THE WHITE HOUSE

WASHINGTON

June 14, 1983

MEMORANDUM TO: EDWIN L. HARPER
FAITH RYAN WHITTLESEY

FROM: Stephen H. Galebach
Morton C. Blackwell

SUBJECT: House Action on "Equal Access Act"

Congressman Carl Perkins has scheduled hearings June 16, on Congressman Trent Lott's bill which would, in effect, prohibit discrimination against student group use of school facilities on the grounds of the religious orientation of such groups.

In a recent letter to Senator Thurmond, the President repeated his endorsement not only of his Constitutional Amendment but of the concept embodied in bills by Senator Denton and Senator Hatfield which are similar to Congressman Lott's Bill, H.R. 2732.

It was very unexpected for Congressman Perkins to schedule these hearings. We think it is very appropriate for the President to respond to Congressman Perkins' initiative.

Attached is a draft letter which we suggest be forwarded to Ken Duberstein for possible signing by the President.

1 Attachment a/s

DRAFT LETTER FOR PRESIDENT'S SIGNATURE

The Honorable Carl D. Perkins,
Chairman
HOUSE COMMITTEE ON EDUCATION AND LABOR
Suite #2181 - Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to hear that your subcommittee has scheduled hearings on June 16, 1983, to consider H.R. 2732, the Equal Access Act. As you know, I strongly support the concept embodied in this bill, and I commend you for taking swift action to consider this problem.

Americans have a strong tradition of respect for religious liberty. We need to uphold this tradition above all in our public schools, which are designed to transmit the best of our values to our young people. Conflicting decisions by lower courts have left school administrators uncertain as to whether they ought to treat voluntary religious groups on an equal basis with other voluntary extracurricular organizations. I believe that Congress should resolve the uncertainty by giving full protection to First Amendment rights as described by the Supreme Court in Widmar v. Vincent.

I realize that there are several possible approaches to this problem, and I look forward to working with your subcommittee in reaching the most equitable solution for all concerned.

No issue is more important than the constitutional rights of young Americans, and I hope that the full committee will be prepared to bring the issue to the floor of the House for consideration in time for final passage in this session of the Congress.

Sincerely,

Ronald Reagan

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 14, 1983

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: School Prayer

I agree with Steve's recommendations. Bob Kabel will be ascertaining the positions of key Senators on the Judiciary Committee today, and we should decide on our strategy as quickly as possible after his report comes in.

Ken Cribb has been keeping on top of this situation for Ed. Galebach and Kabel will brief Ken on the situation tomorrow. If you concur with the recommendations, I suggest this memo be forwarded on to Ken.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON
June 13, 1983

FOR: MICHAEL M. UHLMANN

FROM: STEPHEN H. GALEBACH

SUBJECT: School Prayer

I. Situation

Last week Senators Hatch, Thurmond, and Grassley reported out from the Constitution Subcommittee both the President's school prayer amendment and Hatch's own amendment providing for silent prayer and equal access. The two could be taken up by the full Judiciary Committee as early as June 23.

II. Problem

- The President's amendment faces an uphill battle in the committee. While a possible majority exists for us on the committee -- given maximum lobbying effort and additional time -- we are at a disadvantage with Hatch's alternative amendment on the table and Senators Thurmond and Hatch saying publicly that our amendment cannot pass. Bob Kabel is talking to the swing Senators -- Dole, Heflin, Simpson, DeConcini, and Byrd -- and we should soon have a more precise idea of our chances.

- Hatch's amendment, if brought to a Senate floor vote, will generate very little support from school prayer advocates, because it accomplishes so little -- some groups say they will publicly oppose it, and many fear that it will lend credence to the ACLU argument that the Constitution needs to be changed before equal access can be provided.

- If Hatch's amendment is the only measure to emerge from committee, our school prayer constituency will be demoralized and the issue will cease to be a potent political factor.

- The bottom line is that we need to get some measure through Judiciary Committee that will be a major accomplishment and that school prayer advocates will think is worth working for.

III. Proposed Solution

One possible solution is to arrive at a compromise amendment acceptable to Senators Hatch and Thurmond as well as to the President and the school prayer coalition. The alternatives suggested by outside groups thus far would raise as many problems as they solve, and have not garnered broad support. Senator Hatch, moreover, has appeared quite committed to his own version. But it may be helpful to ask a third party such as Senator Laxalt to act as a mediator and convene talks about compromise language.

