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Chapter 6

Federal Initiatives in Family Leave Policy: Formulation of the FMLA

As a California state legislator representing suburban constituents in the San Fernando Valley, a liberal stronghold northwest of Los Angeles, Democrat Howard Berman had risen to majority floor leader by his second term and prior to this thirty-fifth birthday. It was his legislative leadership position that enabled him to engineer a bill through the General Assembly in 1978 that provided a four-month disability leave for new mothers. Four years later, in 1982, while Berman was running for a U.S. congressional seat, the California Federal Savings and Loan refused to reinstate Lilian Garland when she returned to work following the birth of her child. It was one of 300 cases filed by employees that year, claiming that their employers had violated the 1978 act. Cal Fed, however, was the only corporation to file a lawsuit in federal court, arguing that the law violated the company’s basic right to design, implement, and monitor its own personnel policies (Elving 1995).

Incorporating the Garland case into his congressional campaign, Berman promised voters that, if elected, he would introduce a similar bill in Washington. Having won his congressional seat easily, Berman was in the second year of his first term when the Federal District Court ruled against his maternity leave law in California. The statute violated federal laws, stated the Court.


particularly the gender equity clause of the 1964 Civil Rights Act, because it did not permit men to take maternity leave. Echoes from \textit{Lochner, Muller, Gilbert}, and the Pregnancy Disability Act could be heard in the distance. The issue of special treatment versus equal treatment had surfaced once again and feminists found themselves split on the issue. On one side were advocacy groups such as 9 to 5 and the Coalition for Reproductive Equality in the Workplace who were outraged by the District Court’s ruling (Radigan 1988). On the other side stood the National Organization for Women (NOW) and the Women’s Legal Defense Fund (WLD) which strongly supported equal rights for women and opposed any “special treatment” approach for new or expectant moms (Jacobs and Davies 1994; Kantrowitz and Wingert 1986). Therefore, the Federal District Court’s ruling in 1982 represents an extremely significant benchmark in the developmental history of the Family and Medical Leave Act. It forced the issue of equal vs. special treatment onto center stage, and women’s groups had to wrestle with it prior to formulating any kind of leave policy.

As Berman moved to introduce his legislation at the federal level, he was shocked to learn that those he had counted as allies had become his opponents. “Berman did not need to be helped,” writes Ron Elving in \textit{Conflict and Compromise: How Congress Makes the Law}, “he had to be stopped” (Elving 1995, 20). Fearing that a narrow focus on maternity leave would be perceived as “special treatment,” advocates for a national leave policy made their first important strategic move in their long march toward legislative success. Any bill introduced would have at its core a commitment to “equal treatment” for those seeking time off from work. Therefore, from 1985 when the first leave bill was introduced until 1993 when it was finally enacted into law, during which time it went through four major name changes and was subjected to at least twenty-three specific compromises, the proponents’ devotion and loyalty to “equal treatment” never wavered.

In analyzing and explaining the formulation of the Family and Medical Leave Act of 1993, one may select from a variety of prisms through which to view its development and ultimate passage. There is, of course, the view from the White House, Capitol Hill, special interest groups, and key actors. not to mention the perspectives of political analysts and commentators. There are also multiple political theories from which to choose, as there are numerous sociological and economic explanations that could be utilized. However, the analytical framework to be employed here is somewhat unique in that it attempts to capture the important developmental states of the FMLA’s evolution over an eight-year period. Simply stated, the legislation will be traced through its four major name changes. It is the author’s belief that this approach, more than any other, captures the essence of what could be termed...
clear that one’s job would be guaranteed at the conclusion of the leave period. So although the FESA was never formally introduced in its original form, its two underlying principles of “family care” and “job security” would remain key components of proposed legislation, and ultimately be incorporated in the final version of the Family and Medical Leave Act of 1993. But perhaps most important, by simply creating the FESA (as primitive as it was), legislators were given an option much different from Berman’s. Therefore, the focus of the debate changed considerably.

However, neutralizing Berman’s strategy was only one piece of the puzzle. There was already a movement within Congress to at least get leave legislation on the agenda. George Miller, a liberal Democrat from California, had just created the new Committee on Children Youth and Families in the House, which he chaired. Although select committees have limited powers (they cannot propose legislation, amend existing laws, or take new proposals to the floor), they can raise the level of awareness among other legislators, seek and obtain media coverage, and push their issues into the public arena. Former Congressman Claude Pepper (D-FL), for example, was very successful in raising issues related to the nation’s elderly when he chaired the House Select Committee on Aging. Miller’s strategy was similar, except he focused most of his attention on child care. However, following a series of hearings in which several key witnesses broadened their comments on child care, Miller’s interest slightly shifted. He and other members of his committee had to be persuaded by Lenhoff and her supporters that any leave legislation needed to be broad-based and constructed on a foundation of “equal treatment,” not “special treatment.” This became particularly problematic because Miller and Berman were both from California and had become close friends (Elving 1995; Jacobs and Davies 1994).

