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IMPROVING AMERICA'S SCHOOLS ACT

CONFERENCE REPORT

TO ACCOMPANY

H.R. 6

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THE WHITE HOUSE

Office of the Press Secretary

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MEMORANDUM OF DISAPPROVAL

I am withholding my approval of H.R. 11, the "Revenue Act of 1992," because it includes numerous tax increases, violates fiscal discipline, and would destroy jobs and undermine small business. The urban aid provisions that were once the centerpiece of the bill have been submerged by billions of dollars in giveaways to special interests.

My Administration's agenda for tax legislation has been clear from the outset: a focused measure to encourage economic growth, address the needs of economically deprived urban and rural areas, and make a limited number of significant and broadly supported changes in the tax law. While certain provisions in H.R. 11 meet these objectives, the bill as a whole does not. Its 647 pages contain more than 600 provisions, require more than 25 new studies or reports, set up 4 new commissions and advisory groups, and mandate numerous new demonstration and pilot projects. Most of these provisions are unrelated to the true needs of the economy and the American people.

The original focus of the bill -- to help revitalize America's inner cities -- has been lost in a blizzard of special interest pleadings. In fact, the enterprise zones provisions in H.R. 11 account for less than 10 percent of the revenue cost of the measure. While the enterprise zones provisions are a step in the right direction, more than 75 percent of all seriously distressed communities are left out in the cold. In addition, the capital incentives are far too limited. My proposal would grant eligibility to all areas that meet objective criteria. My proposal also would provide a complete exclusion from capital gains taxation for all investors in enterprise zone businesses, including gains from goodwill, the principal asset created by small business.

The bill's other major urban aid provision, which authorizes assistance to distressed communities, is also inadequate. My "Weed and Seed" proposal, currently being implemented on a pilot basis, coordinates Federal assistance to drug- and crime-ridden neighborhoods and targets much of the assistance to enterprise zone communities. H.R. 11 falls short of my plan. The bill adopts a business-as-usual approach to dispensing Federal assistance. It ignores the Administration's bottom-up method of combining strong law enforcement with resources to assist residents and neighborhoods in attaining economic self-sufficiency. Finally, communities currently benefitting from the pilot program could be denied continued funding because they may not be located in enterprise zones. It is regrettable that the Congress has not included a "Weed and Seed" program in a bill that I can sign.

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(OVER)

Outreach Center, to other technology training entities, and directly to others as determined appropriate by the Secretary of Labor and the Secretary of Commerce.

SEC. 547. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal years 1995 through 1997.

(b) AVAILABILITY.—Amounts appropriated under subsection (a) shall remain available until expended.

PART E—MULTIETHNIC PLACEMENT

Subpart 1—Multiethnic Placement

SEC. 551. SHORT TITLE.

This subpart may be cited as the "Howard M. Metzenbaum Multiethnic Placement Act of 1994".

SEC. 552. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) nearly 500,000 children are in foster care in the United States;

(2) tens of thousands of children in foster care are waiting for adoption;

(3) 2 years and 8 months is the median length of time that children wait to be adopted;

(4) child welfare agencies should work to eliminate racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures; and

(5) active, creative, and diligent efforts are needed to recruit foster and adoptive parents of every race, ethnicity, and culture in order to facilitate the placement of children in foster and adoptive homes which will best meet each child's needs.

(b) PURPOSE.—It is the purpose of this subpart to promote the best interests of children by—

(1) decreasing the length of time that children wait to be adopted;

(2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and

(3) facilitating the identification and recruitment of foster and adoptive families that can meet children's needs.

SEC. 553. MULTIETHNIC PLACEMENTS.

(a) ACTIVITIES.—

(1) PROHIBITION.—An agency, or entity, that receives Federal assistance and is involved in adoption or foster care placements may not—

(A) categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a

placement decision, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) PERMISSIBLE CONSIDERATION.—An agency or entity to which paragraph (1) applies may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child.

