federal Advisory Committee Act (FACA)<sup>34</sup> (which defines how federal advisory committees operate) requires agencies to ensure that committees have adequate staff, quarters, and funds for conducting their business. Since 1980, SACs have accounted for 200 of 254 reports issued by the Commission. However, the productivity of SACs has declined since 2000.<sup>35</sup> In surveys of SACs and interviews with committee members, GAO heard complaints that (1) reduced funding had resulted in limited meetings and travel and reductions in regional staff who provide essential operational support, and (2) the Commission did not review their reports in a timely manner.<sup>36</sup>

**Changes in SACs.** Under the old guidelines and policy of the Commission, SAC members were appointed for a two-year term (the length of the charter) with no limits on the number of terms. The Commission wanted SAC membership to reflect the state's population with respect to ethnicity, race, religion, sex, political affiliation, age, and disability status. It required a minimum minority group membership on the SACs of 40% or not more than 65% and "a diversity of experience and knowledge from business, labor, and other perspectives."<sup>37</sup>

In its 2006 report, GAO found that members of SACs reflected the state populations, e.g., political affiliation and sex, although they generally relied more heavily on minority populations, especially blacks and religious minorities. For instance, whites comprised 35% of committee positions while constituting 72% of the national population. Blacks comprised 29% of committee members while constituting 13.4% of the national population. On the other hand, Hispanics with membership of 15% were comparable to their national proportion of the population (15%). Disabled individuals constituted 16% of membership compared to the proportion of their national population, 19%. Historically, professions of committee members included state legislators, university professors, lawyers, and ministers, which allowed them to be influential on local civil rights issues.<sup>38</sup>

In February 2006, the Commission changed the criteria for membership in SACs, which affects the term of committee members, their diversity, political representation, knowledge, and potentially alters committee membership. New rules limit appointments to a maximum of 10 years or five 2-year terms.<sup>39</sup> The Commission objected to the then-existing regulations and policies on SAC membership (which were established by members of an earlier Commission) that it

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<sup>33</sup> U.S. Commission on Civil Rights, State Advisory Committee Reports, Joint Reports. [usccr.gov/pubs/pubsndx.htm](http://usccr.gov/pubs/pubsndx.htm).

<sup>34</sup> 5 U.S.C. Appendix, Section 5; also see [<http://www.facadatabase.gov>].

<sup>35</sup> GAO, U.S. Commission on Civil Rights, GAO-06-343, pp. 27-31.

<sup>36</sup> GAO, U.S. Commission on Civil Rights, GAO-06-343, pp. 32-34.

<sup>37</sup> GAO, U.S. Commission on Civil Rights, GAO-06-343, pp. 25-26.

<sup>38</sup> GAO, U.S. Commission on Civil Rights, GAO-06-343, pp. 65-66; [<http://www.census.gov/Press>].

<sup>39</sup> Ibid.

viewed as “highly restrictive,”<sup>40</sup> replacing them with ones that emphasize knowledge of academic technical skills, such as law and statistical analysis. Among other reasons, the Commission chair explains this change as a response to staff shortages in regional offices. The Commission intends to have SAC members themselves contribute to the writing of reports; to undertake such a task, the Commission believes committee members must have expertise.<sup>41</sup>

***Political Representation on SACs.*** The old criterion for political representation required SAC membership to reflect the bipartisan character of the Commission. Although the Commission’s new criteria require SAC members to be of both political parties, its staff director reportedly informed GAO that having one minority member on a committee of 11 would fulfill this requirement. This interpretation appears to conflict with the FACA requirement that SAC members be fairly balanced both “in points of view and functions to be performed.”<sup>42</sup> Also, GAO found no reference to political independents in the commission’s new criteria on political representation, although they comprise about a quarter of SAC membership.<sup>43</sup>