By the early fall of 1984, important strategic decisions concerning the future of leave policy had been made. Miller and Berman had backed off on their “special treatment” approach and turned the issue over to the Congressional Caucus on Women’s Issues (CCWI). This proved to be a significant development for two reasons. First, the CCWI was led by Patricia Schroeder, a liberal from Colorado who was the most senior Democratic congresswoman on Capital Hill and a champion of children’s issues. Not only was Schroeder the co-chair of the CCWI, she was also a member of Miller’s Select Committee on Children Youth and Families and held a seat on the all-important Education and Labor Committee as well. It was the latter committee that would most likely serve as the legislative incubator for a new leave bill. And second, Schroeder, the CCWI, and other family-leave advocates were in full agreement with the original FESA supporters that any proposed leave legislation should be broad-based in coverage. It was also decided that the first

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The Family Employment Security Act of 1984

Often forgotten in discussions concerning the history of the FMLA is the fact that the initial bill was created to provide job security. It was also designed to address the issue of “special treatment” versus “equal treatment.” In response to Representative Berman’s efforts to apply his California law to the nation, a group of parental-leave advocates convened in Washington to not only divert Berman from his “special treatment” strategy, but to produce a bill of their own that was anchored to the principle of “equal treatment.” The group included representatives from the Women’s Legal Defense Fund (WLD), the National Organization for Women (NOW), the Junior League, the National Council of Jewish Women (NCJW), and the Women’s Equity Action League (WEAL).

Led by Donna Lenhoff, a young attorney from the Women’s Legal Defense Fund (now known as the National Partnership for Women and Families), the group had at least three objectives. One, to stop Berman in his tracks and offer instead a completely new paradigm shift. That is, to craft model legislation with a focus on equal rather than special treatment. Two, to influence the legislative process that had already begun, particularly within key committees responsible for issues concerning children and families. And three, to decide whether or not any newly proposed legislation should be patterned after European leave policies that include a wage replacement.

Lenhoff, who is often referred to as the architect of the original family-leave bill, drafted a model statute and titled it the Family Employment Security Act. Its underlying strategy was fundamentally consistent with objective one of the newly formed working group. It was a “new bill aimed at maternity leaves alone but at a broad and ambitious array of employee rights all rooted in the principle of equal treatment” (Elving 1995, 22). Written so that all workers could benefit, the proposed bill extended beyond the demands of motherhood. The insertion of the word “family” in the proposed bill should not be taken lightly. It meant that pregnancy, a child’s illness, and a spouse’s disability, regardless of gender, would be covered. Equally important, with the inclusion of “employment security” in the bill’s title, it was
The Parental and Disability Leave Act of 1985

In 1984, Ronald Reagan was swept into office in a landslide victory that was even larger than his initial win against Jimmy Carter in 1980. Despite the fact that his first term was tainted by a sluggish economy, and the gain of thirty-four House seats in 1980 was practically eliminated in the 1982 congressional elections, the Republicans maintained their majority in the Senate in 1984, and gained even more seats in the House. For traditional Democrats, the writing was on the wall and the party was in disarray. In short, the political soil in Washington was not fertile for cultivating liberal ideas such as child care and family leave. Following Reagan’s State of the Union Address in January 1985, Governor Bill Clinton of Arkansas offered a televised Democratic response. As founder and head of the Democratic Leadership Council, a group of moderate Democrats, Clinton called for a new Democratic Party with ideas very different from the past. “The 1984 election seemed to have cost the Democrats far more than just four years,” wrote Ron Elving. “It seemed to have cost the party its hope” (1995, 37). It was within this political climate in which a popular Republican president, who was convinced that “government is not the solution but the problem,” and a Congress, that was eager to cut existing programs rather than create new ones in an effort to erase a major budget deficit, that the first federal family-leave bill in the country’s history was introduced.

On April 4, 1985, Pat Schroeder introduced the Parental and Disability Leave Act on the floor of the House of Representatives of the 99th Congress. It had at least three distinct characteristics. First, the title itself indicated that Berman and the proponents of “special treatment” legislation had been silenced and advocates for “equal treatment” had prevailed. The use of the term “parental” instead of “maternal” clearly eliminated any gender differences, and the use of the word “disability” extended the coverage beyond childbirth. Second, the bill number assigned to it, 2020, was indicative of a House leadership that did not give leave legislation a high priority. The lower the number assigned to a bill, the more likely it will pass during a legislative session. A 2020 number offered little hope. And third, and perhaps most surprising, in her haste to compose the proposed bill, Schroeder failed to recruit any cosponsors. Born to a single mother in an institution dominated by males, HR 2020 was destined to experience an early childhood filled with neglect and abuse (Radigan 1988).

In its original form, the bill required all businesses to provide at least eighteen weeks of unpaid leave for mothers or fathers of newborn or newly adopted children. For those with temporary disabilities that were not related to work and for employees who had ill children, twenty-six weeks of unpaid leave were mandated. In addition to these provisions, health insurance and other personal benefits would be continued during the employee’s absence, and one’s job would be guaranteed upon returning to work. It did not specify the size of companies to which the law would apply, nor did it provide for paid leave. However, the bill called for the creation of a special study commission to explore the possible options available for providing some sort of wage replacement. Compared to similar policies already adopted by countries in Europe and Scandinavia, this proposal was extremely limited. And yet, despite that, it still received a cold reception from Congress. After being introduced, the Schroeder bill was quickly assigned to two committees, Education and Labor being one, and the Post Office and Civil Service Committee being the other. From each of these committees it was then assigned to appropriate subcommittees, a total of four in all. The former body, of which Schroeder was a member, was dominated by old-guard male Democrats who were not particularly sensitive to work and family issues at the time and viewed such legislation as “yuppie bills” (Jacobs and Davies 1994). However, it was generally believed that to be successful, HR 2020 would need strong support from Education and Labor. With respect to the Post Office and Civil Service Committee, 2020 would receive a much warmer reception because Schroeder served as the chair of one of its subcommittees. And indeed, on October 17, 1985, after months of delays and repeated efforts to get HR 2020 on the legislative calendar, the Colorado congresswoman held the first hearing on a federal leave bill in history—though the room was
practically empty and the witness list was short (Elving 1995). However, it eventually moved successfully through two subcommittees before stalling in the summer of 1986.