A more promising solution is the statutory approach already endorsed by the President. An equal access bill (Denton's) could be considered at the same Judiciary Committee markup as the two constitutional amendments. The full committee has already held hearings on this bill, and Senator Denton is prepared to ask Senator Thurmond to put it on the committee's agenda for next week. This move has a number of advantages:

- The President has already asked Senator Thurmond to move quickly in committee with an equal access bill.
- The hearings on this amendment were very successful, and a broad range of religious groups support it enthusiastically.
- The major supporters of our amendment believe that an equal access bill would be a major achievement; it would immediately reverse the widespread success of the ACLU in driving all religious groups out of the schools.
- It should not be difficult to gain majority support for such a bill in the Judiciary Committee and on the Senate floor; moreover, Senator Denton is flexible and willing to compromise on statutory language in order to ensure majority support.

School prayer groups have already been pushing for an equal access bill at the same time as they lobby for the President's amendment. Thus, we would not be asking them to get behind an idea that would be new to their grassroots supporters.

IV. Recommendation

Push the equal access bill as a fallback position to our amendment, taking the following steps:

- Give Senator Denton the go-ahead to ask Senator Thurmond to include the equal access bill on the agenda with the two amendments.

- o Repeat to Senator Thurmond, privately, the President's request that an equal access bill be considered as a separate item on the agenda, and explain why we would like it to be included in the same markup in the two amendments.

- o Coordinate with Senator Denton to make modifications in the bill as necessary to ensure passage.

- o Coordinate with Republican leaders in the House (where Congressmen Lott, Kemp, Dannemeyer, and Hyde have already introduced a bill similar to Denton's).

With this strategy, our supporters can continue to lobby Senators on the committee to vote for both the President's amendment and the equal access bill. Even if Senator Hatch's amendment prevails over the President's, we would at least have a bill which will generate enthusiastic support among our school prayer constituency, and which can provide an important victory.

THE WHITE HOUSE
WASHINGTON
6. 15. 83

Ed -

I have appended a short statement to be released in the President's name (tomorrow, preferably). Some sort of statement will be expected by the RTC's, and better soon than late.

Mike

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 15, 1983

TO: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Supreme Court's Decision in the Akron Abortion Cases

The Supreme Court today struck down most of the state and local restrictions on the manner of performing abortions involved in the related cases of Akron v. Akron Center for Reproductive Health, Planned Parenthood Association of Kansas City, Missouri v. Ashcroft, and Simopoulos v. Virginia. The Court issued separate opinions for each of the three cases.

1. City of Akron case -- The Court struck down all the challenged provisions of the Akron, Ohio ordinance. This ordinance:

- Required all abortions performed after the first trimester of pregnancy to be performed in a hospital.
- Prohibited a physician from performing an abortion on an unmarried minor under the age of 15 unless the physician obtained the consent of one of her parents or unless the minor obtained a court order to have the abortion performed.
- Required that the attending physician inform a potential abortion patient of the status of her pregnancy, the development of her unborn child, the date of possible viability, the possible physical and emotional complications involved, and the availability of agencies to provide her with assistance and information with respect to birth control, adoption, and childbirth.
- Prohibited a physician from performing an abortion until 24 hours after the pregnant woman signs a consent form.
- Required physicians performing abortions to ensure that fetal remains are disposed of in a human and sanitary manner.

The majority found each of these provisions to be a burden on the fundamental right to obtain an abortion. Six justices joined in the opinion for the Court, which was written by Justice Powell. A dissenting opinion was written by Justice O'Connor, joined by Justices White and Rehnquist.

2. Planned Parenthood, Missouri v. Ashcroft Case -- The Court struck down part of a Missouri statute, and upheld other parts.

- The Court struck down that portion requiring that abortions after 12 weeks of pregnancy be performed in a hospital -- Justice Powell again wrote for a six-justice majority, with O'Connor, Rehnquist, and White dissenting.

- The Court upheld those portions requiring (a) a pathology report for each abortion performed, (b) the presence of a second physician during abortions performed after viability, and (c) minors to secure parental consent or consent from the juvenile court for an abortion.

