

**TALKING POINTS
AFFIRMATIVE ACTION**

DRAFT

**OPPORTUNITY FOR AMERICANS -- BUILDING A STRONGER
NATION**

- . Increasing opportunity for all Americans makes citizens more productive, building stronger communities and a stronger nation. This country has not yet achieved equality of opportunity or stamped out discrimination. We must help people develop their capacities so they can fully participate in our society.
- . This Administration is **against** quotas and guaranteed results. But we do need to guarantee a genuine equality of opportunity for all Americans.
- . There are affirmative action programs which have made a great deal of difference to the lives of Americans who have been disadvantaged and who, in turn, have made our country stronger. We should not move backwards on this; where we can move ahead based on need we ought to move forward.
- . The best example is the United States military, where an intense effort is made to develop peoples' capacities to fully participate and contribute as much as possible. Disadvantaged minorities have been given a chance to rise as high as their abilities can take them. In education, training, leadership, development, the military is a model -- it looks like America and it works.

REVIEWING AFFIRMATIVE ACTION PROGRAMS

- . The President has directed that the Administration undertake a review of all Federal affirmative action programs and ask: Does it work? Is it fair? Is it necessary? Does it achieve the desired objective or is there an alternative way to achieve the objective without giving a preference by race or gender?

PROTECTING ALL CITIZENS AGAINST DISCRIMINATION

- . Improperly designed or implemented affirmative action plans weaken our national community. We want to support the programs that are working, but we want to get rid of ones that are not.

Clinton Prioritizes GOP's Proposed Spending Priorities

Clinton said he would not announce conclusions of his review of federal affirmative action programs until it was complete. But in describing his view of programs that have been in place for 30 years to help minorities and women who faced generations of discrimination, he signaled a strong preference for those that broadly help move all Americans into the middle class, not ones that provide special advantages based on race or gender alone. "It's difficult to draw a conclusion that they even do what they were intended to do in the first place," he said.

A senior official cautioned Clinton "has not prejudged" the affirmative action review, due by the end of the month, and said that to conclude he plans to eliminate some or all of the set-aside type programs "would be wrong." Clinton said programs that have "most helped minorities" are those that have benefited all who need help, citing the Head Start pro-

gram, expansion of college loans, expansion of the earned income tax credit and empowerment zones that give tax breaks in depressed areas to attract investment.

Clinton said he opposes quotas but is unsure what to do in "a gray area where is a minority scholarship program or a contracting set-aside . . . that really is often got around because of the way they are written. I want to review those. I do not want to see us stop trying to develop the abilities of all Americans. I do not want to see us move away from trying to concentrate our resources in the areas of greatest need."

On other issues yesterday, Clinton said he is working on plans to safeguard U.N. peacekeepers in Croatia should they be ordered to withdraw. But he said he is intent on avoiding "a long-term commitment of American ground troops" in the region. Asked about the French demand that the United States remove diplomats accused of economic espionage, Clinton said only, "I believe we have resolved this matter with France." A senior official said later that what has been resolved is that the two countries should work out an agreement privately and not discuss it in public.

Clinton also said Mexican President Ernesto Zedillo is "moving in the right direction" to deal with the economic crisis in his country. That, Clinton said, has "turned out to be more difficult and thorny than originally had been thought." Congressional Republicans spent many of the hours before Clinton's appearance yesterday blaming him and the Democrats for killing the balanced budget amendment and challenging them to demonstrate commitment to eliminating the deficit.

House Speaker Newt Gingrich (R-Ga.) called on Clinton in a letter to revise his proposed 1996 budget that now keeps the deficit hovering close to \$200 billion by the turn of the century. "It seems to me the president should show some leadership by telling us how he would balance the budget," Gingrich told reporters.

Gingrich and other House GOP leaders promised to unveil a detailed seven-year plan early this year showing how the Republicans would balance the budget by 2002. But the leadership has repeatedly put off the deadline for presenting the plan, most recently pushing back the deadline from mid-April to some time in May. Yesterday, Gingrich appeared to be saying now he wanted the president to go first with a plan before Republicans showed their hand.