The reasons underlying the bill’s problems are not difficult to identify. There had been four hearings on HR 2020 by December 1985, but the substance of the bill had not been fully debated. Although forty members had eventually signed on as cosponsors, conspicuously absent were some key women legislators and the chairmen of the two committees called upon to usher the bill through Congress. When Schroeder voted against a plant-closing bill that had become the pet project of the Education and Labor Committee, she alienated the very legislators she needed to engineer her proposal through the committee process and onto the floor of the House. Consequently, advocates outside Congress but inside the beltway began to question whether or not she was becoming a liability. And finally, not to be overlooked was the glaring fact that no one in the Senate had produced a companion bill (Elving 1995). But at least a bill had been proposed in the House that was beginning to generate some interest on Capitol Hill and even in the media.

Meanwhile, about the time HR 2020 was being born, other relevant events were unfolding. In April 1985, the U.S. Ninth Circuit Court of Appeals in San Francisco overruled the 1984 decision of the Federal District Court that declared Berman’s maternity-leave bill unconstitutional. However, and most important for the “equal treatment” advocates, the Appeals Court did not agree with the lower court’s emphasis on equal treatment; it opposed the decision that confined the concept of equality solely to pregnancy. That is, stated the Court, it was the intent of Congress in passing the Pregnancy Discrimination Act “to construct a floor beneath which pregnancy disability benefits may not drop, not a ceiling above which they may not rise” (California Federal Savings and Loan Association v. Guerra 1985, 11). For people like Schroeder, Lenhoff, and other advocates of broad-base leave legislation, the Ninth Circuit’s ruling merely fortified their position on equal treatment.

Another significant event occurred several months later about the time a revised leave bill was being crafted and introduced in Congress. In January 1987, the U.S. Supreme Court, after hearing a final appeal from Cal Fed, upheld the California statute (the Berman law) by a 6 to 3 vote. Ruling that the California law neither violated federal law nor discriminated against men, the majority of the Court concluded that by recognizing pregnancy, California’s pregnancy disability-leave law permits women as well as men to support their families without losing their jobs. In other words, the “statute does not compel California employers to treat pregnant workers better than other disabled employees, but merely establishes the benefits that employers must, at a minimum, provide to pregnant workers” (Jacobs and Davies 1994, 97). Once again an important court ruling provided an impetus for those who supported a broad-based leave policy. And, as will be learned later, a bill with expanded coverage will attract more supporters. This occurred after a newer version of the original Schroeder bill was introduced in 1987.

Parental and Medical Leave Act of 1986

With doubts growing about Schroeder’s ability to maneuver a leave bill through an unfriendly Education and Labor Committee, supporters of the legislation sought out another lead sponsor in the House and searched for a senator willing to offer a companion bill in the other chamber. Selected to assist Schroeder was Representative William Clay, who chaired one of the four subcommittees (Labor Management) to which HR 2020 was originally assigned in 1985. Clay was one of the early cosponsors of the bill and was respected by his colleagues. Secure in his district, he felt comfortable in assuming a leadership role and pushing an issue that he knew would eventually draw strong opposition from conservative legislators. Clay and his staff adopted a different title and drafted new paragraphs designed to address concerns that were ignored in the original Schroeder bill.

Because some advocates of the handicapped found the use of the term “disability” in HR 2020 to be offensive, the title of the bill was changed from the Parental and Disability Leave Act to the Parental and Medical Leave Act. As a result, the handicapped were no longer offended by the language, the use of the term “medical” appealed to an even broader audience, and by maintaining the word “parental” in the title, gender differences and the “special treatment” issue were neutralized. Other important decisions were made as well. The wording on job security was clarified to satisfy the concerns of labor unions. The question of whether or not women could use leave time to have abortions was handled by addressing it in a committee report but not including such language in the bill itself. Proponents feared that such a provision would only serve as a lightning rod and distort the debate. After all, the U.S. Catholic Conference was a very influential ally that the parental leave coalition could not afford to lose (Elving 1995; Jacobs and Davies 1994; Radigan 1988). And because the word “medical” had been inserted in the title of the revised bill, the language of the proposed legislation had to be reconstructed to more clearly define the meaning of the term “serious health condition,” an allowable reason for missing work. As will be discussed in the succeeding chapter, this term has become quite contentious and the focal point of numerous court battles (Wisensale 1999d).

But while the House version of the bill was undergoing a major renova-
amendments and orchestrating a procedural filibuster (Jacobs and Davies 1994). By October 7, 1988, Senate Majority Leader Robert Byrd (D-WV) accused Republicans of being antifamily and pulled the bill from the floor (Morehouse 1988).

After the votes were counted in the 1988 election, Vice President George Bush had defeated Democratic opponent Michael Dukakis of Massachusetts. But although the Republicans retained control of the White House, the Democrats still controlled the House and Senate. And while the proposed child-care bill showed early signs of passing during the 101st Congress, less optimism was expressed about the future of the Family and Medical Leave Act. Looking back over the eight-year struggle, it is easy to understand why 1988 was the low point in the FMLA's development. It had been stalled in both houses for three years and the incoming president not only campaigned against it, but promised to veto the bill if Congress passed it.

