



CONFLICT & COMPROMISE

How Congress Makes the Law

"Conflict and Compromise is an authoritative and suspenseful primer on the legislative process."

—Clara Bingham, *The Washington Post Book World*

RONALD D. ELVING

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Ronald D. Elving

A TOUCHSTONE BOOK
Published by Simon & Schuster



TOUCHSTONE

Rockefeller Center

1230 Avenue of the Americas

New York, NY 10020

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First Touchstone Edition 1996

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Designed by Levavi & Levavi

Manufactured in the United States of America

1 2 3 4 5 6 7 8 9 10

Library of Congress Cataloging-in-Publication Data

Elving, Ronald D.

Conflict and compromise : how Congress makes the law /

Ronald D. Elving.

p. cm.

Includes index.

1. United States. Family and Medical Leave Act of 1993.

2. Parental leave—Law and legislation—United States.

3. Maternity leave—Law and legislation—United States.

4. Sick leave—Law and legislation—United States.

I. Title.

KF3531.E45 1995

344.73'0125763—dc20

[347.304125763]

95-5572

CIP

ISBN 0-684-80195-7

0-684-82416-7

(Pbk)

Acknowledgments

AMONG THOSE WHO ENCOURAGED THE writing of this book was Eric Redman, who wrote his own (*The Dance of Legislation*) in the early 1970s. Redman's account of the creation of the National Health Services Corps remains a vivid evocation of the legislative life, even after more than two decades. And while this book was conceived as an update—recognizing the changes in congressional process and personalities since the Nixon era—it is intended also as a tribute.

Redman noted that the NHSC bill he chronicled was the vehicle of his story but that Congress itself was the subject. Similarly, here, the issue of family leave performs much the same function. For help in guiding me toward this particular vehicle (and away from other prospects) I am indebted to former Congressman Bill Frenzel, Republican of Minnesota; Professor James Thurber, director of the Center for the Study of Congress and the Presidency at the American University; Dr. Catherine Rudder, executive director of the American Political Science Association; and Alan Ehrenhalt, executive editor of *Governing* magazine.

Ehrenhalt also favored the manuscript with his critical skills, tempering and refining the end product. Another source of expert consultative advice was Walter J. Oleszek, senior specialist in American national government and public administration for the Congressional Research Service, whose own book on congressional procedure is the standard text.

I wish to thank all of the *Congressional Quarterly* reporters whose careful coverage of family leave over five Congresses helped inform this

6 Acknowledgments

narrative, especially Julie Rovner and Jill Zuckman, who each followed the bill through more than one Congress and shared generously what they had learned. Rovner, one of the leading experts in Washington's social policy debates of the 1980s and 1990s, was not only full of insights into the subject matter but a willing commentator on the text as well. Any errors are solely my responsibility.

At Simon & Schuster, it was Alice Mayhew who felt the need for a book of this kind and who was willing to entrust the project to me. Senior editor Bob Bender saw me through not only the uncertainties at the outset but also the anxieties at the end. Special thanks must go to Edwin R. Bayley, first dean of the Graduate School of Journalism at the University of California at Berkeley, who encouraged my interest in words and politics. I am greatly indebted to Robert W. Merry, executive editor of *Congressional Quarterly*, who was at once a model and a patron for this enterprise. Also essential from beginning to end were Gail Ross, a literary agent willing to tackle tough projects, and Belle Elving of *The Washington Post*, always my first and most forthright critic, for her patience and forbearance and for squaring it with our daughter, Kelsey.

For Esther Holmlund Elving (1916–1988), who began school in Opportunity, Montana, in 1921, graduated first in her high school class and pursued careers as teacher, wife and mother. She finished her college degree in 1971. She would have liked to hold this book in her hands.

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Introduction

ON FEBRUARY 5, 1993, BILL CLINTON staged his first bill-signing ceremony as president of the United States. The midwinter day was remarkably warm and sunny, with a high near sixty degrees, so the event was held outdoors in the Rose Garden. There were chuckles as Clinton tried his hand at signing parts of his name with different pens. He then handed out the pens to the congressional worthies arrayed behind him, applauding and beaming for the cameras.

The celebration seemed in order, not only because the Family and Medical Leave Act of 1993 would be the first law of the new presidency but also because it had shot through both chambers of Congress in a month. Just sixteen days after taking his oath of office, Clinton could claim to have enacted a significant change in social policy in keeping with the "People First" theme of his campaign.

