COMMITTEE ON WAYS AND MEANS

HEARINGS BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES
(Volume 1 of 3)

104th Congress
1995-1996

	Tab No.
Contract With America-Welfare Reform-Part 1	1
Contract With America-Welfare Reform-Part 2	2
Child Care and Child Welfare (Joint with Committee on Economic and Educational Opportunities, Subcommittee on Early Childhood, Youth, and Families)	3
Child Support Enforcement Provisions Included in Personal Responsibility Act as Part of the CWA	4

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(Volume 2 of 3)

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1995-1996

	Tab No.
Federal Adoption Policy	5
Federal Unemployment Compensation System and Consolidation of Job Training Programs	6
Child Support Enforcement and Supplemental Security Income	7
Earned Income Tax Credit (Joint with Subcommittee on Oversight, Volume 2.)	
Welfare Reform Success Stories	8
The National Governors' Association Welfare Reform Proposal	9
Causes of Poverty, with a Focus on Out-of-Wedlock Births	10
Welfare Reform	11

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	Tab No.
Barriers to Adoption	12
Unemployment Insurance Issues	13
Joint Hearing on H.R. 3467, "Saving Our Children: The American Renewal Act of 1996 (Joint with Committee on Economic and Educational Opportunities, Subcommittee on Early Childhood, Youth, and Families)	14
Implementation of Welfare Reform and Child Support Enforcement	15

BARRIERS TO ADOPTION

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JUNE 27, 1996

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CONTENTS

	Page
Advisory of June 20, 1996, announcing the hearing	2

WITNESSES

Benn, Deborah, Cleveland, OH	56
Binsfeld, Hon. Connie, Lieutenant Governor, State of Michigan	27
Child Welfare League of America, Inc., David S. Liederman	89
Dave Thomas Foundation for Adoption, R. Dave Thomas	35
D'Ambra, Laureen, For the State of Rhode Island, Providence, Rhode Island	99
Dean, Robert, Omaha, NE	74
Department of Children and Family Services, Cleveland, OH, Judith Goodhand	46
Department of Children and Family Services, Los Angeles, CA, Peter Digre	110
DeWine, Hon. Mike, a U.S. Senator from the State of Ohio	7
Digre, Peter, Department of Children and Family Services, Los Angeles, CA	110
Fawell, Hon. Harris W., a Representative in Congress from the State of Illinois	23
Goodhand, Judith, Department of Children and Family Services, Cleveland, Ohio	46
Levy, Hon. D. Bruce, Administrative Judge, Miami, FL	85
Liederman, David S., Child Welfare League of America, Inc.	89
Michigan, State of, Hon. Connie Binsfeld, Lieutenant Governor	27
Miller, Hon. George, a Representative in Congress from the State of California	17
Murphy, Sister Josephine, St. Ann's Infant and Maternity Home, Hyattsville, MD	57
Newell, Patricia, Cleveland, OH	52
Rhode Island Child Advocates, Providence, RI, Laureen D'Ambra	99
St. Ann's Infant and Maternity Home, Hyattsville, MD, Sister Josephine Murphy	57
Thomas, R. Dave, Dave Thomas Foundation for Adoption	35
Warenda, Patricia, Fort Lauderdale, FL	64

SUBMISSIONS FOR THE RECORD

Cajoleas, Lynda Carter, Roswell, GA, letter	125
Flory, Patricia A., Azusa, CA, letter	127
Grandparents as Parents, Inc., Lakewood, CA, Rosalie Cauley, letter	130
Grandparents United for Children's Rights, Inc.:	
Mary Hantman, letter and attachments	133
Ethel J. Dunn, joint statement	162
National Coalition of Grandparents, Inc., Madison, WI, Ethel J. Dunn, joint statement (see listing under Grandparents United for Children's Rights, Inc.)	162
Hear My Voice, Ann Arbor, MI, statement	167
Helms, Gail A., Los Angeles, CA, statement and attachment	170
Justice for Children, Houston, TX, Randy Burton, statement and attachment	178
Olson, Eileen, Jacksonville, FL, letter	185