During the next four years, several important events occurred that had a major impact on the outcome of the FMLA. First, by 1990, the Democrats succeeded in pushing through a child-care bill that George Bush reluctantly signed. Although it was watered down significantly and limited to lower income families, its passage was particularly relevant to FMLA advocates because child-care and family-leave proponents would no longer have to divide their time fighting battles on two fronts.

Second, the Democrats were successful in persuading high-ranking Republicans to cross over and support the FMLA. For example, in the House, Illinois Republican Henry Hyde, a strong pro-life advocate and an early opponent of family leave, spoke in favor of the bill after he was persuaded that the FMLA would help lower the abortion rate. If women wanted to maintain their careers, a leave policy would allow them to have children and still work. Aborting a fetus in order to save one's job could be avoided, thanks to the FMLA. Such logic also appealed to Republican Christopher Smith of New Jersey who also "moved to the other side." In the Senate, Kit Bond (R-MO) stands as an example of a Republican who crossed over. Such actions provided the necessary political cover other legislators needed to avoid jeopardizing their seats if they voted "yea" on family leave.

And third, as the compromises on each of the bill's attracted more legislators to move to the other side, the votes in favor of the proposal began to increase, both in committee actions and on the floor of the House and Senate. By 1990, the Democratic leaders in both houses were convinced they had enough votes to pass the leave bill, but not enough to override an expected Bush veto, particularly in the House. If nothing else, the bill was at least "veto bait" that could be used against the Republicans in the 1990 congressional elections. On the Republican side, however, Senate Minority Leader Bob Dole (R-KS) saw things differently. By allowing the leave bill to move through both chambers and on to the White House, it would give George Bush the opportunity to have one more of his vetoes sustained. By this time he had vetoed twelve pieces of legislation without being overridden once by Congress (Elving 1995; Jacobs and Davies 1994). Besides, Bush signed the child-care bill, a civil rights law, and the Americans with Disabilities Act in 1990. He believed he could afford a veto of family leave without appearing to abandon the "kinder, gentler America" pledge he made during his acceptance speech at his party's nominating convention two years earlier.

After passing in the House by a vote of 237-187 and by a voice vote in the Senate, President Bush kept his promise and vetoed the measure in June 1990. And, as was predicted, the House failed to override it a month later, falling short of the necessary two-thirds majority by fifty-three votes. But if 1988 was the low point for the proponents of family leave, 1990 can be identified as the major turning point of the battle. Not only had the bill passed in both chambers for the first time, but George Bush's veto put the monkey on the back of the GOP forever (Elving 1995). Unbeknownst to many Republicans (and Democrats, too), "family values" would infiltrate the next two presidential campaigns and the family leave bill would play a special role in each. In a strategic move, the Democrats deliberately held back the FMLA in 1991 and waited patiently, with their political snare in place, for the next election.  

Family Values, Family Leave, and the 1992 Election

Family values, as a campaign issue, was catapulted onto the 1992 presidential campaign by a rather convoluted assortment of characters and events that included Rodney King, a victim of police brutality; a riot in South Central Los Angeles that followed a controversial jury verdict; a fictitious TV character and single mom, Murphy Brown; a feisty vice president, Dan Quayle; a special speech on families delivered in Cleveland by candidate Bill Clinton; and a night devoted to "family values" at the Republican Party's nominating convention. The ultimate outcome was the election of a new president, a reassessment of how seemingly unrelated events can shape social policy in America, and the push to get more family-oriented issues onto the political agenda. How and why this has occurred deserves some explanation.

In the spring of 1992, several Los Angeles police officers who were accused of excessive force in the videotaped beating of Rodney King, an African-American male who was stopped for a traffic violation, were acquitted by an all-white jury in a conservative suburban community of Los Angeles. The verdict produced a riot in the predominantly black community of South Los Angeles, but prompted reaction from the Democratic nominee in the 1992 election, Bill Clinton. Clinton, responding to the acquittal, said that in the fall of 1992 he would have a "special message" for the country about family leave and the need to reign in the frenzy of so-called family values. Clinton's promise was fulfilled on the fall campaign trail with a series of campaign speeches about family leave, with particular emphasis on family leave, and a promise during the four debates he had with his Republican opponent, George Bush, to work toward family leave as part of a national agenda for the next administration. By the end of the election, Clinton had been explicitly endorsed by a number of family leave advocates, but still, the family leave issue remained a non-starter on the campaign trail that failed to grab the imagination of the American electorate (Jacobs and Davies 1994).
Central Los Angeles, resulting in numerous deaths and major losses of property. Several days later, Dan Quayle appeared on national television and blamed the L.A. riots on the deterioration of the American family. He also blamed Hollywood for its anti-family bias that produced such shows as Murphy Brown, in which the main character, a highly successful career woman, chose to have a child through artificial insemination and raise it without a father. This outburst by Quayle prompted a response from the Democratic Party’s leading candidate for the presidential nomination.

In early May, approximately two weeks after Dan Quayle’s attack on Murphy Brown, Bill Clinton delivered a speech in Cleveland, Ohio, in which he outlined his “eight-point plan on the American family.” His proposal included an intense media campaign to combat teen pregnancy, an $800-per-child tax credit for preschool children, an expansion of the Earned Income Tax Credit, a greater emphasis on child support, a call for more child-sensitive divorce laws, more parental responsibility, greater emphasis placed on family preservation programs, and the adoption of a family-leave policy (Marshall and Schram 1993).