But this ceremony, intended to be rich in political symbolism, was also rife with irony. Family leave was the furthest thing from an overnight success. Before its swift passage at the outset of the 103rd Congress, it had been through painstaking consideration in each Congress since the 99th. Reintroduced every two years, it had hacked its way again and again through the thicket of Capitol Hill hearings, markups, cloakrooms and pitched battles on the House and Senate floors. One participant compared the bill's fitful progress to the myth of Sisyphus, others thought it closer to *The Perils of Pauline*. To read family leave's journal of survival is to realize how ingeniously frustrating the mechanisms of Congress can be.

Rarely has a piece of social legislation been as simple and succinct. Its gist could be summed up in a sentence: *Employers would be required to grant leaves of absence for employees who were seriously ill, who had newborn or newly adopted children, or who had to care for sick children, spouses or parents.*

But if the new law was short, its history was extensive. The basic idea had come to Congress from disparate channels that seemed to converge all at once in the mid-1980s. But as far back as the turn of the century there had been talk among various social reformers and labor organizers of the need to recognize temporary disabilities—including those originating with family obligations—as legitimate workplace issues.

The idea took hold in Europe after World War II, where severe shortages of male workers kept women in the labor force. But it did not find favor in America's baby-boom years of nuclear families and *Father Knows Best*. The demography of it all began to change in the later 1960s, when recession and inflation ended the relatively easy prosperity the nation had enjoyed for most of two decades. Women began going back to work to supplement the earnings of husbands who could no longer earn enough to cover the bills.

Soon, working women were no longer a minority and women's rights were no longer a campus theory. As part of this change, family leave became a concept, then a proposal and then a bill. It was not proposed by the president or the executive branch, and it was not a favorite of the congressional leadership until its latter days. It arose from real-life situations, and it moved through Congress largely on the lobbying, organizing and pressure-building skills of outsider groups.

As a political cause family leave began with feminists. But from the beginning, common cause was made with advocates of traditional family life such as the Association of Junior Leagues and the U.S. Catholic Conference. By setting aside its fundamental disagreement with feminists over abortion for the sake of this issue, the Catholic Conference made it possible for Bella Abzug and John Cardinal O'Connor to soldier together in a shared crusade. In time, this coalition added organized labor and senior citizen groups. The coalition would prove resilient through the years of frustration, widening its base both outside and inside the institution of Congress. It made friends in both parties and in both chambers, among women and men, among ancient committee chairmen and brash newcomers alike.

And yet, powerful as this array became, it was checked year after year by the equally effective tactics and strategies of a business-lobbying

coalition. These men and women and the members with whom they were allied saw family leave not as a labor standard but as the first in a new generation of government mandates on business. They saw an underfunded and largely unpopular federal government trying to impose a social agenda using private employers as its agents.

This corresponding and adversarial coalition not only delayed the bill but also managed to amend it substantially along the way. Even when the opposition had been worn down by years of compromise, family leave was obstructed by the workings of Congress itself and the realities of divided government. Twice passed in the early 1990s by both chambers of Congress, family leave was twice vetoed by Republican President George Bush. Both times the Democrat-controlled House failed to muster enough votes to override.

That was why the election of a new, Democratic president made the difference for family leave. In his own remarks in the Rose Garden in February 1993, Clinton hailed the "end of gridlock." The new administration and the Congress had shown they could work together and accomplish something, after all. "With the passage of this bill, we hear the sound of cracking ice as the iceberg breaks away," said Congressman Pat Williams, a Democrat from Montana.

Some believed family leave would raise the curtain on a new era of social legislation. Welfare and health care would be reformed, government reinvented. But nearly two years later Clinton would still be citing family leave as his showcase social achievement because his administration would have nothing to top it. While the new administration was pleased to sign family leave and claim some measure of credit for its enactment, it was not able to replicate that success on other social issues.

In the end, family leave never belonged to any White House. It was a bill that emerged from Congress and the forces that work upon it. That is why it reveals so well the ways of Congress in their natural place and time, the internal workings and relations between officeholders and those who serve or seek to influence them. The purpose in telling this story is to demonstrate how these elements interact with that system of rules, procedures, traditions and customs by which Congress makes the law.

Part One

**BEGINNINGS: THE 98TH
AND 99TH CONGRESSES
(1984–1986)**