  -- The Missouri statute differed from the Akron ordinance in that it specified that the juvenile court should grant consent for the abortion if it found the minor to be sufficiently mature to make the decision or if it found the abortion to be in the best interest of the minor.

  -- In this part of the opinion, Justices Powell and Burger were joined by Rehnquist, O'Connor, and White in the majority opinion, with Justices Blackmun, Brennan, Marshall, and Stevens dissenting.

3. Simopoulos v. Virginia -- The Court upheld the conviction of a doctor for violating Virginia statutory provisions that make it unlawful to perform an abortion during the second trimester of pregnancy outside a licensed hospital.

- The Court reached a different result than in the similar provision of the Akron ordinance, because the Virginia statute allowed out-patient clinics to be licensed as "hospitals" by the state, thus imposing less of a burden on the procurement of abortions than in the Akron ordinance, which allowed abortions only in in-patient hospitals.

- Justice Stevens filed the lone dissent to this opinion.

I am profoundly disappointed by the decisions announced today by the Supreme court in striking down several prudent efforts by state legislators to control the circumstances under which abortions may be performed.

As Justice O'Connor emphasized in her dissenting opinion joined by Justices White and Rehnquist, the legislature is the appropriate ~~forum for resolving sensitive policy~~ issues. The ~~issue of abortion must be resolved by our democratic process, and~~ Congress should ~~make its~~ voice be heard against abortion on demand, both by statute and by constitutional amendment. I do thank Justices O'Connor, White, and Rehnquist for continuing to speak out forthrightly against unrestricted court-imposed abortion.

Our society is confronted with a profound moral issue - the taking of the life of an unborn child. Without reviewing the merits of the issue, considered by the court, I want to express my deep concern.

I am profoundly disappointed by the decisions announced today by the Supreme Court in striking down several prudent efforts by state legislators to control the circumstances under which abortion may be performed.

As Justice O'Connor emphasized in her dissenting opinion joined by Justices White and Rehnquist, the legislature is the appropriate forum for resolving sensitive policy issues. The issue of abortion must be resolved by our democratic process, and Congress should make its voice heard against abortion on demand, both by statute and by constitutional amendment. I do thank Justices O'Connor, White and Rehnquist for continuing to speak out forthrightly against unrestricted court-imposed abortion.

I urge the Congress to come to grips with this issue so that our legislative processes are not defaulting to the Courts on matters as controversial and as important as abortion.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 15, 1983

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  - -- The Missouri statute differed from the Akron ordinance in that it specified that the juvenile court should grant consent for the abortion if it found the minor to be sufficiently mature to make the decision or if it found the abortion to be in the best interest of the minor.

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- o The Court reached a different result than in the similar provision of the Akron ordinance, because the Virginia statute allowed out-patient clinics to be licensed as "hospitals" by the state, thus imposing less of a burden on the procurement of abortions than in the Akron ordinance, which allowed abortions only in in-patient hospitals.

- o Justice Stevens filed the lone dissent to this opinion.

Accordingly, I join millions of Americans in expressing

I am profoundly disappointed by the decisions announced today by the Supreme court in striking down several prudent efforts by state legislators to control the circumstances under which abortions may be performed.

As Justice O'Connor emphasized in her dissenting opinion joined by Justices White and Rehnquist, the legislature is the appropriate forum for resolving these sensitive policy issues. The issue of abortion must be resolved by our democratic process. Once again, I call on the and Congress (to restore legal protection for the unborn, and to) should make its voice heard against abortion on demand, both by statute and by constitutional amendment. I do thank Justices O'Connor, White, and Rehnquist for continuing to speak out forthrightly against unrestricted court-imposed abortion.

and to restore protection

THE WHITE HOUSE

WASHINGTON

June 23, 1983

Dear Mr. Jibilian:

Thank you for writing to the President about the activities in your high school to discourage drunk driving and to allow study of the Bible. The President has asked me to respond on his behalf, since we work closely on these issues in the Office of Policy Development.

It is certainly good to see high school students forming associations to combat the problem of drunk driving, which claims the lives of classmates in many tragic accidents each year. Efforts such as yours at the local level are often the most effective way to convince students of the need for responsible conduct with respect to driving.

