

New Federal Initiatives Project

**The Proposal to Establish a U.S. Commission
on Civil and Human Rights**

**By
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Several dozen advocacy organizations are promoting a proposal to recreate the U.S. Commission on Civil Rights as a U.S. Commission on Civil *and Human* Rights. This proposed legislation would authorize the newly reauthorized commission to monitor U.S. compliance with international human rights treaties and advocate for U.S. adoption of international human rights treaties. It would also create a new process for commissioner and executive staff appointments. Advocates argue that the proposal will strengthen human rights protections in the United States. Critics respond that the proposal is not at all what it appears to be and that it would, as currently formulated, likely accomplish the opposite of its stated intentions.

Established in 1957, the U.S. Commission on Civil Rights is an independent, bi-partisan federal research organization (or think tank), which provides policy analysis, investigation, findings and recommendations regarding anti-discrimination law to the President and Congress.¹ Formally, its mandate is:

To investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.

To study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

To appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice....²

The Commission is composed of eight members, who serve staggered six-year terms. Four are appointed by the President, two by the Senate President pro tempore and two by the Speaker of the House of Representatives.³ The Staff Director is appointed by the President with the concurrence of the commissioners, and the General Counsel serves at the pleasure of the Staff Director.

The Civil Rights Commission's former chair, Mary Frances Berry, recommended reestablishing the agency as a "U.S. Commission on Civil and Human Rights" in the course of her book, *AND JUSTICE FOR ALL*, which remains the only full-length historical treatment of the commission.⁴ The plan has been further developed in formal reports, op-ed pieces, and congressional testimony. Its fullest exposition can be found in Catherine Powell's *HUMAN RIGHTS AT HOME*, a report for the American Constitution Society for Law and Policy.⁵ It is also embraced in a Catherine LeRoy's *RESTORING THE CONSCIENCE OF A NATION*, a report for the Leadership Conference on Civil and Human Rights Education Fund.⁶ The Leadership Conference's CEO, Wade Henderson, urged Congress to adopt the plan in testimony before the Senate Subcommittee on Human Rights and Law.⁷ A coalition said to include fifty advocacy organizations has formed an umbrella group, called the Campaign for a New Domestic Human Rights Agenda, for the purpose of advancing it.⁸

The central plank of the proposal is to authorize the commission to investigate human rights violations within the United States. First, the agency would investigate alleged violations by government officials, such as those “related to the government’s response to Hurricane Katrina or to the terrorist attacks of September 11, 2001.”⁹ Second, it would monitor U.S. compliance with international treaty obligations. Third, it would recommend new legislation and “encourage adoption” of international conventions to which the U.S. is not currently a party.¹⁰ Supporters argue that this new role would advance the commission’s historic mission as a body “devoted to the idea that all people have a right to be treated fairly because of their humanity...” and that the commission, under its current leadership, is disserving the agency’s historic mandate.¹¹ Critics argue that this expanded mandate would dilute the commission’s core focus on invidious discrimination; that it would overburden an agency already long challenged by budgetary constraints; and that it would serve as a back-door means of advancing economic redistributionism in the name of human rights.¹² Moreover, under some formulations, the commission would be permitted to use taxpayer funds to lobby for legislation or treaties.

Equally important, the proposal would change the process for appointing commissioners and executive staff. Under the proposal, the President would appoint all commissioners subject to senate confirmation, while the positions of staff director and general counsel would become career appointments.¹³ This would provide the current administration and the Congress an opportunity to change the commission’s current composition ahead of the expiration of their terms and to replace incumbent holdovers in the positions of Staff Director and General Counsel. Supporters argue that these steps are necessary to eliminate what they characterize as partisan polarization.¹⁴ They assert that the commissioner and senior staff as currently composed are an unworkable, dysfunctional entity. Critics argue that the proposal would unfairly enable Democratic officials to terminate holdovers ahead of the expiration of their terms – a concern that is heightened if the effective date of the proposed legislation is prior to the commencement of the next presidential term.¹⁵ Therefore, critics conclude that the proposal is likely to generate the same kind of partisan politicization it is intended to avert.

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¹ The commission’s public website is located at www.usccr.gov.

² 42 U.S.C. § 1975(2).

³ *Id.*

⁴ MARY FRANCES BERRY, *THE UNITED STATES COMMISSION ON CIVIL RIGHTS AND THE CONTINUING STRUGGLE FOR FREEDOM IN AMERICA* (2009).

⁵ Catherine Powell, *HUMAN RIGHTS AT HOME: A DOMESTIC POLICY BLUEPRINT FOR THE NEW ADMINISTRATION* (2008), <http://www.acslaw.org/files/C%20Powell%20Blueprint.pdf>.

⁶ CATHERINE LEROY, *RESTORING THE CONSCIENCE OF A NATION: A REPORT ON THE U.S. COMMISSION ON CIVIL RIGHTS* (2009), http://www.civilrights.org/publications/reports/commission/lccref_commission_report_march2009.pdf.

⁷ See Wade Henderson, President & CEO, Leadership Conference on Civil and Human Rights, Testimony before the Senate Subcommittee on Human Rights, *The Law of the Land: U.S. Implementation of Human Rights Treaties*, Dec. 16, 2009, <http://www.civilrights.org/advocacy/testimony/henderson-human-rights.html>.

⁸ <http://www.prnewswire.com/news-releases/coalition-of-civil-and-human-rights-organizations-calls-on-president-obama-to-live-up-to-peace-prize-by-fulfilling-human-rights-commitments-here-at-home-78895962.html>.

⁹ POWELL, *supra* note 6 at 21.

¹⁰ BERRY, *supra* note 5 at 338.

¹¹ *Id.* at 337-8.

¹² See Kenneth L. Marcus, *Fixing the U.S. Commission on Civil Rights*, ENGAGE (forthcoming 2010).

¹³ See, e.g., LeRoy, *supra* note 7 at 5.

¹⁴ *Id.* at 43.

¹⁵ See Kenneth L. Marcus, *Civil Wrongs: Mary Frances Berry's Legacy of "Ideological Food Fights*, *The Weekly Standard*, May 25, 2009 at 39.

Related Links:

"Gay but Equal?" by Mary Frances Berry, *The New York Times*, January 15, 2009: <http://www.nytimes.com/2009/01/16/opinion/16mfberry.html>

"Civil Wrongs: Mary Frances Berry's legacy of 'ideological food fights.'" by Kenneth L. Marcus, *The Weekly Standard*, May 25, 2009, Vol. 14, No. 34: <http://www.weeklystandard.com/Content/Protected/Articles/000/000/016/509gyzgg.asp>

Restoring the Conscience of a Nation: A Report on the U.S. Commission on Civil Rights, The Leadership Conference on Civil and Human Rights: <http://www.civilrights.org/publications/reports/commission/>

Leadership Conference on Civil Rights Education Fund Restoring the U.S. Commission on Civil Rights: <http://www.civilrights.org/donate/resources/issues--strategies/restoring-usccr.html>

"The Right Frontier for Civil Rights Reform" by Kenneth L. Marcus, George Mason University Civil Rights Law Journal (CRLJ), Vol. 19, No. 1, 2008:
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1284645