***Problems Concerning the SACs.*** In its 2006 report, GAO noted the important, historical relationship between the Commission and the SACs and recent changes the Commission has made in the criteria for membership on a SAC. GAO identified several problems concerning the relationship of the Commission with SACs. According to this report, the Commission had not issued timely renewal of state advisory committee charters, leaving a majority of SACs without current charters that authorize them to operate; 38 of the 51 SACs lacked authorizing charters. Since the GAO publication and institution of the above identified changes, the Commission has reported that it has rechartered 27 of 51 SACs, leaving 24 state advisory committees without charters.<sup>44</sup> Although SACs, as in the past, have continued to operate while their applications for renewal are being considered, FACA prohibits SACs from meeting or conducting business without a charter.<sup>45</sup>

GAO also found that the Commission had not sought the views of the SACs when making organizational changes that directly affect the committees or “fully integrated the committees into the accomplishment of its mission.”<sup>46</sup> The report found that, generally, the Commission had not incorporated the role of the SACs into its strategic planning and decision-making processes. For example, SAC input was not sought when the Commission approved the staff director’s proposal to reduce expenses by closing two regional offices in fiscal year 2006. In addition, regional

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<sup>40</sup> Information received from U.S. Commission on Civil Rights, Chris Byrnes, Chief, Regional Programs Coordination Unit, July 17, 2008 (hereafter, Byrnes).

<sup>41</sup> GAO, U.S. Commission on Civil Rights, GAO-06-343, p. 26.

<sup>42</sup> Ibid.

<sup>43</sup> GAO, U.S. Commission on Civil Rights, GAO-06-343, p. 25.

<sup>44</sup> Byrnes, July 17, 2008.

<sup>45</sup> GAO, U.S. Commission on Civil Rights, GAO-06-343, pp. 23, 27.

<sup>46</sup> Ibid., p. 2.

directors, the liaisons to SACs, were not notified of the closings until three days after the decision had been made; two regional directors learned of the decision from sources outside the Commission. The SACs were not involved in development of the Commission's draft strategic plan until congressional staff asked about the SACs' role in it. According to the report, only after several Members of Congress commented on the lack of SACs' participation in development of new criteria for state committee membership were they included in discussion on the proposal. In reply to this charge, the staff director stated that the perspectives of 13 SACs with active charters were sought and about half of them agreed to extend SACs' charters and the chairs to four years.<sup>47</sup>

GAO recommended that the Commission modify its review process to ensure that various and balanced perspectives were included in final products. According to a GAO spokesperson, the Commission has implemented all of the recommendations included in the GAO 2006 report.<sup>48</sup>

## Controversies Surrounding Commissioners

**Kirsanow Appointment.** President Bush's nomination in 2001 of Peter Kirsanow to the U.S. Commission on Civil Rights was opposed by some commissioners and some civil rights advocates for two primary reasons. First, some commissioners said they did not believe that a vacancy existed on the Commission. In November 1995, President Clinton appointed Judge Leon Higginbotham to a six year term on the Commission. Judge Higginbotham died in December 1998, before the expiration of his term of service, which would have been November 29, 2001. On appointing Victoria Wilson to the vacancy in December 1998, President Clinton, in his appointment certificate, indicated that her term would expire on November 29, 2001. However, her attorney, Leon Friedman, claimed this was a clerical error. Friedman was reported in the *Washington Post* as stating that statutes governing the Commission did not allow for the appointment of members to interim or acting status and that all terms were for six years.<sup>49</sup>

On December 6, 2001, President Bush appointed Peter Kirsanow, a labor lawyer and former chairman of the Center for New Black Leadership, to replace Victoria Wilson on the Commission. According to an article in the *Washington Post*, Kirsanow's appointment was opposed by some civil rights advocates and commissioners.<sup>50</sup> Moreover, some commissioners did not believe that a vacancy existed on the Commission.<sup>51</sup> Because the Commission on Civil Rights Act of 1994

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<sup>47</sup> GAO, U.S. Commission on Civil Rights, GAO-06-343, pp. 32-34.

<sup>48</sup> Telephone conversation with a GAO spokesperson on September 24, 2008.

<sup>49</sup> Darryl Fears, "Lawsuit Is Filed to Seat Bush Rights Panel Choice," *The Washington Post*, December 11, 2001.