(3) DEFINITION.—As used in this subsection, the term "placement decision" means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of the agency or entity involved to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement.

(b) EQUITABLE RELIEF.—Any individual who is aggrieved by an action in violation of subsection (a), taken by an agency or entity described in subsection (a), shall have the right to bring an action seeking relief in a United States district court of appropriate jurisdiction.

(c) FEDERAL GUIDANCE.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall publish guidance to concerned public and private agencies and entities with respect to compliance with this subpart.

(d) DEADLINE FOR COMPLIANCE.—

(1) IN GENERAL.—Except as provided in paragraph (2), an agency or entity that receives Federal assistance and is involved with adoption or foster care placements shall comply with this subpart not later than six months after publication of the guidance referred to in subsection (c), or one year after the date of enactment of this Act, whichever occurs first.

(2) AUTHORITY TO EXTEND DEADLINE.—If a State demonstrates to the satisfaction of the Secretary that it is necessary to amend State statutory law in order to change a particular practice that is inconsistent with this subpart, the Secretary may extend the compliance date for the State a reasonable number of days after the close of the first State legislative session beginning after the date the guidance referred to in subsection (c) is published.

(e) NONCOMPLIANCE DEEMED A CIVIL RIGHTS VIOLATION.—Noncompliance with this subpart is deemed a violation of title VI of the Civil Rights Act of 1964.

(f) NO EFFECT ON INDIAN CHILD WELFARE ACT OF 1978.—Nothing in this section shall be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

SEC. 554. REQUIRED RECRUITMENT EFFORTS FOR CHILD WELFARE SERVICES PROGRAMS.

Section 422(b) of the Social Security Act (42 U.S.C. 622(b)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following:

"(9) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.".

Subpart 2—Other Provision

SEC. 556. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301–1320b–13) is amended by inserting after section 1122 the following:

"SEC. 1123. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

"In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 471(a)(15) of the Act is not enforceable in a private right of action.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to actions pending on the date of the enactment of this Act and to actions brought on or after such date of enactment.

PART F—MISCELLANEOUS

SEC. 561. BUDGET COMPLIANCE.

Any authority or requirement to make funds available under this Act shall be effective only to the extent provided in appropriations Acts.

SEC. 562. DOCUMENTS TRANSMITTED TO CONGRESS.

In documents transmitted to Congress explaining the President's budget request for the Special Education account, the Department of Education shall display amounts included in the request to reflect the incorporation of the program for children with disabilities under part D of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (as such part was in effect on the day preceding the date of enactment of the Improving America's Schools Act of 1994).

SEC. 563. VOCATIONAL EDUCATION REGULATIONS.

(a) IN GENERAL.—Notwithstanding any other provision of law, beginning on the date of enactment of this Act, and ending on the date of enactment of an Act reauthorizing the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) the Department of Education's interpretation of the Carl D. Perkins Vocational and Applied Technology Act relating to—

Waste Management Education Research Consortium (WERC)

1. The Senate amendment authorizes the Secretary to establish a partnership of Department of Energy laboratories, academic institutions, and private sector industries to conduct environmentally related education programs, including programs involving environmentally conscious manufacturing and waste management activities that have undergraduate and graduate educational training as a component.

The House recedes.

The Senate amendment establishes "The Multi-Ethnic Placement Act of 1994", the purpose of which is to decrease the length of time that children wait to be adopted, to prevent discrimination in the placement of children on the basis of race, color or national origin, and to facilitate the identification and recruitment of foster and adoptive families that can meet children's needs.

The House recedes with amendments replacing references to "racial identity needs" with "racial background" and requiring an agency to comply with this subtitle not later than 6 months after publication of the guidance referred to in subsection (c), or 1 year after enactment, whichever is sooner.