Staff writer Eric Pianin contributed to this report.

COURSE AND THE DINING CIRCLE INVITE YOU TO OUR ANNUAL


Spectacular

THE WHITE HOUSE

WASHINGTON

September 7, 1993

MEMORANDUM FOR CAROL RASCO

FROM: DONSIA STRONG 

SUBJECT: Affirmative Action

NASA has proposed creating an 8% set-aside for "socially and economically disadvantaged individuals, including women," and "historically black colleges and universities", and "other minority educational institutions," as defined in the Higher Education Act.

On at least two other occasions I have been asked to provide comments on proposals regarding affirmative action and set-asides. In the first case, DOD proposed limiting socio-economic considerations from its procurement process. During the NPR I reviewed the language which again would have cut back on the considerations provided to historically disadvantaged groups. In each case the changes sought met very strong opposition from agencies and offices within the White House.

While I believe the Administration should encourage a policy of ensuring participation for socially and economically disadvantaged individuals, I have very little guidance as to how senior advisors believe the Administration should proceed. However, I believe the attached NEC memo provides a good method and rationale for proceeding on this issue in this instance.

Please advise.

THE WHITE HOUSE

WASHINGTON

September 2, 1993

MEMORANDUM FOR GENE SPERLING

FROM: SHERYLL CASHIN

SUBJECT: **AFFIRMATIVE ACTION ISSUE -- OMB Legislative Referral
Response Due by 12 Noon, Friday, September 3.**

Attached is a draft of a letter and statutory amendment that NASA proposes to send to the Hill. The amendment would create an 8% set-aside for "socially and economically disadvantaged individuals, including women," and "historically Black colleges and universities," and "other minority educational institutions," as defined in the Higher Education Act.

Currently, NASA is required by statute to set an annual goal of 8% for contracting with this same set of identified classes of persons and entities just described. These requirements were passed as part of the VA-HUD-Independent Agencies Appropriations for FY 1990 and FY 1991, and were repeated in part in the same appropriation for FY 1993.

NASA seeks the legal authority to achieve the required 8% goal through the use of a set-aside. (In other words, because the Supreme Court has upheld as constitutional set-asides passed by Congress, NASA is seeking to gain the benefit of this legal protection before implementing a set-aside program.)

NASA offers "at least two reasons" in its sectional analysis for pursuing the set-aside. First, it says that it has not been able to meet the 8% goal by relying on the SBA's 8(a) program. It claims, incorrectly I believe, that "businesses which owned or controlled by women are not part of the section 8(a) process." (On the contrary, I have been told by SBA's Legislative Affairs office that several non-minority women have been certified to participate in the 8(a) program by meeting the SBA's criteria of economic and social disadvantage.) Second, it states that many minority-owned concerns whose products can meet NASA's requirements do not participate in the 8(a) program but cannot usually compete successfully on a full and open basis.

I suspect what is going on is that NASA is finding that it is consistently falling short of its required goal, despite the availability of minority and "disadvantaged" businesses that are qualified to contract with NASA, because these businesses face disadvantages vis-a-vis larger, more established contractors. Such disadvantages typically include discrimination by prime contractors, difficulties in meeting bonding and insurance requirements, difficulties and

discrimination in access to capital for expansion, etc.

I believe the set-aside is consistent with the direction we have discussed for affirmative action because it allows for the participation of socially and economically disadvantaged individuals. However, much of the language NASA uses is problematic.