It is also good to see students having the chance to read the Bible along with other important literary works. The President has proposed a constitutional amendment to reverse the Supreme Court's decisions of the early 1960s that excluded Bible reading and prayer from public classrooms. But study of the Bible as literature has always been allowed by the Supreme Court, and it is encouraging to see schools taking advantage of this opportunity.

I regret to tell you that the President's other commitments do not permit him to give a talk to your class concerning these topics. Please be assured the President shares your concern for these important issues. I wish you all the best for your future endeavors.

Sincerely yours,

Edwin L. Harper
Assistant to the President
for Policy Development

William Jibilian
Northern Highlands Regional High School
Hillside Avenue
Allendale, New Nersey 07401

DOCUMENT NO. 14424 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 6/9/83 **ACTION/CONCURRENCE/COMMENT DUE BY:** June 17, 1983

SUBJECT: LETTER TO THE PRESIDENT FROM WILLIAM JIBILIAN RE: PRESIDENT'S RELIGIOUS POLICIES

	ACTION	FYI
HARPER	☐	☒
PORTER	☐	☐
BARR	☐	☐
BLEDSOE	☐	☐
BOGGS	☐	☐
BRADLEY	☐	☐
CARLESON	☒	☐
DENEND	☐	☐
GALEBACH	☐	☐
GARFINKEL	☐	☐
GUNN	☐	☐
B. LEONARD	☐	☐
LI	☐	☐
McALLISTER	☐	☐
MONTOYA	☐	☐
ROPER	☐	☐
SMITH	☐	☐
SWEET	☐	☐
UHLMANN	☐	☐
ADMINISTRATION	☐	☐

	ACTION	FYI
DRUG POLICY	☐	☐
TURNER	☐	☐
D. LEONARD	☐	☐
OFFICE OF POLICY INFORMATION		
HOPKINS	☐	☐
PROPERTY REVIEW BOARD	☐	☐
OTHER		
_____	☐	☐
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REMARKS: TO STEVE GALEBACH
PLS. HANDLE

Please return this tracking sheet with your response

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

Northern Highlands Regional High School
HILLSIDE AVENUE • ALLENDALE, NEW JERSEY 07401
(201) 327-8700

GERALD F. HOPKINS
Superintendent
JOHN W. MINTZER
Principal
ALFRED L. VINCI
Vice Principal

April 11, 1983

The President of the United States
The White House
Washington, D.C.

My Dear Mr. President

I am attending a Bible as Literature course at Northern Highlands Regional High School, in Allendale, New Jersey. Being a practicing Christian and upon hearing that you named this year The Year of the Bible, I am writing this letter to ask you to give a talk to our class concerning your religious policies.

Another concern at our school that might be of interest to you is a politically active organization called LEADD, (Legislation Education Against Drunk Driving), whose story was recently covered by Channel 4 News. Being a community near the New York boarder, which has a lower drinking age, we are deeply concerned with a National Drinking Age.

I would very much appreciate a response from you concerning either of the subjects covered in this letter. Knowing that you have many great concerns, I am sure your schedule is quite full, but if you could make the time, our school would consider it a great honor to have you as a guest speaker.

Sincerely yours

William Jibilian

William Jibilian

Justice Appropriations Bill

Timing

The Commerce/Justice/State appropriations bill was reported out of the full House Appropriations Committee on June 3.

There is a controversial provision in the bill which makes the timing of floor action uncertain. Rep. Neal Smith, Chairman of the Subcommittee on Commerce/Justice/State, succeeded in putting into the bill a provision barring funding to Radio Marti. (Apparently, RM interferes with the signal of a commercial station in Smith's district.) Smith has sought a Rule barring any amendments to this provision. The Rules Committee has refused to give this Rule, and Smith is so far unwilling to let the bill go to the floor without it.

Floor action could be as late as September.

Issues

The bill as a whole is $1.3 billion over budget; the Justice portion is $120 million over the President's request.

- The bill does not provide the $92 million funding sought by the Administration for its Justice Assistance Act proposal.
- The bill provides $70 million for the Juvenile Justice program, which the Administration would like to zero out.
- The bill provides $10 million for DeConcini grants (multistate intelligence system), which the Administration would like to zero out.
- The bill provides $30 million over the Administration's request for INS to add another 400 positions for border patrol.
- The bill adds $20 million to the Administration's request for the cooperative agreement program for local jail improvements.
- The bill provides $10 million more than requested for renovation of a correctional facility in Sheridan, Oregon.
- The bill would require DOJ to absorb an extra $34 million in SLUC charges and appropriates $7 million over the Administration's request for DEA.
- The bill gives TVA independent litigation authority.