<sup>50</sup> Darryl Fears, "A Deepening Divide on U.S. Civil Rights Panel; Controversy Over Appointment Highlights Historical Disagreements Over Commission's Role," *The Washington Post*, December 18, 2001, p. A03.

<sup>51</sup> Sabrina Eaton, "Cleveland Lawyer Fights for Seat on Rights Board," *Plain Dealer*, (continued...)

provides that all commissioners serve six-year terms, Commission Chairperson Mary Frances Berry insisted that Wilson's term did not expire for six years. According to newspaper accounts, Berry and other commissioners charged that President Bush's appointment of a new commissioner was intended to "muzzle" the Commission because it released a report concluding that minority rights had been violated in the 2000 presidential election in Florida.<sup>52</sup>

In establishing the Commission as an independent entity, insulated from political influence, Congress, through the act of 1983, provided for lengthy, fixed, staggered terms of office, political balance in the membership of the Commission, and protection of Commission members from presidential removal by limiting removal only for neglect of duty or malfeasance in office. On the basis of provisions of the Civil Rights Act of 1983 that related to the terms of commissioners, the Bush Administration maintained that Commissioner Wilson's appointment ended on November 29, 2001, because she was appointed to fill the vacancy caused by Judge Higginbotham's death. It argued that the Civil Rights Act of 1994 intended to preserve the same staggered six-year term for commissioners that was provided in the 1983 Act. Otherwise, it would allow a president before leaving office to appoint a majority of his people to the Commission.<sup>53</sup> In 2001, when Peter Kirsanow appeared at a meeting of the Commission, it refused to seat him by a vote of 5-3.<sup>54</sup> The Bush Administration responded by filing a federal suit seeking removal of Commissioner Wilson and the seating of Kirsanow. U.S. District Judge Gladys Kessler ruled in Wilson's favor. On appeal, a three judge panel of the U.S. Court of Appeals for the D.C. Circuit unanimously ruled for Kirsanow, "holding that the 1994 Act did not disrupt the staggering of terms of Commission members established in the 1983 Act."<sup>55</sup>

The second reason voiced for opposition to the appointment of Kirsanow reportedly was his perceived hostility to civil rights policies supported by many black Americans. Critics charged that Kirsanow opposes affirmative action and, with no history in the struggle for civil rights, was appointed to the Commission largely

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<sup>51</sup> (...continued)

December 17, 2001, p. 28.

<sup>52</sup> Hanna Rosin, "Bush Swears In Disputed Choice for Rights Panel," *The Washington Post*, December 7, 2001, p. A39; Katharine Q. Seelye, "U.S. Rights Commission Blocks Seating of Bush Nominee," *The New York Times*, December 8, 2001 (nytimes.com); Darryl Fears, "Rights Panel Spurns Bush Choice," *The Washington Post*, December 8, 2001, p. A2.

<sup>53</sup> Daniel Levin, Acting Assistant Attorney General, Office of Legal Counsel, Memorandum Opinion for the Deputy Counsel to the President, "Terms of Members of the Civil Rights Commission," November 30, 2004; Rosin, "Bush Swears In Disputed Choice for Rights Panel," *The Washington Post*, December 7, 2001, p. A39.

<sup>54</sup> Fears, "A Deepening Divide on U.S. Civil Rights Panel," *The Washington Post*, p. A03; Katharine Q. Seelye, "U.S. Rights Commission Blocks Seating of Bush Nominee," *The New York Times*, December 8, 2001 (nytimes.com); Fears, "Rights Panel Spurns Bush Choice," *The Washington Post*, December 8, 2001, p. A2.

<sup>55</sup> *United States v. Wilson*, 351 U.S. App. D.C. 261 (D.C. Cir. 2002) *cert denied*, 537 U.S. 1028 (2002).

because of his race. According to critics, his mission is “to lobby against the policies responsible for [his] prominence.”<sup>56</sup> In appointing Peter Kirsanow to the Commission, the Bush Administration described Mr. Kirsanow as an “extraordinarily well-qualified individual”<sup>57</sup> who practiced labor and employment law.