MULTIETHNIC PLACEMENT

Subtitle A—Multiethnic Placement

Multiethnic Foster Care and Adoption Placements

Title VI of the Civil Rights Act of 1964 provides that programs that receive federal funds cannot discriminate on the basis of race, color, or national origin. Although race, color, or national origin may not be used as a basis for providing benefits or services, the federal policy guidelines that interpret Title VI's meaning in the context of adoption and foster care permit officials to consider these factors in making placements. The guidelines state that: "In placing a child in an adoptive or foster home it may be appropriate to consider race, color, or national origin as one of several factors . . . This policy is based on unique aspects of the relationship between a child and his or her adoptive or foster parent. It should not be construed as applicable to any other child welfare or human services area covered by Title VI."

Subtitle B—Other Provision

Effect of Failure to Carry Out State Plan

The "State plan" titles of the Social Security Act include Aid to Families with Dependent Children (AFDC) (Title IV–A), Child Welfare Services (Title IV–B), Child Support and Establishment of Paternity (Title IV–D), Foster Care and Adoption Assistance (Title IV–E), Job Opportunities and Basic Skills Training (JOBS) (Title IV–F), and Medicaid (Title XIX). Under these titles, as a precondition of funding, each participating State is required to develop a written "State plan" that meets certain statutory requirements in order to be approved by the Secretary of the Department of Health and Human Services (HHS).

The Adoption Assistance and Child Welfare Act of 1980 amended the Social Security Act to require States to provide in their Title IV–E plans that, in the case of each child, reasonable efforts will be made (a) prior to the placement of the child in foster care, to prevent or eliminate the need for removal of the child from his home, and (b) to make it possible for the child to return to his home (sec. 471(a)(15)).

On March 25, 1992, the U.S. Supreme Court held in *Suter* v. *Artist M.*, that the "reasonable efforts" clause does not confer a federally-enforceable right on its beneficiaries, nor does it create an implied cause of action on their behalf. In rendering its opinion, the Court also stated that although section 471(a) does place a requirement on the States, that requirement "only goes so far as to ensure that the States have a plan approved by the Secretary which contains the 16 listed features."

House Bill

No provision.

Senate Amendment

The official title of the Senate Amendment is the Multiethnic Placement Act of 1994. The stated purpose of the Multiethnic Placement Act is to decrease the length of time that children wait to be adopted and to prevent discrimination in the placement of children on the basis of race, color or national origin. It has the following provisions:

Prohibition

Agencies or entities receiving Federal funds who are involved in adoption or foster care placements may not, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved: (1) categorically deny to any person the opportunity to become an adoptive or foster parent, or (2) delay or deny the placement of a child for adoption or into foster care, or otherwise discrimination in making a placement decision.

Permissible Consideration

Any agency or entity may consider the race, color or national origin of child as a foster in making a placement decision if the factor is relevant to the best interests of the child involved and is considered in conjunction with other factors.

Definition

The term "placement decision" means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of the agency or entity involved to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement.

Limitation

The Secretary of HHS is prohibited from providing funds under Title IV–E of the Social Security Act for placement and administrative expenditures to any agency or entity that is not in compliance with the anti-discrimination policy outlined above.

Equitable Relief

The Act would provide a right to bring an action seeking relief in U.S. district court to any individual who is aggrieved by a violation of the anti-discrimination policy outlined above.

Construction

Nothing in the Multiethnic Placement Act shall be construed to affect the application of the Indian Child Welfare Act.

CONFERENCE AGREEMENT

Subtitle A—Multiethnic Placement

Multiethnic Foster Care and Adoption Placements

The conference agreement follows the Senate amendment with the following modifications:

Purpose

Change the purpose to read: It is the purpose of this Act to promote the best interests of children by: (1) decreasing the length of time that children wait to be adopted; (2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and (3) facilitating the identification and recruitment of foster and adoptive families that can meet children's needs.

Permissible Consideration

Change permissible consideration to read: An agency or entity to which the prohibition against discrimination applies may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of the child of this background as one of a number of factors used to determine the best interests of a child.

Limitation

Substitute the following language: Noncompliance with this Act constitutes a violation of Title VI of the Civil Rights Act of 1964.