Two months later, the Republicans devoted an entire evening to “family values” at their nominating convention while a Democratic Congress sought to embarrass President Bush by pressuring him to sign the Family and Medical Leave Act. Beginning on the eve of the Republican National Convention, the Senate approved its version of the bill by a voice vote on August 11. Although Senator Dodd favored a roll-call vote, Republican leaders threatened to block it, thus preventing the bill from leaving the Senate before the August recess, scheduled to begin August 13.

Over several months, Republican Senators Kit Bond of Missouri and Dan Coats of Indiana, and Congressmen Tom Coleman of Missouri, Bill Young of Florida, and James Saxton of New Jersey, were recruited through a variety of Democratic concessions. But in spite of growing support from such conservative Republicans, the Bush administration continued to oppose the proposed legislation. “They were not willing to deal,” stated Bond. “I think the president is just plain wrong on this ... and ... it is a failure to reinforce what is a very important part of his platform” (Congressional Quarterly Almanac 1992).

As the 1992 presidential campaign continued, the House passed the measure on September 10 by a 241–161 vote. The Republicans described the bill as an election-year ploy designed to embarrass Bush. On September 16, the President announced an alternative to the Democratic bill. Instead of government mandates, he argued, businesses should be offered tax incentives. That is, a refundable tax credit of 20 percent of compensation, from $100 a week to a maximum total of $1,200, would be available for all businesses with fewer than 500 employees if they provide at least twelve weeks of family leave. More important, argued the president, his proposal would have covered about 15 million more workers and twenty times the number of workplaces than the Democratic version.

The day after his announcement, Congress sent its bill to the White House for Bush’s promised veto. For Roukema, a longtime supporter of family leave, Bush’s alternative was “an interesting supplement to the basic bill. But it is no substitute. To use the tax incentives does not give the job guarantee,” she said (Congressional Quarterly Almanac 1992). Republican Congressmen Dick Armey of Texas, who opposed family leave from its inception, described the timing of Bush’s proposal as “unfortunate.” “To the extent the President’s proposal is political, it’s in response to the timing of the Democrats,” Armey continued. “They thought this is a great time to embarrass the President by sending him a family leave bill so close to the election” (Congressional Quarterly Almanac 1992).

With Congress ignoring his pleas, Bush vetoed the Family and Medical Leave Act for a second time on September 22. “I want to strongly reiterate that I have always supported employer policies to give time off for a child’s birth or adoption or for family illness and believe it is important that employers offer these benefits,” he stated in his veto message. “I object, however, to the federal government mandating leave policies for America’s employers and work force” (U.S. Executive Office of the President 1992).

Two days later, and after four years and thirty-two vetoes from President Bush, the Senate finally produced enough votes to override his opposition to a bill. Voting 68–31, two votes more than the two-thirds necessary, the Senate refused to sustain the President’s veto on September 24. Within a week, however, the House failed to override the veto. On September 30, by a vote of 258–169, the veto override attempt fell short by twenty-seven votes. Not to be overlooked is the fact that forty-two Democrats voted to sustain the President’s position (Elving 1995). The bill was dead for the 102nd Congress.

In November, Bill Clinton became the first Democrat to be elected president in twelve years. With his victory, the 103rd Congress underwent a major transformation. The 1992 elections produced 110 new House members and thirteen new senators, including unprecedented numbers of women and minorities. In the Senate, the number of women increased from two to six; in the House the number of women grew from twenty-nine to forty-eight. But the newcomers did little to change the partisan composition of the two houses. The Democrats’ fifty-seven to forty-three advantage in the Senate was identical to that of the 102nd Congress, and the 258 to 176 to 1 House edge represented a loss of only ten seats (Bernie Sanders of Vermont is the “one” independent in the House). In contrast to the Reagan-Bush era, there would be little discussion of the number of votes necessary to override presidential
vetoes, at least among Democrats. Owing perhaps to the near doubling of females in Congress, family-oriented issues in general, and the family-leave bill in particular, received increased attention even before Bill Clinton was sworn into office.

Between Election Day and Inauguration Day, both the House (265-163) and the Senate (71-27) acted favorably on the Family and Medical Leave Act. Key players in the legislative debate assumed predictable positions on the political territory they had staked out as early as 1985. The National Federation of Independent Businesses, the National Association of Manufacturers, the U.S. Chamber of Commerce, and the Concerned Alliance of Responsible Employers argued against the bill. They were countered again by the American Association of Retired Persons, the Children's Defense Fund, the National Organization of Women, and the Women's Legal Defense Fund. Unlike the child-care coalition of the 1970s that weakened over an eight-year period, the FMLA coalition grew stronger by making the bill more appealing to the undecided and by slowly converting some old adversaries. "By making common cause with antiabortion conservatives, the basic core of feminists and liberals had performed the essential trick that turns ideas into laws. They surrounded the opposition and minimized it" (Elving 1995, 290).

In essence, the long battle drew to a close when Congressman Henry Hyde, the conservative Republican from Illinois, took the floor of the House just weeks before Clinton's inauguration and spoke in favor of the FMLA. It was Hyde, an influential figure among House Republicans, who was persuaded two years earlier to support the bill because it may reduce abortions. While this image may serve as a description of what happened in the end, an explanation of how it all came about might be found in the statement of two key antagonists. "It hurt us to see it referred to as 'watered down,' but it helped with the numbers," explained Donna Lenhoff of the Women's Legal Defense Fund (now the National Partnership for Women and Families), describing the proponents' legislative strategy to capture more votes (Elving 1995, 288). On the other side, Mary Tavenner of the Concerned Alliance of Responsible Employers said, "If we had not been there, family leave would have passed as written. We made them change it. The bill became more and more 'reasonable' until inevitably some businesses were neutralized" (Elving 1995, 290).