First, NASA should be advised to articulate better, more concrete reasons for pursuing the set-aside -- reasons that reflect any structural disadvantages the identified classes face in competing for contracts. Otherwise, the language NASA uses creates the impression that a set-aside is necessary only because the identified classes are not really capable of serving NASA competently -- an impression that clearly would be wrong. If NASA cannot articulate better reasons, perhaps they do not have a clear understanding as to why their current efforts are not working. I believe that there are contexts when set-asides are necessary and this is probably one of them. However, we should be sure that a set-aside is being proposed for the right reasons and give the best reasons we have. At minimum, NASA should change or clarify its statement that the section 8(a) program does not involve women-owned firms.

Second, NASA has taken a requirement mandated by Congress to benefit small socially and economically disadvantaged businesses, women-owned business, and traditionally Black and other minority colleges and labeled it "Assistance to Achieve Contract Goal for Minorities." Consistent with the President's New Democratic message of bringing all Americans together and opposing quotas, this label ought to be changed everywhere to say, for example, "Assistance to Achieve Congressionally-Mandated Goal for Socially and Economically Disadvantaged Organizations and Individuals." All language that suggests that this is "just another program to benefit minorities" should be changed to reflect the fact that (1) any individual who can meet the SBA's criteria for social and economic disadvantage is also eligible; and (2) that this set-aside is needed to meet a Congressionally mandated goal.



National Aeronautics and
Space Administration

Washington, D.C.
20546

Office of the Administrator

85 16 1993

The Honorable Leon E. Panetta
Director
Office of Management and Budget
Executive Office of the President
Washington, DC 20503

Dear Mr. Panetta:

In accordance with Circular No. A-19, I am forwarding for Office of Management and Budget coordination and advice 25 copies of proposed legislation to add a section to the National Aeronautics and Space Administration Authorization Act for FY 1994 and 1995 entitled, "Assistance to Achieve Contracting Goals for Minorities," a draft sectional analysis thereof, and draft letters for transmitting the proposed legislation to the House and the Senate.

The purpose of the proposed new section is to provide NASA the authority to reserve acquisitions exclusively for small businesses and other organizations owned or controlled by socially and economically disadvantaged individuals, including women, and historically black colleges and universities and other minority educational institutions. Since the enactment of 42 U.S.C. 2473b in Public Law 101-144, NASA has established a goal of awarding at least 8 percent of the total value of our prime contracts and subcontracts to these designated minority business concerns and institutions. Achievement of this prescribed goal will be significantly facilitated by enactment of this set-aside authority. Of course, meeting, or even exceeding, the goal will mean increased contracting and subcontracting opportunities for minority owned or controlled entities.

Specific legislative authority to set aside procurements for participation by minority concerns will eliminate certain legal questions which might otherwise arise. Enactment of this proposed new section will give NASA the clear legal authority to limit participation in selected acquisitions to minority concerns and to permit our prime contractors to do the same with regard to subcontracting opportunities.

2

We feel that this legislative proposal will enable NASA to better meet congressional objectives and increase the number of minority concerns in the aerospace contracting community. If we may be of assistance to you during your coordination of this package, please let us know.

Sincerely,



Daniel S. Goldin
Administrator

3 Enclosures
(25 copies)



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

MEMORANDUM FOR ELAINE KAMARCK

FROM: Chris Edley *CE*

SUBJECT: National Performance Review Recommendations on Procurement Simplification

The "Reinventing Federal Procurement" draft proposes using simplified contracting procedures for acquisitions with value less than \$100,000. Such procedures would include waiver of various statutory socio-economic requirements, e.g., provisions of law providing labor standards protections and requiring non-discrimination and affirmative action. These proposals are based upon the March 1993 recommendations of the Acquisition Law Advisory Panel's review of Department of Defense contracting.

You should be aware of views that Secretary Reich has expressed relating to these waivers. In his July 21, 1993 letter to Director Panetta, Secretary Reich opposed recommendations by the Acquisition Law Advisory Panel to adopt a simplified acquisition threshold. Secretary Reich specifically opposed recommendations to waive the Davis-Bacon Act, the McNamara-O'Hara Service Contract Act, and the Walsh-Healey Act for contracts having value of less than \$100,000. These statutes require that the Government pay prevailing wages and fringe benefits on Federal construction and service contracts. Organized labor is likely to react strongly.