BARRIERS TO ADOPTION

THURSDAY, JUNE 27, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:13 p.m., in room 1100, Longworth House Office Building, Hon. E. Clay Shaw, Jr. (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE
June 20, 1996
No. HR-12

CONTACT: (202) 225-1025

Shaw Announces Hearing on Barriers to Adoption

Congressman E. Clay Shaw, Jr. (R-FL), Chairman of the Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on barriers to children being placed for adoption. **The hearing will take place on Thursday, June 27, 1996, in the main Committee room, 1100 Longworth House Office Building, beginning at 1:00 p.m.**

Oral testimony at this hearing will be heard from invited witnesses only. Witnesses are expected to include Members of Congress, foster parents, scholars, and program administrators. Mr. Dave Thomas, founder of Wendy's International and Chairman Emeritus of Wendy's Board of Directors, will also testify. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) requires that "reasonable efforts" be made to keep children with their parents prior to the placement of a child in foster care, both to prevent or eliminate the need for removal of the child from his family and to make it possible for the child to return to his family. A central goal of Congress in creating the "reasonable efforts" provision was to reduce the likelihood that children would be inappropriately removed from their parents. However, there have been some unintended consequences of this legislation. In several well-publicized cases, it is clear that children were abused, damaged, or even killed when State departments of child welfare, in attempting to meet the "reasonable efforts" mandate, left or returned these children to abusive families. Witnesses have testified before the Subcommittee in the past that the "reasonable efforts" provision plays some role in children being left with or returned to maltreating families. In addition, the way in which the "reasonable efforts" provision is actually implemented in many States may be a barrier to children being placed for adoption. Since many States now use intensive family preservation programs as a way of keeping families together, the Subcommittee is interested in learning more about the success of these programs.

In announcing the hearing, Chairman Shaw stated: "Removing barriers to adoption is an important means of addressing the crisis of the nation's child welfare system. While many families can and should be preserved, there are some families and caretakers that cannot be rehabilitated. In these cases we must find caring, loving, and permanent families for children who need them."

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by the close of business, Thursday, July 11, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Human Resources office, room B-317 Rayburn House Office Building, at least one hour before the hearing begins.

(MORE)

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are now available on the World Wide Web at 'HTTP://WWW.HOUSE.GOV/WAYS_MEANS/' or over the Internet at 'GOPHER.HOUSE.GOV' under 'HOUSE COMMITTEE INFORMATION'.

*****

Chairman SHAW. If our guests and Members could take their seats, we will start with today's hearing.

I have a brief opening statement that I would like to read, and then we will yield to our Ranking Democratic Member, Mr. Ford, for whatever comments he would care to make.

Most of the hearings of this Subcommittee conducted over the last 18 months have directly related to legislation, usually welfare reform. As a result, our hearings have tended to be slightly partisan. Now that is perhaps an understatement.

Today's hearing is very different, I am most glad to say. This is truly an exploratory hearing, and it is about a subject that we all deeply care about.

It seems that nearly everyone agrees that adoption is one of the wonderful inventions of human society. Adoption ensures that children are raised by loving parents in most cases. As if we need confirmation that adoption works, social research has produced several studies showing that adoption is indeed good for children. Adoption has the promise of being one of the means of solving the serious problems that bedevil our children and our child welfare system.

Reports of child abuse have increased enormously in the last decade. More children are in foster care. And yet paradoxically fewer children are being adopted out of foster care.

If children are to be adopted, we must go through the most difficult and permanent of legal steps, terminating parental rights. Here, society and government confront a vexing question: How much help and assistance should we provide, and for how long before we take steps that will allow children to be adopted?

The key issue here can be summarized in one word, and that word is "time." While society tries to help parents with problems, the clock is ticking on their child's development, and the child is holding in a kind of development limbo.