With the appointment of Kirsanow to the Commission, the panel was evenly divided ideologically between members who tended to agree with Mr. Kirsanow that “all civil rights legislation that can be passed has been passed and it is time to go in a new direction”<sup>58</sup> and those who wanted to continue the traditional approach of pointing out civil rights violations and pursuing policy changes.<sup>59</sup>

**Political Balance on the Commission.** The most recent controversy concerning appointees to the Commission involved two current commissioners who reportedly changed their party affiliation. As noted earlier, no more than four members of the same political party can serve on the Commission at any one time.<sup>60</sup> The vote of five commissioners is needed to approve a report or make a recommendation.

**Abigail Thernstrom and Gail Heriot.** On December 6, 2004, President Bush appointed two Republicans to the Commission, Gerald A. Reynolds (as chair) and Ashley L. Taylor, bringing the total number of Republican commissioners to four. Abigail Thernstrom was originally a congressional appointee to the Commission as a Republican.<sup>61</sup> However, *The Boston Globe* asserts that in October 2004, six weeks before President Bush appointed her to the Commission as vice-chairwoman (and also before the Reynolds and Taylor appointments), she changed her political affiliation to Independent. According to this same report, Gail Heriot changed her party affiliation from Republican to Independent in 2007, seven months before Senate Republicans appointed her to the Commission. Further, the report asserts that when questioned about the switch in parties, both Thernstrom and Heriot denied that their change in registration had anything to do with the Commission.<sup>62</sup>

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<sup>56</sup> Trevor Coleman, *New Civil Rights Official Out of Touch with Black America*, Detroit Free Press, May 17, 2002.

<sup>57</sup> Congressional Record, *Concern for the Integrity and Reputation of the United States Civil Rights Commission*, December 6, 2001, pp. S12530-S12531.

<sup>58</sup> Steve Miller, *Bush’s Choice to Join Civil Rights Panel; High Court Won’t Review Ruling Upholding Appointment*, The Washington Times, November 19, 2002, p. A05.

<sup>59</sup> Facts on File World News Digest, *Civil Rights: Court Rejects Bush Pick for U.S. Commission*, February 2, 2002, p. 91B3.

<sup>60</sup> P.L. 98-183.

<sup>61</sup> On January 6, 2001, House Majority Leader Tom DeLay had appointed Thernstrom to the Commission to complete the term of Carl Anderson. She was reappointed to the Commission in February 2002.

<sup>62</sup> Savage, “Maneuver Gave Bush a Conservative Rights Panel,” *The Boston Globe*, November 6, 2007, p. A1.

The current website of the Commission indicates that Thernstrom's political affiliation is Republican and Heriot is an Independent.<sup>63</sup>

**Russell Redenbaugh.** In another potential example of changing party affiliation, Charles Savage, of *The Boston Globe*, reports that former commissioner Russell Redenbaugh (who resigned in 2005) appears to have changed party affiliation twice during his tenure on the Commission, most recently in 2003, when he switched from Republican to Independent. This move created a Republican opening on the Commission.<sup>64</sup>

**Party Affiliation Provisions.** The political balance provisions of the Civil Rights Act of 1983<sup>65</sup> do not address whether the party affiliation of a commissioner is considered only at the time of appointment or whether a commissioner who changes party identification would be bound by the old party affiliation ceiling or not. In December 2004, the Department of Justice (DOJ) issued a memorandum to the White House, in response to a request for an interpretation of this issue. The DOJ Office of Legal Counsel (OLC) wrote:

Specifically, you have asked whether, in the appointment of a new member to the Commission, the relevant consideration is the party affiliation of the other members at the time the new member is appointed (which would take into account any changes in party affiliation by those other members after their appointment to the Commission), or whether it is the party affiliation of the other members at the time those other members were appointed (which would not take into account any such post-appointment changes in party affiliation). We conclude that the plain language of the statute makes clear that the relevant consideration is the party affiliation of the other members at the time the new member is appointed.<sup>66</sup>