There are no major substantive policy issues in the bill; however, we can anticipate efforts on the floor to tack on controversial riders, such as antibusing provisions.

BILL BARR

Assistant Directors:
Bob Carleson
Danny Boggs
Wendell Gunn
Mike Uhlmann
Ralph Bledsoe
Roger Porter (Gene McAllister)

June 30, 1983

URGENT

Tracking the Appropriations Bill Process

At this point you should all be experts on the appropriations bills in your areas of responsibility roughly in accordance with the attached list. The moment of truth has arrived.

Ed Harper has just asked for a written update for Ed Meese on the policy issues surfacing in each of the appropriations bills. This update must be ready by tomorrow afternoon.

Would each of you please give me a one page summary on each appropriations bill of the policy issues involved and some idea of the timing -- that is the timeframe for Administration decisions concerning these bills. (Only one appropriation bill per page please)

Obviously I need these as soon as possible after lunch if we are to have an OPD report by tomorrow evening. (Today, if you are reading this Friday morning.)

Thanks

Les

June 17, 1983

APPROPRIATIONS BILLS ASSIGNMENTS

Agriculture	Boggs	Khedouri
Commerce/Justice/State		
Commerce	Gunn	Horner
Justice	Uhlmann	Horner
Energy and Water	Boggs	Khedouri
HUD	Porter	Horner
Interior	Boggs	Khedouri
Labor/HHS/Education		
Labor	Porter	Cogan
HHS	Carleson	Cogan
Education	Carleson	Cogan
Transportation	Gunn	Horner
Treasury/Postal		
Treasury	Porter	Horner
Postal	Bledsoe	Horner

Mueller v. Allen

Minnesota Tax Deduction Case

In a 5-4 decision, the Supreme Court upheld the constitutionality of a Minnesota statute which allows state taxpayers to deduct "tuition, textbooks, and transportation" expenses incurred in educating their children, with a maximum deduction of $500 per dependant in grammar school and $700 per dependent in high school. Under the statute, the deduction is available to parents of both public and private school students.

Petitioners had challenged the statute as a violation of the Establishment Clause because most educational expenses for public school students are paid for by the state, and hence the bulk of deductions are claimed for private school students, 95% of whom attend religious schools.

In an opinion delivered by Justice Rehnquist and joined by Burger, White, Powell, and O'Connor, the Court found that the statute satisfied all elements of the three-part test laid down in Lemon v. Kurtzman: (1) the statute had a secular legislative purpose; (2) its primary effect was neither to advance nor inhibit religion; and (3) it did not foster "excessive government entanglement with religion."

(1) Legislative purpose: The Court said it was reluctant to attribute unconstitutional motives to states, when a plausible secular purpose for a state's program can be discerned from the face of the statute. The Court observed that the statute could be justified by a number of secular purposes: (a) the state's interest in ensuring a well-educated citizenry; (b) "a strong public interest in ensuring the continued financial health of private schools . . . By educating a substantial number of students, such schools relieve public schools of a correspondingly great burden."; (c) "Private schools may serve as a benchmark for public schools" (e.g., competition).

(2) Primary effect: The Court found several features of the statute significant in determining that the statute's primary effect was not to advance the sectarian aims of private schools:

> (a) The statute was among many deductions in the state's tax scheme (charitable contributions, medical expenses, etc.) and appeared to be a genuine tax equity measure. The Court distinguished this "genuine deduction" from the "disguised grants" struck down in Nyquist. The Court noted that in Nyquist the New York law provided for outright grants to low-income parents, and that benefits to middle-income parents were unrelated to the money actually expended on tuition.
>
> (b) "Most importantly, the deduction is available for educational expenses incurred by all parents", including those whose children attend public or private schools,

sectarian and non-sectarian. The Court distinguished Nyquist where tuition grants were provided only to parents of children in private schools.