So, we are presented with the difficult task of making decisions that would test Solomon.

In 1980, Congress passed a law that created the outlines of the current child protection system. It was a good law. Even I would go so far as saying, it is an excellent law.

The Subcommittee is fortunate today to have one of that law's prime authors, George Miller, here to testify.

The 1980 law required States that used Federal dollars to have clear plans for children removed from their homes, to provide timely services, and to get children in permanent placements as soon as possible.

Until sometime in the mideighties, the new law and the State programs based on the law seemed to be working. We know that the number of children in foster care and probably the length of time in foster care, both were declining.

But then, perhaps because of crack cocaine and other illegal substances, the rolls exploded, and the length of time in foster care grew, and children started entering foster care at younger ages.

It appears that in most States the foster care rolls have now stabilized, although at a very high level. This stability provided us with the opportunity to evaluate the 1980 legislation without the pressure of rapidly increasing caseloads.

Even so, we do have some problems. Adoption out of foster care has declined. Only about 8 percent of the children in foster care in a given year are adopted. Meanwhile many experts believe that as many as half of the children who return to their parents from foster care are re-abused and wind up in foster care once again.

So, the purpose of today's hearing is to see whether there needs to be Federal action to promote adoption. The issue we have heard most about in previous testimony is reasonable efforts. Title IV–E of the Social Security Act requires States to make reasonable efforts to prevent or eliminate the need for removal of children from their homes and to make it possible for them to return home.

"Reasonable efforts" have not been defined either in Federal statute or in regulations. Perhaps for this reason, "reasonable efforts" have been the target of several court cases, especially the famous *Suter* v. *Artist M.* case. But we still do not know what "reasonable efforts" means and at what point the efforts to preserve the family become unreasonable by placing the children at risk of reabuse.

It is not surprising, then, that some States may be finding it difficult to meet a standard that is not defined. The worst result of this situation may be that States are reluctant to terminate parental rights, even in appropriate cases.

We have invited witnesses to present testimony on whether the current system of balancing the rights of biological parents and the needs of children is working. We will hear both good things and bad things about the child protection system and about reasonable efforts.

We have also invited witnesses who have expertise in and ideas about how Federal and State governments can promote adoption.

After hearing this testimony and considering other sources of information, it will be up to us on this Committee and in this Congress to decide whether Federal action is necessary, and if so, what action to take.

I will now yield to the gentleman from Tennessee, Mr. Ford, for any remarks he might wish to make.

Mr. FORD. Thank you very much, Mr. Chairman.

And I, too, am pleased that we are taking time this afternoon to take another look at our Nation's child welfare and foster care programs. These programs care for some of the most at-risk and most injured children who live in America today.

Anything that we can do to make certain that States design the best programs, recruit the most qualified staff, and make a positive difference in the lives of each and every child who crosses their paths, then we should do so here today with these witnesses.

Unfortunately, there is considerable evidence that we are not doing all that we can. Too often we read about the nightmarish experience of a child who needed our protection, whether the mistake was not removing the child from a dangerous situation or reuniting a family that was not ready to cope with the matter.

What matters is that each child should get precisely the right intervention. I have been around these hearings and been around here in the Congress long enough to know, Mr. Chairman, that this is easier said than done.

Families and the problems they face are complicated. Resources are tight. What works for one family might be a complete failure

for another family. And in large measure, success is dependent upon a well-trained, sensitive worker who shoulders incredible burdens and whose light burns out quickly.

But we must make sure that we have legislation that focuses on some of the problems that we know exist as it relates to barriers for adopting kids.

We should devote our energy to creating a system that encourages adoption where appropriate, but also gives families the wide array of services that they need to stay together.

Mr. Chairman, I join with you today and the three panel of witnesses who are testifying before this Committee and hopefully we can say that we are not going to just express outrage, but we are really going to try to address the problems. We know that the temptation is to look at the wide array of problems and blame an easy target. Let us move away from finger pointing and toward problem solving.