Amendment to Title IV–B Child Welfare Services program

Add the following Title IV–B State plan requirement: The State plan must provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.

Federal Guidance and Deadline for Compliance

Add the following: Not later than 6 months after enactment the Secretary of HHS must publish guidance to concerned public and private agencies and entities with respect to compliance with the Multiethnic Placement Act. An agency or entity that receives Federal assistance and is involved with adoption or foster care placements shall comply not later than 6 months after publication of guidance or 1 year after enactment, whichever is sooner. In cases where a State demonstrates to the Secretary's satisfaction that a

particular practice cannot be changed without amending State law, the Secretary may extend the compliance date for such State a reasonable number of days after the closing of the first State legislative session beginning after the Federal guidance is published.

Subtitle B—Other Provision

Effect of Failure To Carry Out State Plan

The provision would amend Title XI of the Social Security Act by adding a new section that reads as follows: "In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter* v. *Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter* v. *Artist M.* that section 471(a)(15) of the Act is not enforceable in a private right of action."

The intent of this provision is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to the decision in *Suter* v. *Artist M.*, while also making clear that there is no intent to overturn or reject the determination in *Suter* that the reasonable efforts clause to Title IV–E does not provide a basis for a private right of action.

The amendment would apply to actions pending on the date of enactment and to actions brought on or after the date of enactment.

For consideration of the House bill and the Senate amendment (except for sections 601–603 and 801–805):

WILLIAM D. FORD,
GEORGE MILLER,
DALE E. KILDEE,
PAT WILLIAMS,
MAJOR R. OWENS,
TOM SAWYER,
DONALD M. PAYNE,
JOLENE UNSOELD,
PATSY T. MINK,
JACK REED,
TIM ROEMER,
ELIOT L. ENGEL,
XAVIER BECERRA,
GENE GREEN,
LYNN C. WOOLSEY,
CARLOS ROMERO-BARCELÓ,
KARAN ENGLISH,
TED STRICKLAND,
ROBERT A. UNDERWOOD,

The excitement over the high speed rail demonstration run between Portland and Bellingham is testament to the support this program will receive. Once we have high speed rail up and running in the Northwest, I am certain we will wonder how we ever got along without it.

Mr. BUMPERS. I move that the Senate concur in the House amendment.

The PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. BUMPERS. I move to reconsider the vote.

Mr. LOTT. I move to lay that on the table.

The motion to lay on the table was agreed to.

CORRECTING THE ENROLLMENT OF S. 1312

Mr. BUMPERS. Mr. President, I ask unanimous consent the Senate turn to the consideration of H. Con. Res. 304, a concurrent resolution to correct the enrollment of S. 1312, the Employee Retirement Income Security Act; that the concurrent resolution be agreed to; the motion to reconsider laid on the table and any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDENT pro tempore. Without objection, it is so ordered.

So the concurrent resolution (H. Con. Res. 304) was agreed to.

THE SOCIAL SECURITY ACT AMENDMENTS

Mr. BUMPERS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5252, a bill to amend the Social Security Act to make miscellaneous and technical amendments, just received from the House; that the bill be deemed read a third time and passed; the motion to reconsider laid on the table and any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 5252) was deemed read a third time and passed.

TECHNICAL CORRECTION ACT

Mr. ROCKEFELLER. Mr. President, I am extremely pleased that after several years of hard work, we are finally able to enact a number of Medicare provisions, mostly of a technical and clarifying nature. But many of these provisions are of great importance to my home State, especially in the case of the Essential Access Community Hospital and Rural Primary Care Hospital Program.

West Virginia is one of seven States that is participating in the so-called EACH/RPCH Program. West Virginia is serving as a national model of how to maintain essential and emergency health care services in rural and remote areas. This legislation contains a number of provisions to give hospitals additional flexibility to help them make the transition from a full service acute care hospital to a health care facility that provides emergency services, limited inpatient care, and other health services identified as vital to a particular community.