When Bill Clinton affixed his signature to the Family and Medical Leave Act in February 1993, it was the very first major piece of legislation signed by the new president. As a result, employees in companies with fifty or more workers have the right to twelve weeks of unpaid leave to care for a child, a spouse, an ailing parent, or themselves. The bill also guarantees job security and requires an employer to continue healthcare benefits during the leave of absence. Finally, the act permits a company to deny leave to a salaried em-

ployee who falls within the top 10 percent of its paid workforce. All told, it applies to about 6 percent of the nation's employers and roughly 60 percent of the American labor force.

Ironically, the bill that Clinton signed into law was, in essence, a Republican product. It was very similar to the proposal Marcy Remkema (R-NH) introduced in 1987. But such an outcome may say more about the location of the Democratic Party on the political spectrum in the 1990s than it does about the skill and ingenuity of Republican legislators. With the passage of the FMLA, however, at least three perplexing questions emerged. One, why did President Bush wait so long to offer an alternative to the Democrats' proposal, particularly if he believed the opposition party was deliberately out to embarrass him over the family-values issue? In short, why did he not put forth his tax incentive proposal sooner? Two, with Clinton riding high on a presidential victory that brought with it a Democratic-controlled Congress, why did he not seize the opportunity to push for a much stronger family-leave bill? Why, especially during the honeymoon phase of his administration when his political influence was probably at its zenith, did the newly elected president choose to settle for the minimum, and thus provide the nation with one more example of what some may label as symbolic politics? And three, because it is unpaid and applies to only 6 percent of the corporations and about 60 percent of workers, how effective can it be in addressing the caregiving needs of America's families?

Family Values and Family Leave in the 1996 Election

What worked for the Democrats in the 1992 election was employed again in 1996. Choosing "Family Values First" as their campaign theme, the Democrats captured, at least temporarily, what Steiner (1981) refers to as "the higher moral ground." On family values, Bill Clinton reminded voters that the Family and Medical Leave Act was the first bill he ever signed as president, while his opponent, Bob Dole, had voted against it twice and repeatedly organized Republican efforts to kill the initiative on the Senate floor.

Most blatantly, perhaps, the Democrats selected September 24, 1996, as "Family Leave Day" to remind voters that on that date four years earlier, Bob Dole had voted to uphold George Bush's veto of the bill. Family advocates, business leaders, and key legislators across the country held special news events in forty-four states not only to highlight the success of President Clinton's Family and Medical Leave Act, but to bash Bob Dole in the process. This approach was similar to Clinton's campaign efforts in forty-six states on September 18, which drew attention to the administration's anti-crime record. That event alone generated more than 500 local television news stories (Clinton-Gore Press Office 1996).
Family Leave Day was developed by Ann F. Lewis, the deputy campaign manager for communications. She was assisted by Stephanie Foster, manager of the campaign's women's outreach initiatives; Stacie Spector, the deputy communications director for field communications; and Donna Lenhoff, the author of the very first family-leave bill and a volunteer on leave from the Women's Legal Defense Fund. President Clinton, Vice President Gore, First Lady Hillary Rodham Clinton, and Tipper Gore kicked off the nationwide events in New Jersey, Louisiana, Connecticut, and Tennessee, respectively (Clinton-Gore Press Office 1996).

In a brief twenty-three minute talk in front of a Freehold, New Jersey, Revolutionary War monument, President Clinton reminded his audience that it was his administration that enacted the Family and Medical Leave Act. “You hear people talking all the time about family values. Well, if we’re going to talk about family values, shouldn’t we value families?” the president asked. “I never go anywhere in America—never—that I don’t meet families who have at least one or two examples in their own lives where they have felt the wrenching conflict between their responsibilities to their children or their parents, and their responsibilities at work” (Home News Tribune 1996). Standing by his side were David Del Vecchio, a candidate for the 12th District, and Congressman Bob Torricelli, the candidate who was seeking to capture the U.S. Senate seat vacated by fellow Democrat Bill Bradley.

Campaigning in Southern states where Republicans had strong support, Vice President Gore appealed to moderate voters by pushing the president’s proposal to expand the existing Family and Medical Leave Act to cover short periods of unpaid time off for medical appointments and PTA meetings. Speaking in Shreveport, Louisiana, the vice president also took a swipe at Bob Dole for his position on family leave. “Again, if we’re going to say we value strong families...then we’ve got to be willing to put our laws where our political rhetoric is” (Associated Press News Service 1996, 2). Mary Landrieu, Louisiana’s Democratic candidate for the U.S. Senate, was standing by the vice president’s side. “Guess who voted against it?” Landrieu asked the crowd of supporters. “Bob Dole, six times” (Associated Press News Service 1996, 2).

Hillary Rodham Clinton, speaking at Connecticut College in New London, Connecticut, on September 24, reminded the audience that it was her husband who signed the FMLA and that it was Bob Dole who opposed it. She emphasized again that “while Republicans talk about family values, Democrats prove that they value families” (Connecticut Post 1981, A-1). Representatives from two families that used family leave in the past appeared on stage with the First Lady and thanked the Clinton White House for signing the bill. Her visit also aimed to boost Congressman Sam Gejdenson’s reelection bid. Just two years earlier he had defeated his opponent by only twenty-one votes.