We have had witnesses who have testified before this Subcommittee in the past, but we have not been able to move in the direction of protecting children and removing adoption barriers.

Mr. Chairman, I join with you today and join with my colleagues on this Subcommittee to say that all of the catchy slogans and that all of the sensationalism is fine, but I think it is now time for us to move and take some action in a bipartisan way that can bring real legislation that will respond to the real needs of those children who are in need of parents, who are in need of protection, and who are in need of loving homes.

Thank you, Mr. Chairman.

Chairman SHAW. Thank you, Mr. Ford.

Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman. I would like to associate myself with your remarks.

This is an exploratory hearing on the impact that Federal regulations and guidelines have had on adoption, and I know the witnesses appearing today are here to describe their experiences and offer their insights on adoption in America.

And while we listen to the testimony, we should remember that the focus of these hearings is the children and what we can do ensure that they grow up and become mature in a safe and healthy environment. And today's children face a host of problems outside the home. They encounter drugs, alcohol, crime, and disease, which often have devastating consequences on children and families.

Specifically we will hear testimony on the devastating impact that drugs have had on parents, foster parents, and social workers.

The love and care of parents should provide a guiding light during these trying times. Many children, however, face these problems in their homes at the hands of their parents. Sometimes a parent fails to recognize their role, and that leads to abuse and neglect.

According to Department of Commerce data, in 1993 more than 1 million children were subject to some form of abuse. Of this 1 million, approximately 630,000 were subject to physical or sexual abuse. And in my State of Michigan alone, there were over 136,000 reports of abuse.

Our children are our future. A small investment of time and energy in our children can reap tremendous rewards, and we must do all we can to allow them to grow up in a safe and healthy environment.

I would like to thank the witnesses for coming and look forward to hearing their testimony.

Thank you.

Chairman SHAW. Thank you, Mr. Camp.

We have our first distinguished panel of witnesses, who are already seated at the table. I will introduce them and invite them to speak in the order in which I am introducing them:

Hon. Michael DeWine, who is a former member of the House of Representatives before he descended to the Senate; and, of course, George Miller, a most respected member of this Congress, as is Harris Fawell from Illinois.

We also have Hon. Connie Binsfeld, who is Lieutenant Governor of the State of Michigan, whom Mr. Camp has introduced to us.

And a constituent of mine, Mr. David Thomas, who is founder and Chairman Emeritus of the board of directors of Wendy's International in Dublin, Ohio, but I might say more importantly a member of the high school class of 1993 of Coconut Creek, Florida.

This perhaps explains why you are running around in that convertible and doing all these things when we see you on television. I think that probably most of these high school kids would eat their heart out to be able to ride in a car such as we have seen.

Senator, would you proceed?

STATEMENT OF HON. MIKE DeWINE, A U.S. SENATOR FROM THE STATE OF OHIO

Senator DEWINE. Mr. Chairman, thank you very much. I would like to submit a more detailed statement for the record.

Chairman SHAW. All statements will be submitted for the record from all of the witnesses, and we would invite the witnesses to proceed as they see fit and to summarize.

Senator DEWINE. Thank you, Mr. Chairman.

Mr. Chairman, too many children are spending their most important formative years in a legal limbo, a legal limbo that denies them their chance to be adopted, that denies them what all children should have—the chance to be loved and cared for by parents.

The job of finding parents for these children becomes infinitely more difficult the longer they are suspended in this foster care limbo.

Sometimes, Mr. Chairman—sometimes—we focus our energies on fruitless attempts to reunify certain families that simply cannot be fixed. As a result, the children lose the opportunity to find a permanent adoptive home.

We are sending too many children back to dangerous and abusive homes. We send them back to live with parents who are parents in name only, to homes that are homes in name only.