Critics of this interpretation charge that it violates the spirit of the law, which intended to achieve a bipartisan approach to investigating alleged violations of civil rights by limiting the number of commissioners affiliated with a particular party.<sup>67</sup> Through the Leadership Conference on Civil Rights and Citizens for Responsibility and Ethics in Washington, some civil rights groups (including the National

<sup>63</sup> Although the website of the U.S. Commission on Civil Rights indicates that Commissioner Thernstrom's political affiliation is Republican, efforts to determine if or when she changed her political affiliation to Republican have been unsuccessful. As of this date, Commissioner Thernstrom has not responded to an inquiry from CRS seeking clarification of her political affiliation.

<sup>64</sup> Charles Savage, "Maneuver Gave Bush a Conservative Rights Panel," *The Boston Globe*, November 6, 2007, p. A1.

<sup>65</sup> 42 U.S.C. 1975(b)

<sup>66</sup> Daniel Levin, Acting Assistant Attorney General, Department of Justice, Office of Legal Counsel, "Memorandum Opinion for the Deputy Counsel to the President," December 6, 2004.

<sup>67</sup> Charles Dervarics, "President Bush Seeks Sweeping Changes on Civil Rights Panel: Gerald Reynolds to Replace Outgoing Chairwoman Mary Frances Berry," *Black Issues in Higher Education*, December 30, 2004.

Association for the Advancement of Colored People, Mexican American Legal Defense and Educational Fund, National Women's Law Center, and National Congress of American Indians) also challenge OLC's interpretation of the statutory provision concerning the political affiliation of commissioners. These groups argue that when sitting commissioners are allowed to switch party-affiliation, it undermines congressional intent to maintain political balance on the Commission. They have requested Attorney General Mukasey to rescind the OLC opinion.<sup>68</sup>

Over the past 20 years, some allege that partisanship on the Commission has increased. As civil rights issues have become more complex, ideological differences among commissioners contribute to disputes over how to identify and address a civil rights concern. In addition, it has been charged that partisanship interferes with the basic operation of the Commission.

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<sup>68</sup> Wade Henderson, Leadership Conference on Civil Rights and Melanie Sloan, Citizens for Responsibility and Ethics in Washington, et al., letter to Department of Justice, Attorney General Michael B. Mukasey, January 29, 2008.

## Appendix. Commission Funding History

**Table 1. Funding for the  
U.S. Commission on Civil Rights, 1959-2009**  
(\$ in millions)

Fiscal Year	Budget Request	Appropriations
1959	0.75	0.78
1960	0.29	0.78
1961	0.99	0.89
1962	0.30	0.89
1963	0.99	0.96
1964	0.99	0.99
1965	0.99	1.28
1966	1.72	1.91
1967	2.70	2.49
1968	2.79	2.65
1969	2.65	2.65
1970	2.65	2.70
1971	3.20	3.39
1972	3.80	3.82
1973	4.65	4.94
1974	5.81	5.90
1975	6.91	7.00
1976	7.84	8.05
1977	9.54	10.07
1978	10.54	10.85
1979	10.75	10.85
1980	11.37	11.72
1981	12.14	12.15
1982	12.96	12.32
1983	11.63	11.98
1984	12.18	12.01
1985	12.75	12.87



## CRS-22

Fiscal Year	Budget Request	Appropriations
1986	12.06	11.77
1987	12.58	7.52
1988	9.80	5.71
1989	13.38	5.71
1990	7.86	5.71
1991	10.15	7.08
1992	10.78	7.00
1993	9.00	7.78
1994	8.00	7.78
1995	10.20	9.00
1996	11.40	9.00
1997	11.40	9.00
1998	11.00	8.74
1999	11.00	8.90
2000	11.00	8.90
2001	11.00	8.90
2002	9.10	9.10
2003	9.58	9.10
2004	9.00	9.10
2005	9.00	9.10
2006	9.00	9.05
2007	9.31	8.80
2008	9.00	8.46
2009	8.80	

**Source:** For each year, the Budget of the U.S. Government, Appendix.