Appearing at several rallies in Tennessee on September 24, Tipper Gore also highlighted the virtues of family leave while reminding voters that Bob Dole’s labeling of Bill Clinton as a liberal was a distortion. “When I think of this administration, ‘liberal’ does not come to mind. We’re very much middle of the road. The Democratic campaign’s emphasis on family issues and values could be labeled conservative,” she said (Johnson City Press 1996, A-1). Mrs. Gore appeared with Tennessee politicians who had supported the FMLA and several families who had benefited from it. She visited the Johnson City Medical Center Children’s Hospital and participated in a round-table discussion at the Ronald McDonald House nearby. She later joined another round-table discussion on the attributes of the FMLA at a private home in Clarksville.

Concurrently, similar events were being held across the country. Department of Labor Secretary Robert Reich participated in radio interviews in Boston and Worcester, Massachusetts. In Florida, Governor Lawton Chiles held a news conference at Wackenhut Security Firm in West Palm Beach. In Atlanta, at a Ben and Jerry’s ice cream shop, Vicki and George Yandle, who participated in the White House signing ceremony in 1993, held a news conference and described the benefits of the FMLA. In Indianapolis, Indiana, Governor Evan Bayh sponsored a workshop on father-friendly workplaces. Of all the Family Leave Day events organized in forty-four states, very few did not include politicians who were competing for office. Clearly, the Family and Medical Leave Act had become valuable political currency for Democrats in the 1996 campaign.

But while the Democrats continued to hit Bob Dole over the head with the family-leave issue in 1996 as they had done with George Bush four years earlier, the Republican response was ineffective. Candidate Dole continued to emphasize that he had opposed the bill in 1992 and that he would do so again if he were still in the Senate and it came to the floor for a vote. Instead of taking family leave head-on, Bob Dole and the Republicans attempted to corner Bill Clinton on family values by forcing two pieces of controversial legislation onto the president’s desk in the summer before the election: the Welfare Reform Act of 1996 and the Defense of Marriage Act.

With respect to the former act, Clinton disarmed the Republicans by stating that he would sign what many considered to be a harsh bill. Viewing it as “veto bait” that could be used against him later in the campaign, as the family-leave bill was used against Bush in 1992, the president alienated many loyalists and lost some key White House staffers when he placed his signature on the legislation in August. However, his opponent could not accuse him of being soft on welfare during the campaign.

With respect to the Defense of Marriage Act (DOMA), Clinton found himself negotiating a political minefield that was saturated with family values.
Following a December 1995 court ruling in Hawaii that legalized same-sex marriages (it was eventually defused via a state referendum opposing such marriages), state legislatures and members of Congress moved quickly to inoculate themselves against the recognition of such marital unions in other states or by the federal government. The passage of DOMA, clearly earmarked as veto bait by White House insiders, was part of a Republican strategy to embarrass the same president who spoke out strongly for gay rights in the military early in his first term. A veto of the bill would jump-start a lethargic, if not dead, Dole camp just in time for the home-stretch of the campaign.

Instead, President Clinton heeded the words of his trusted adviser, Dick Morris, and practiced triangulation. It was the same strategy Clinton had applied to the Welfare Reform Act. Unlike the Family and Medical Leave Act signed by Clinton with much fanfare in the White House Rose Garden on February 5, 1993, the Defense of Marriage Act was signed at 12:50 a.m. on the morning of September 21, 1996, just six weeks before the election, by a president sitting alone in the Oval Office. When he refused to heed gay activists who demanded that he pull Democratic campaign spots on Christian radio stations that praised him for signing DOMA, the president was then heeding the advice offered by Robert Byrd on the floor of the U.S. Senate during a heated debate over the bill. “At some point,” stated the West Virginia Democrat, “a line must be drawn by rational men and women who are willing to say ‘Enough’” (United States Senate 1996).

Bob Dole also had had enough. Efforts to attack Bill Clinton on family values had failed miserably. Even worse, from his perspective, decisions made by the former senator four years earlier had been used to inflict serious damage on him during a campaign that would have had to have been run flawlessly for him to at least have a chance of winning. With a strong economy stalling him in the face, combined with failed attempts to corner the incumbent president on family values, Dole was politically finished. Consequently, although the Republicans would win both houses again, they would once again miss the opportunity to take the White House and have it all.

As the words from Bill Clinton’s inaugural address drifted out over the nation on January 20, 1997, a soft echo from the not-too-distant past could be heard. Six and a half years earlier, on July 25, 1990, the White House was celebrating another failed override vote by Congress as the family leave bill went down to another defeat. During a TV interview on that same July evening, David Gergen, a former Reagan communications director, criticized George Bush in general and the Republican Party in particular for missing the boat on family leave. “The issue was a winner for the Democrats,” Gergen stated, “because the Republicans were making it one” (Elving 1995, 198). The issue would keep returning again and again, he warned in 1990, and it would be bigger every time it came back.

In retrospect, one should not conclude that the FMLA was the key to the Democratic victories in 1992 and 1996. It was simply one campaign strategy among many that was used to put the Republicans on the defensive. A weak economy in 1992 and a strong one in 1996 probably had to do with Clinton’s back-to-back victories than anything else. But although the Democrats used the Family and Medical Leave Act effectively in 1992 and 1996 by incorporating the bill into its family-values strategy, they also abused it shamelessly by portraying it as something much more than it actually was. For in the end, the FMLA provided no paid leave and applied to only 6 percent of corporations and 60 percent of the workforce. However, it did provide that rapidly growing confederacy of cynics with what many would consider to be one more excellent example of symbolic politics. And meanwhile, as will be discussed in chapter 9, the United States remains far behind other industrialized countries in addressing work and family issues.