In my view, this situation is caused, in part—in part—by a misinterpretation of the 1980 Adoption Assistance and Child Welfare Act. That legislation, as the chairman has pointed out, did a great deal of good, and I am very glad to be here with some of the distinguished individuals who wrote that law.

The Child Welfare Act increased the resources available to struggling families. It increased the supervision of children in the foster care system. And it gave financial support to people to encourage them to adopt children with special needs.

The authors of the Child Welfare Act did an outstanding job, and their legislation has done a great deal to improve the lives of America's children.

But while the law has done a great deal of good, I have come to believe that the law is being commonly misinterpreted with some truly unintended and undesirable consequences.

Under the act, for a State to be eligible for Federal matching funds for foster care expenditures, the State must ensure that—and I quote: "Reasonable efforts must be made to reunify families."

Too often, Mr. Chairman, these reasonable efforts have, in practice, become extraordinary efforts. Families that are families in name only, households in which abuse and torture take place, are being reunited.

Mr. Chairman, there are hundreds of examples that I could give this Committee. Over the last few months, I have talked to people all over Ohio, professionals who deal with this problem, with this issue, every single day. And I think the best way for me to illustrate the problem is to tell you about a hypothetical that I ask each group of professionals that I talk to. This is the hypothetical; this is what I have asked them.

Let us say that there is a cocaine-addicted mother who has seven children. The father is an alcoholic. All seven children have been taken away permanently by the county. The mother then gives birth to an eighth child. That child, that baby, tests positive for cocaine. The father is still an alcoholic.

What would you do?

I pose this to people who have to make these decisions. Some said they would apply for emergency temporary custody, but they would still have to work to put that family back together.

Others told me that a court would not grant them even temporary custody of that child. In one county I was told it would be 2 years before the child would be available for adoption. Another county told me it would be 5 years before that child could ever be adopted.

Mr. Chairman, Dr. Goodhand, who is here today and will be testifying later, in response to a similar hypothetical question, told me that her department would move immediately for permanent custody. But she did say that their success would really depend on the Judge assigned to the case.

Mr. Chairman, now the answers I got were different from county to county. But one thing is clear. It is the 1980 law and how it is being interpreted by social workers and Judges that in some cases leads to these different results.

Mr. Chairman, I have absolutely no doubts that the authors of the Child Welfare Act did not intend for the law to bring about the results that I have just described. They wanted to make it easier for families with problems to work out their problems and stay together and to give those families the resources they needed.

They clearly did not intend to favor the interests of dangerous and abusive adults over the health and safety of children.

In the years since the passage of the Child Welfare Act, we have seen case after case after case in which the children are sent back to the custody of people who have already abused and tortured them. Every day in America, three children actually die of abuse and neglect at the hands of their parents or caretakers. That is over 1,200 children every year. And almost half of these children are killed after their tragic circumstances—after their tragic circumstances—have come to the attention of child welfare agencies.

Mr. Chairman, there are many causes for this—many, many causes. But I believe that the misunderstanding of the 1980 act is one of those causes. I think it is time to clarify Congress' intent.

While family reunification is a very laudable goal and should usually be attempted, the health and safety of the child should always come first. That, in my view, was the intention of the drafters of the 1980 law. Congress should reaffirm this by making whatever clarification is necessary in the law.

It is time, Mr. Chairman, for us to break this cycle, to help children escape abusers and find a permanent home before they have suffered absolutely irreparable physical and emotional damage. Let us make explicit the commitment of Congress and the American people. The health and safety of America's children must come first.

Thank you very much.

[The prepared statement follows:]

STATEMENT OF
SENATOR MIKE DEWINE
JUNE 27, 1996

Thank you, Mr. Chairman.

Mr. Chairman, too many children are spending their most important, formative years in a legal limbo that denies them their chance to be adopted -- that denies them what all children should have -- the chance to be loved and cared for by parents.