Two hospitals in West Virginia, Broaddus Hospital in Phillipi and Webster County Memorial Hospital, have already been federally designated as rural primary care hospitals. They are two of only a handful of hospitals officially designated as RPCH's nationwide since the program was enacted in 1989. Part of the delay has been due to the inability of Congress to enact these technical amendments which have been stalled in the legislative process for the past few years. For example, this legislation clarifies that "rural primary care hospitals" may keep patients hospitalized for an average of 72 hours, rather than no longer than 72 hours. Without the EACH/RPCH Program, the only other option for many small, rural hospitals is to shut their doors.

This legislation also includes a key extension for the authorization for the Rural Health Transition Grant Program. This grant program has benefited many hospitals in West Virginia since its enactment in the mid-1980's. Many West Virginia hospitals have already received funding to develop rural health care networks, for management improvements, recruitment and retention of health care providers, and to enhance outpatient services.

I am particularly pleased that this legislation includes a provision that clarifies legislation I authored, which was successfully enacted in 1989, that expanded Medicare reimbursement to include coverage for mental health services provided by psychologists. Previously, millions of Medicare beneficiaries, particularly residents of rural areas, were unable to have access to mental health services because psychiatrists were the only recognized mental health providers under Medicare. In West Virginia, almost 40 percent of the rural elderly live in areas without a psychiatrist. That's why I felt it was so important for the Medicare Program to catch up with other health insurance programs and State laws.

This legislation also completes action on a piece of legislation which I introduced in 1991, the Medicare Cancer Coverage Improvement Act. The sole provision of this legislation that has yet to be enacted is included in this technical bill as well. It instructs the Secretary of Health and Human Services to study the costs of patient care for Medicare beneficiaries enrolled in clinical trials of new cancer therapies. This will allow patients to participate in clinical trials which may save their lives, instead of forcing them to back into therapies already deemed useless by their doctors. It is time to develop a rational policy to make sure Medicare beneficiaries are not unfairly denied access to the best available care. As that National Cancer Institute has frequently noted, treatment provided under a clinical protocol is state-of-the-art cancer therapy.

Mr. President, I am also pleased that this legislation contains a provision to extend the Medicare Select Program for another 6 months. While currently limited to 15 States, this Medigap insurance policy option has resulted in lower premiums for many Medicare beneficiaries. A recent Consumer Reports included 8 Medicare Select policies in the top 15 rated Medigap products nationwide.

Last year, I introduced the Family Preservation and Child Protection Reform Act with Senator BOND which called for new Federal funding for child welfare services, with an emphasis on preventive service to children. Thanks to the leadership of our President, we made a downpayment on child welfare reform with almost $1 billion in new flexible funding in the budget bill signed into law last year. This bill helps to fill in the gaps by moving forward on provisions that could not be in the reconciliation bill because of procedural rules of the Senate. This package includes basic action for child welfare traineeships, and other necessary enhancements.

I would especially like to commend Chairman MOYNIHAN and the ranking member, Senator PACKWOOD, for their leadership on the Suter issue, which covers the enforcement of State plans of child welfare, welfare and other provisions of the Social Security Act. A sweeping Supreme Court decision eliminated an individual's right to sue to enforce provisions of State plans under the Social Security Act. This caused real concern, and I joined with several of my Senate colleagues in petitioning the finance committee to review this court decision and its impact on States and children in 1992. Senators MOYNIHAN and PACKWOOD held a hearing which helped to forge a compromise on this issue. That compromise is part of this legislation.

Also, I would like to mention that this legislation makes improvements in child support enforcement. It includes a provision, similar to a bill I sponsored in the past, to require States to provide information to credit bureaus about overdue child support. If an individual places their credit rating at risk by missing a car payment, shouldn't the same thing happen if they are at least 2 months delinquent on their child support payments.

Mr. President, I have only listed a few of the provisions that illustrate the scope and importance of this legislation, even though it is called a "technical corrections" bill. Again, despite its technical nature, this bill will provide important assistance to rural areas and other health care providers, and help children and families get the services they need.