Secretary Reich also opposed waiving requirements designed to ensure the advancement of women, racial and ethnic minority people, Vietnam era veterans, and the disabled. He specifically opposed waiving Executive Order 11246, which requires equal employment opportunity, section 503 of the Rehabilitation Act of 1973, which requires affirmative action and nondiscrimination in the employment of people with disabilities, and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974. These waivers also would have applied to acquisitions with value less than \$100,000.

* I concur with Secretary Reich regarding opposition to the waiver of requirements that promote social inclusion, especially Executive Order 11246. We also are concerned about congressional reaction to a proposal to waive these requirements.

Attachment

cc: Philip Lader
 Allan Burman
 Isabel Sawhill

** this will be a major political problem*

EXECUTIVE OFFICE OF THE PRESIDENT

26-Mar-1996 05:26pm

TO: Stephen C. Warnath
FROM: Ashley Oliver
Office of Public Liaison
CC: Betsy Myers
SUBJECT: Affirmative action briefing

Tomorrow at 3:30 in room 180, Ellie Smeal of the Feminist Majority will be briefing Alexis Herman, Betsy Myers, and other White House staff on anti-affirmative action ballot initiatives that are going on in California and other states. We hope that you can join us.

Please let me know if you plan to attend or if you need more information.

Thanks,

Ashley Oliver



Leadership Conference on Civil Rights

1629 "K" St., NW, Suite 1010
Washington, D.C. 20006
202 / 466-3311

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Karen McGill Arrington

(*Deceased)

MEMORANDUM

TO: Members of the Press

FROM: Ralph G. Neas, Counsel to LCCR on Affirmative Action
(202-778-2340)

Richard Womack, Acting Executive Director

DATE: October 20, 1995

Update on Affirmative Action

- Senate Defeats Anti-Affirmative Action Amendments Once Again
- Bipartisan Consensus Against The Elimination of Affirmative Action Programs for Women and Minorities Remains Strong

A. Overview

Last Spring, pack journalism reigned generally in the press about the imminent demise of affirmative action programs for women and minorities. The print and electronic media chronicled daily the anti-affirmative action rhetoric of various Republican presidential candidates and congressional leaders. Many of these reports lacked balance and fairness, failing to share with the American people important facts and history regarding affirmative action. Indeed, on occasion, especially with respect to several national weekly news magazine covers, press coverage became irresponsible and inflammatory.

Despite all of this, which helped feed the conventional wisdom that affirmative action was dead, supporters of affirmative action were more determined than ever to tell the public, the press, the Clinton Administration, and the Congress the positive story of affirmative action: how well it works, why it is still needed, and how it benefits America.

"Equality In a Free, Plural, Democratic Society"

As part of the national education campaign to counter the myths and misrepresentations surrounding affirmative action, supporters also stressed what is legally permissible under affirmative action plans, and equally important, what is not permissible under such plans (quotas, preferring someone solely because of race or gender, and unqualified individuals). See enclosed National Law Journal article.

Affirmative action in the Fall of 1995, while still under attack and sure to be a major issue in 1996, is still alive. Many Republican and Democratic supporters have publicly defended it. The Clinton Administration supports it and several efforts to eliminate it have been defeated in the Senate. And even in the very conservative Supreme Court, seven out of nine justices in the damaging Adarand decision upheld the constitutionality of affirmative action and its continued need in certain circumstances. Perhaps more important politically, national polls show that a strong majority of the American public either supports or wants to improve affirmative action programs for women and minorities. Only 20-25% want to end affirmative action.

B. The Clinton Administration Position

By far the most important event of the year with respect to affirmative action was the July 19th speech of President Bill Clinton. His historic speech at the National Archives reaffirmed the President's long standing support for affirmative action and his commitment to reforming affirmative action where necessary. The President's "mend it, don't end it" approach reflects both a national and congressional bipartisan consensus.