The job of finding parents for these children becomes infinitely more difficult the longer they are suspended in this foster-care limbo. Sometimes we focus our energies on fruitless attempts to reunify certain families that can't be fixed. As a result, the children lose the opportunity to find a permanent adoptive home.

We are sending too many children back to dangerous and abusive homes. We send them back to live with parents who are parents in name only -- to homes that are homes in name only.

We send these children back to the custody of people who have already abused and tortured them.

We send these children back to be abused, beaten, and many times killed.

We're all too familiar with the statistics that demonstrate the tragedy that befalls these children.

Every day in America, three children actually die of abuse and neglect at the hands of their parents or caretakers. That's over 1200 children every year.

And almost half of these children are killed after their tragic circumstances have come to the attention of child welfare agencies.

Tonight, almost 421,000 children will sleep in foster homes. Over a year's time, 659,000 will be in a foster home for at least part of the year. Shockingly, roughly 43 percent of the children in the foster care system at any one time will languish in foster care longer than two years.

Ten percent will be in foster care longer than five years.

And the number of these foster children is rising. From 1986 to 1990, it rose almost 50 percent.

In summary, Mr. Chairman, too many of our children are not finding permanent homes.

Too many of them are being hurt.

Too many of them are dying.

0 Most Americans have probably heard of the tragedy that befell nine-year-old Elisa Izquierdo of New York City. Her mother used crack when she was pregnant with Elisa. A month before Elisa was born, her half-brother Ruben and half-sister Cassie had been removed from her mother's custody and placed into foster care. They had been neglected -- unsupervised and unfed for long periods of time.

In other words, this woman left her children alone -- and didn't feed them.

But then, Mr. Chairman, the children were sent back -- sent back to her!

Then Elisa was born.

When Elisa was born, she tested positive for crack. She was taken from her mother and transferred to her father's custody.

Tragically, in 1994, Elisa's father died.

Elisa was then five years old. The director of Elisa's pre-school warned officials about her mother's history of child abuse and drug abuse. But -- without any further investigation, and without ordering any further monitoring of Elisa's home situation, a family court judge transferred Elisa back to her mother.

In March 1995, when Elisa was six years old, she was admitted to the hospital with a shoulder fracture.

A shoulder fracture, Mr. Chairman. A little girl from a household with a history of child abuse shows up at the hospital with a shoulder fracture.

The hospital sent her back home to her mother.

Eight months later, in November of 1995, she was battered to death by that same mother. You see, Elisa's mother was convinced that Elisa was possessed by the devil. She wanted to drive out the evil, so she forced Elisa to eat her own feces, mopped the floor with her head, and finally bashed her head against a concrete wall. On November 22, 1995, Elisa was found dead.

It was on the front page of the New York Times. Millions of Americans were shocked.

What shocked me, Mr. Chairman, when I read the story was that anyone would be shocked.

While this horrible tragedy captured the attention of the country, the sad fact is that atrocities against children happen every day in this country. Children are reunited with brutal abusers -- they are abused again -- and yes, sometimes, they die.

0 Here's another incredible story. A Chicago woman had a lengthy history of mental illness. She ate batteries and coat hangers. She drank Drano. She stuck pop cans and light bulbs into herself. Twice, she had to have surgery to have foreign objects removed from her body.

Then, when she was pregnant, she denied that the baby was hers.

While pregnant, she even set herself on fire.

That's her idea of what being a parent is all about.

On three occasions, her children were taken away from her by the Department of Children and Family Services -- known as DCFS.

One of her children was named Joseph. Joseph's second foster mother reported to the DCFS that every time Joseph came back from visiting his mother, he had bruises.

But, in 1993, the children were returned to this mother -- one last time.

A month later, in April 1993, she hanged Joseph. She hanged her three-year-old son. Her comment to police was, "I just killed my child. I hung him."

She stood him up on a chair and said "bye." He said, "bye." Then he waved.