(c) "[B]y channeling whatever assistance it may provide to parochial schools through individual parents, Minnesota has reduced the Establishment Clause objections . . . . The historic purposes of the Clause simply do not encompass the sort of attenuated financial benefit, ultimately controlled by the private choices of individual parents, that eventually flows to parochial schools from the neutrally available tax benefit . . . ."

(d) The Court dismissed petitioner's argument based on statistical evidence that most of the deductions were claimed by parents with children in religious schools. The Court said it could not adopt a rule grounding the constitutionality of a facially neutral statute on this kind of statistical evidence because more certainty was needed and because there were no principled standards to evaluate such evidence. Finally, the Court said that private school parents perform a valuable public service at great cost to themselves (i.e., relieving the burden on public schools) and that, if they do disproportionately benefit, it is only a "rough return" for the benefits they provide the state and all taxpayers.

(3) Entanglement: The Court dismissed any entanglement problem. The only state scrutiny needed is to ensure that deductions are not taken for instructional materials used in religion courses. This is not overly intrusive and is no different than that which occurs under the textbook loan system upheld in the Allen case.

Implications for Administration Bill

Overall, the opinion bodes well for our tuition tax credit bill. We are obviously facing a more sympathetic Court, and there are a number of points in the decision which will support our legal arguments for the constitutionality of our legislation.

Nevertheless, the Court seems to have placed great weight on the fact that the Minnesota statute made deductions available to all parents. Our proposed legislation would make credits available only to parents with children in private schools. This may not be fatal, and we can make a number of arguments to justify our approach at the federal level. On the other hand, we may want to consider changing our bill to eliminate any question of a constitutional challenge.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 24, 1983

FOR: ROGER B. PORTER

FROM: WILLIAM P. BARR

SUBJECT: Meeting with Association of General Contractors on Minority Business Provisions of Surface Transportation Act of 1982

AGC Meeting

Yesterday I met with the following representatives of the Association of General Contractors (AGC): James Pitcock, Senior Vice President; Hubert Beatty, Executive Vice President; and John Gentille, Director of Highway Division.

AGC is an association of 32,000 firms responsible for employment of 3,500,000 employees and more than 80% of the nation's non-residential construction.

The AGC representatives strongly objected to the way DOT is administering the MBE participation provisions of the Surface Transportation Act of 1982. They made the following points:

Background

Prior to 1982, DOT ran an administratively-created program to enhance MBE participation in the federal aid highway program. Under this, DOT would require states to submit annual MBE participation goals to FHA that reflected each state's realistic assessment of its potential for MBE participation.

Under this administrative program, by FY 82, about 4.5% of federal highway funds ($8 billion) went to MBE's.

The 1982 Surface Transportation Assistance Act (STAA) contemplates a four-year program with budget levels ranging from $13-15 billion annually. In considering the act, the House adopted an amendment sponsored by Rep. Parren Mitchell which provided that, "Notwithstanding any other provision of law, not less than ten percent of the amounts authorized . . . shall be expended directly" [with MBE's].

In Conference Committee, this provision was changed by dropping the word "directly" and by inserting the phrase "Except to the extent the Secretary determines otherwise" in lieu of the phrase "Notwithstanding any other provision of law." This change was achieved largely through the efforts of AGC and Members of Congress from states with small minority populations. There are

statements in the legislative record indicating that the purpose of the Conference Committee change was to provide DOT with broad latitude to implement the provision in a flexible, cost-effective, cooperative manner that recognizes the differences among the individual states.

The Problem

DOT has issued interim regulations implementing STAA which AGC says are inflexible and draconian. DOT will shortly be sending proposed final regulations over to OMB which AGC believes will be equally objectionable.

The DOT interim regulations impose the 10% MBE goal on every state, effective immediately. AGC believes this is an erroneous interpretation of the statute, which they say looks to 10% participation nationwide during the statute's four-year term.

The 10% requirement is clearly impossible in many, if not most, states, particularly those with small minority populations. For example, the regulation will require the following increases in MBE utilization in FY 83: South Dakota -- 8690%; Wyoming -- 2549%; Texas -- 1385%.

The regulations also provide that, if a state fails to meet its goal, a number of sanctions can be imposed, including the cutoff of federal highway assistance.

Because of the possible sanctions, AGC claims that the states are inflexibly applying the regulations -- imposing the 10% rule on a project-by-project basis, requiring full compliance and ignoring evidence of unsuccessful good faith efforts to find the requisite number of MBE's.