C. Congress

1. Senate

While the press has provided substantial attention to the anti-affirmative action rhetoric of some politicians, it has not covered well what has actually happened on Capitol Hill with respect to the efforts to eliminate affirmative action. For example, Senator Phil Gramm stated publicly many times last spring that he would attach anti-affirmative action riders to all thirteen appropriations bills. Many people reading this memorandum probably do not know that the Senate, on July 20 and on September 28, defeated three Gramm anti-affirmative action amendments. On July 20, the vote was 61-36. On September 28, at least 62, perhaps as many as 65 senators, were poised to defeat his two anti-affirmative action amendments (including an amendment which would have incorporated the Dole bill into the Commerce-Justice-State appropriations bill). A number of Republican moderates and conservatives (Cohen, Domenici, Hutchison, Hatfield, Specter, and Jeffords) led the bipartisan effort to strike the Gramm amendments. Wisely, Senator Dole maneuvered the Senate into a parliamentary situation where the anti-affirmative action amendments, along with several other types of amendments, were defeated by a voice vote.

While some of the July 20 and September 28 opposition to the Gramm amendments was based on process and not on substance, there is no question that a majority of the Senate opposes the Dole bill and other bills that would eliminate affirmative action. The bottom line is that a majority of the Senate supports both affirmative action and improving affirmative action where necessary.

2. House

- a. It appears that the House leadership has decided not to bring affirmative action bills to the House floor for a vote this year. The Congressional Black Caucus and moderate Republicans have played an important role so far in that decision.
- b. Because there have been no votes (or vote counts) in the House, it is more difficult to assess the status of affirmative action in the House of Representatives. However, while it is premature to predict the outcome of votes on affirmative action, we can state, after discussions with scores of key Democrats and Republicans, that there is strong bipartisan opposition to right wing efforts to eliminate affirmative action.

D. Republican Support Outside of the Congress

Many prominent Republicans outside of Congress have expressed their concern about the efforts to eliminate affirmative action. Governor William Weld and Jack Kemp have been among those who have made a positive contribution.

In addition to Governor Weld, a number of Republican governors, including George V. Voinovich, Tom Ridge, Christine Todd Whitman, Jim Edgar, and John Rowland have expressed their problems with the Dole-Wilson-Gramm approach. According to Governor Voinovich:

A lot of us believe [affirmative action] is good for America. There may be problems with it, but you don't throw out the baby with the bath water. Making this an issue is not good for the country--or the Republican Party. (Washington Post, 8-1-95)

E. The Support of Colin Powell

Perhaps one of the most important political factors in the affirmative action debate has been the emergence of Colin Powell (not to mention the demise of the Wilson presidential campaign). Whether Powell runs for president or not, his public support of affirmative action and his opposition to quotas will have a positive impact on the debate.

It should be noted that in the presidential polling data, more than 60% of Americans support President Clinton and Colin Powell, two of the country's most public and persuasive defenders of affirmative action.

F. The Public

While the national polls on affirmative action are often times confusing and complex, they do demonstrate that a substantial majority of Americans either support affirmative action or want to keep it but improve it. Only 20-25% of those polled want to abolish it. The results are consistent with the positions of Clinton, Powell, and a majority of Members of Congress. The consistency of the positive polling data is quite remarkable considering the relentlessly negative press coverage of the past nine months.

While recent events certainly complicate the issue of race in America, we believe that in the long term they will contribute to a better understanding of the persistence of racism and sexism in America and the need for initiatives such as affirmative action to help resolve these vexing problems. And we strongly believe that politicians, like Clinton and Powell, who talk about tolerance, hope, and racial reconciliation, will continue to strike a responsive chord in American society.

G. The Leadership Conference on Civil Rights Affirmative Action Campaign.

Enclosed is a list of the members of the LCCR Steering Committee on Affirmative Action. These individuals and institutions have been meeting regularly since January to plan and implement a national strategy to save affirmative action at the national and state level. Already they have spent hundreds of hours with Clinton Administration officials, Members of Congress, and their staffs.