Notes

1. Connecticut was the first state to pass a family-leave bill. Concerned about the issue of cost if paid leave were to be proposed, the General Assembly chose the incremental approach. Therefore, the first bill in 1987 applied to the public sector only. A representative from the private sector (Southern New England Telephone) even spoke in favor of the bill, provided it was unpaid. Two years later, a second bill was passed that applied to the private sector. Neither bill provided paid leave.

2. Marian Wright Edelman, founder and director of the Children’s Defense Fund, was particularly concerned about the family-leave lobby cutting into her child-care coalition. Whatever conflict may have existed between the Children’s Defense Fund and the American Association of Retired Persons (AARP) was defused in the late 1980s when the two groups became cosponsors of Generations United, a Washington-based organization that was formed to address the “coming generational war.” Today, Generations United suggests legislation and offers various community programs designed to bring generations together. See Wisensale’s “Grappling with the Generational Equity Debate: An Ongoing Challenge for the Public Administrator” (1999b) in Public Integrity, Winter, 1–19.

3. The U.S. General Accounting Office (GAO) report proved to be instrumental in neutralizing the business community’s claim that an unpaid family-leave bill would be too costly. The GAO estimated the costs to be relatively insignificant ($188 to $236 million) and confined mostly to the cost of maintaining employees’ health insurance. For an interesting and thought-provoking analysis of the cost issue, see Spalter-Roth and Hartmann’s “Unnecessary Losses: Costs to Americans of the Lack of Family and Medical Leave” (1990) and Spalter-Roth and Hartmann’s “Science and Politics and the ‘Dual Vision’ of Feminist Policy Research: The Example of Family and Medical Leave” in Hyde and Essex’s Parental Leave and Child Care: Setting a Research and Policy Agenda (1991). For example, Spalter-Roth and Hartmann concluded in 1991 that it costs American women more than $31 billion in earnings losses annually to have the next generation of workers and citizens. Also, refer to pages 86–90 in Elving’s Conflict and Compromise: How Congress Makes the Law (1995).
4. According to William Safire’s *Dictionary of American Politics* (1995), the use of the term “family values” began in 1976 with its inclusion in the Republican platform. “Divorce rates, threatened neighborhoods, and schools and public scandal all create a hostile atmosphere that erodes family structures and family values.” Eight years later New York Governor Mario Cuomo referred to “family” and “values” separately in his 1984 speech before the Democratic National Convention. But the term stuck during the 1992 presidential campaign and has been with us ever since.

More recently, at least one scholar has explored the concept of “family values” through the prism of the U.S. Constitution, and the post–Civil War amendments in particular. See Peggy Cooper Davis’s *Neglected Stories: The Constitution and Family Values* (1997).

5. The FMLA was not the key to Clinton’s election in 1992; the economy was. But had Bush been reelected in 1992 and/or had the bill still been under debate during the 104th Congress, it probably never would have passed. The Congress that was elected with Clinton was no more “veto proof” than the two that convened under George Bush.

6. Two key White House aides who resigned in protest over Clinton’s signing of the Welfare Reform Act of 1996 were David Ellwood and Peter Edelman. Edelman offers his explanation for his decision to resign in a March 1997 issue of *The Atlantic Monthly*. Particularly troubling to Edelman was Clinton’s statement that he should be reelected in 1996 because only he could be trusted to fix the flaws in the legislation. This prompted political correspondent David Broder to write in the *Washington Post* that reelecting the president based on his promise to fix the law would be like giving Jack the Ripper a scholarship to medical school. Edelman, who is married to Marian Wright Edelman, head of the Children’s Defense Fund, was the assistant secretary for planning and evaluation at the Department of Health and Human Services before he resigned in 1996.

7. There are numerous books on the Clinton presidency that explain his political motivations. Highly recommended is Caplan and Feffer’s *State of the Union 1994: The Clinton Administration and the Nation in Profile* (1994). More specifically, pages 20–28 describe the political climate of divisiveness within which Clinton had to operate during his years in the White House. This analysis helps explain some of Clinton’s policy choices, including welfare reform and the Defense of Marriage Act.


Chapter 7

Implementation and Evaluation of the Family and Medical Leave Act

The FMLA, which went into effect on August 5, 1993, stipulated that an evaluation of the law’s impact be completed by a bipartisan commission within three years of its implementation. The Commission on Leave, which formed in November 1993, was chaired by Senator Christopher Dodd (D-CT), the bill’s key sponsor in the Senate, and co-chaired by Donna Lenhoff, one of the original architects of the law. It included congressional leaders from both parties, important lobbyists representing various viewpoints on the issue, and key cabinet members whose purview covered family and medical leave issues. The Commission’s primary charge was to determine the new law’s impact on costs, benefits, and productivity. In short, was the FMLA as expected and who was it helping or hurting?

Between 1993 and 1995, two major research strategies were employed by the Commission to gather information. First, public hearings in three different sites across the country were held to solicit comments from a variety of people about the law’s strengths and weaknesses. Second, in 1995, the Commission contracted with two research organizations, Westat, Inc. and the Institute for Social Research at the University of Michigan, to complete two major studies. One, the Employer Survey, was a national, random-sample