The regulations do provide for a waiver if requested by the governor of the state. AGC complains that the regulations make these virtually impossible to get. The regulations say that MBE availability within a state is not limited to MBE's located within the state. The regulations suggest that waivers will not be granted if the states have laws that inhibit meeting MBE goals (e.g., lowest bidder laws, bonding laws, etc.). The regulations require a state seeking a waiver to take "all affirmative action it can" sufficient to meet a 10% goal.

AGC says that two states have sought waivers to date, Wyoming and Idaho, and that both have been rejected.

AGC claims that DOT's rigid approach is causing chaos in the marketplace. They claim that there are not enough MBE's to do the work, and that while non-MBE contractors are "starving" (with

16 or 17 bidders per project), MBE's are saturated and are going about essentially charging whatever the traffic will bear to serve as subcontractors on projects. AGC says that this increases the cost of projects and is driving non-MBE subcontractors completely out of the market.

AGC Position

It is AGC's position that the statute was never intended to require DOT to pass down to every state the overall 10% MBE goal. AGC believes that there is abundant discretion under the Act for DOT to waive the 10% participation goal where appropriate. AGC believes that the statute permits DOT to administer the program much as it did before the statute was enacted -- that is, to require states to submit annual goals that reflect realistic assessments of that state's MBE contracting potential.

AGC says that DOT has come up with these regulations for political reasons: so that state governors rather than the Administration will be seen as trying to get out from under the 10% goal. AGC says that this is unfair and that Secretary Dole should have enough courage to use the discretion she was given under the Act. Even if the political onus is to remain with the governors, AGC says that some of the gratuitous restrictions in the regulations make it almost impossible even for politically brave governors to obtain waivers of the 10% level.

AGC says that, although they have broad support in Congress for their interpretation of the statute, there is little sentiment to open up the Act, and so a legislative solution seems out of the question.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 24, 1983

FOR: EDWIN L. HARPER

FROM: WILLIAM P. BARR

SUBJECT: Legal Services Corporation

Legislative Status

1. House of Representatives. On May 17, the Judiciary Committee reported out H.R.2909, a three-year reauthorization bill ($296 million the first year).

- The bill contains some bad provisions such as restrictions on the powers of recess appointees. Also, it eliminates a provision currently in the continuing resolution which requires a majority of local board members to be attorneys appointed by the majority bar association.

- The bill also contains some good provisions, including a key one that would make it easier to deny refunding to a grantee. Generally, however, the protections against abuses in this bill are significantly toned down from the restrictions adopted by the House last Congress in H.R.3480. For example, the lobbying provision is more liberal than the existing regulations.

- Many of the good restrictions that were contained in H.R.3480 last Congress were added on the floor, and perhaps we can expect a similar tightening up of H.R.2909 if it proceeds to floor action. However, the House is more liberal than it was last Congress, and we have also lost some ground because of the compensation stories that appeared several months ago.

2. Senate. The center of activity in the Senate is the Labor and Human Resources Committee:

- Senators Eagleton and Weicker are pressing for action on their bill, S.1133, a three-year authorization bill ($296 million for the first year).

  -- The bill contains a number of objectionable provisions including provisions locking in current funding formulas; requiring board members to be supporters of LSC; and requiring that special weight be given to LSC experience in selecting board members.

-- The bill contains no effective safeguards against past abuses. There is no provision in the bill for expedited denial of refunding to grantees.

- o A majority of Committee members support the Weicker/ Eagleton bill. Under pressure, Senator Hatch has promised oversight hearings on LSC on July 12 and markup of a reauthorization bill by July 20.

- o Although a majority of the Committee favors the Weicker/ Eagleton bill, the conservatives on the Committee still believe that they can block the bill from being reported out favorably by the Committee, or, if the bill does get to the floor, that they can prevent its enactment.

- o Nominations for the full 11-member board should be ready to send up to the Committee before the August recess.

Options

Option 1. Stand firm. Insist on "zeroing out" LSC and replacing it with some other structure for providing legal services to the poor, such as block grants or some other approach. Work with conservative Members to block reauthorization bill.