Also, enclosed is a list of LCCR experts on the substance of affirmative action whom you may want to consult as the affirmative action debate proceeds.

Enclosures

The Leadership Conference on Civil Rights is the nation's oldest, largest, and broadest coalition. Established in 1950, the nonpartisan coalition is the legislative arm of the civil rights movement, consisting of approximately 180 national organizations representing minorities, women, persons with disabilities, older Americans, labor, and major religious groups. During the Reagan-Bush presidencies, LCCR coordinated the national campaigns that led to the strengthening of every major civil rights law.

legal, but rare

Gov DA ~~has~~ mandate (prohibit) voluntary

Need to curtail U hardship still exists

qualified/merit

when to cut loose - transition -

AA = qualified

feeling up that A.A. has been poorly designed + not effective — we heat the solution

like debt illegal many to protect legal many

? business determines that it ~~has~~ needs to voluntarily take steps?

women

white underprivileged



Get Education Scholarship statement referred to in meeting

reappointment

alternative language to CA initiative

↓ we will face in Ct cases - where we have
filed - ↓ anticipated

Inventory of cases

white disadvantage - sharing benefit in programs

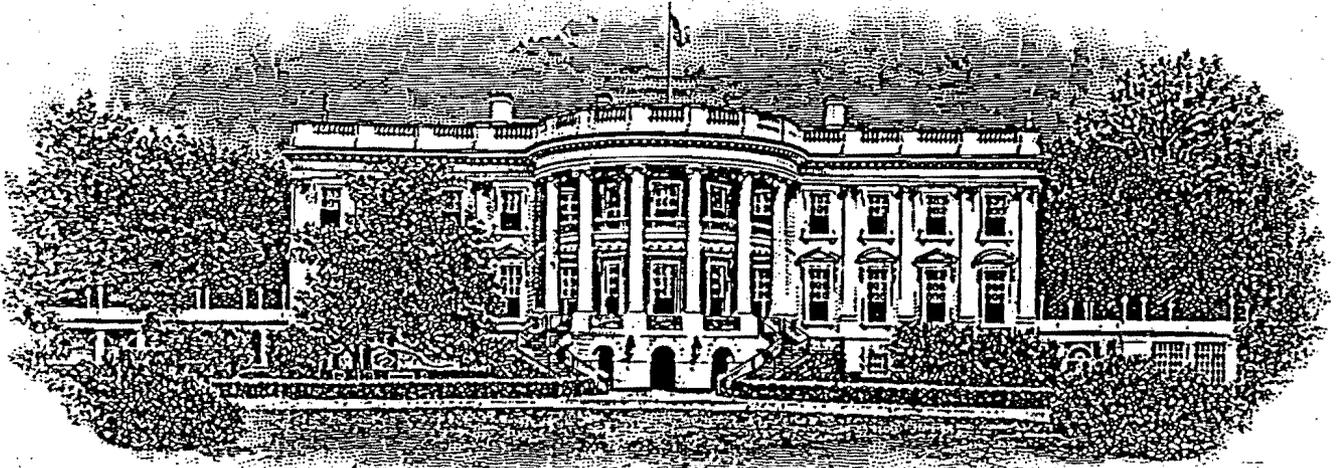
inclusion + preference

AA = qualified

fessing up to ms A.A. has been poorly designed
+ not effective - more heat than solution

TUES 3:00 Set-aside

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Ida Hernandez

FAX NUMBER: _____

TELEPHONE NUMBER: _____

FROM: Stephen Warrath

TELEPHONE NUMBER: _____

PAGES (INCLUDING COVER): _____

COMMENTS: re: Affirmative action

There are also, of course, public statements
by Deval Patrick, POTUS, the A.G. etc.
on affirmative action.

Shals