Arguments for standing firm:

- o LSC issue has symbolic importance for conservative groups, and failure to stick to our guns would bring vocal criticism from a key constituency.

- o Efforts to reform LSC are doomed. Restrictions will be ineffective as long as legal services are provided through permanent staff attorneys.

- o Doing away with LSC and creating a better structure for delivering legal services is "the right thing to do" from a policy and philosophical standpoint.

- o Even if we don't do away with LSC, preventing its reauthorization demoralizes the most activist elements among the staff attorneys.

Likely outcome: Continued Mexican standoff. LSC will operate under continuing resolutions. Because of the difficulty in tacking meaningful restrictions onto appropriations measures, it is unlikely that any significant reform of LSC operations would occur.

Option 2. Go along with reform-oriented reauthorization bill. Signal that Administration would not veto reauthorization legislation, provided that (a) our board is confirmed; and (b) the bill contains reforms that will correct LSC abuses in the past, particularly provisions which make it easier to deny refunding and which give the board some tools to keep grantees in line. Attempt to include in the bill the "seeds" of an alternative delivery mechanism; for example, the provision that would expand private bar involvement.

Arguments for reauthorization bill:

- o There is no realistic prospect for doing away with LSC.
- o The current stalemate is not in our interest because LSC continues to operate and no steps can be taken to make lasting reforms.
- o We are missing an opportunity to deal effectively with the worst abuses of LSC. Restrictions can be effective if we can get a good board in place and give them the power to deny refunding to grantees.
- o Focusing on the abolition of LSC plays into the hands of our opponents by permitting them to argue that we are opposed to legal services to the poor. A debate on the reauthorization bill would permit us to focus on the abuses of LSC.
- o The reauthorization bill could give us a chance to sow the seeds for an alternative delivery mechanism.

Likely outcome: A prognosis is difficult. There are reports that the legal service establishment may now feel that they are better off with continuing resolutions than with a reauthorization bill. It's unclear whether this attitude is yet reflected among liberal Members of Congress. We may be helped by recently discovered evidence of LSC grantee abuses.

Further Actions

If there is any disposition for modifying our stand on LSC, the following actions should be taken as soon as possible:

1. Consult with Senator Hatch, and subsequently other key conservatives on the Senate Labor and Human Resources Committee.

2. Work with conservative Senators on the Committee in developing a reauthorization bill that contains:

(a) A wish list of safeguards against abuses, such as those contained in H.R.3480 last Congress; and

(b) Provisions allowing for the evolution of alternative delivery systems. (For example, a section providing that, if a state bar association applies to LSC to administer a legal services program in its state, and the proposal meets a certain criteria, then LSC must make a grant to the association, and commence the orderly phase-out of other grantees within that state.)

Pornography and the Exploitation of Children

A new White House working group has been established to deal with the issue of pornography. The goal of the new working group is to coordinate the agencies concerned -- Justice, FBI, Customs, and Postal Service -- and come up with ideas for improving our investigation and enforcement efforts.

The nature of the problem:

- Pornography is a multi-billion dollar business, which is growing both in volume and in the degree of violence and perversity being depicted.

- There is evidence of a relationship between pornography and other criminal activities:

  -- Organized crime participates heavily in the lucrative pornography trade, and the FBI has evidence that child pornography and sado-masochist pornography sometimes inspire violent acts against children and other persons.

  -- Father Bruce Ritter of Covenant House in New York City (which helps teenagers caught up in the pornography/prostitution culture around Times Square) gave a presentation last week in the Roosevelt Room about organized rings that sexually exploit runaway teenage boys and girls.

What we have done thus far:

- The Attorney General sent a letter to U.S. Attorneys last fall outlining three priority areas for prosecution: child pornography, cases involving organized crime, and cases where pornography is an especially great local problem.

- Commissioner von Raab of Customs has stepped up enforcement efforts against the importation of pornography.

- The Department of Justice has testified in favor of strengthening federal laws against child pornography, to allow prosecutions where there is no commercial distribution-for-money aspect.

Future tasks under consideration in the working group:

- Coordinating the investigation and enforcement efforts of federal agencies and devising strategies against the worst forms of pornography and related criminal activities.

- Working with state, local, and private sector groups to raise public awareness and improve enforcement.

The working group will report by the end of the summer on what is accomplished and what is proposed for future action in this area.

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