And she pushed the chair away. She hanged him.

What kind of person does something like that to her child?

She told a policeman: "DCFS was" blankety-blank "with me."

Mr. Chairman, why on earth would anyone think we should keep trying to reunite that family?

0 Last year in Brooklyn, New York, there were allegations that baby Cecia Williams and her three older siblings had been abandoned by their mother. As a result, they were

temporarily removed from her mother's custody. It turned out that they had not been abandoned by the mother. She had placed them in the care of an uncle -- and he had abandoned the children.

Later, Cecia and the other children were sent back home. Last month in New York, Cecia Williams died after being battered, bruised, and -- possibly -- sexually abused. Her mother and her boyfriend have been charged with the crime.

Cecia was nine months old.

Today, Cecia is dead -- a victim of blunt blows to her torso, and lacerations to her liver and small intestinal area.

O A young boy in New Jersey named Quintin McKenzie was admitted to a Newark Hospital after a severe beating, for which his father was arrested. Quintin was placed in foster care -- but when the charges were dropped, he was sent back to his family.

In 1988, Quintin was three-and-a-half years old when his mother killed him. She plunged him into scalding water because he had soiled his diapers.

O In Franklin County, Ohio, the local Children Services agency was trying to help Kim Chandler deal with her children -- 7-year-old Quiana, four-year-old Quincy, and one-month-old Erica. In July 1992, they closed the case on her. On September 24, 1992, all three children were shot dead -- and Kim Chandler was charged with the crime.

O In Rushville, Ohio, in March 1989, four-year-old Christopher Engle died when his father dumped scalding water on him.

Mr. Chairman, I could multiply example after example of households like these -- households that look like families but aren't. People who look like parents but aren't. People who never should be allowed to be alone with a child.

Why are atrocities like this happening?

There are many factors contributing to this problem.

O In many cases, the abuse is caused by parents who were themselves abused as children.

O In other cases, the parent is deeply disturbed or mentally ill.

O Often, the parent is a teenager -- emotionally unprepared for the responsibility of raising a child.

O All of these factors were present in earlier generations. What's different today is that too many of the young parents have no role models of good parenting. They didn't have good parents themselves -- so they have no idea how to be parents for their own children.

O Another major problem is the decline of the extended family -- the support system that used to do so much to make sure the children were taken care of.

O Add to this, the relatively new phenomenon of crack. As we all know, since the late 1980s we have seen the explosion of a new form of cocaine that's readily available, cheap, and explosively addictive. Crack is so addictive that mothers have sold their children so they can get some more of it.

Put all these factors together and you have a major social problem on your hands. We ask social workers to try and patch up the wounded, but the social workers are underpaid and overworked. When I was an assistant county prosecutor, and then county prosecutor, I worked closely with these dedicated, hard-working social welfare professionals. I have great respect and admiration for them. They are at the front line of our efforts to save children. We expect the impossible from them, and frankly don't give them all the tools and resources they need to do their job. Often, the only option they have -- and the only choices they have for these children -- are all bad.

Many times our social welfare agencies are simply overwhelmed. Some experts say a social worker ought to handle no more than 15 cases -- but we have social workers handling 50 to 70 cases. They don't have enough time -- they don't have enough resources -- to solve the problems these kids have.

In summary, Mr. Chairman, there are many causes for the tragedies I have discussed. Further, there are many things that must change, many things we can do to help these children.

There are many things we can do to lessen the time it takes for children to be adopted, and to lessen the time these poor kids have to spend in the legal limbo of the system. Further, there are many things we can do to lessen the odds of tragedies like the cases of Elisa Izquierdo and Joseph Wallace.

Mr. Chairman, I intend to keep working to find solutions to these problems, recognizing that their causes are multiple -- and that to solve them, we must do many things.

But today, I would like to focus on one of the causes of these tragedies, one that most people haven't heard about. It's the unintended consequence of a small part of a law passed by the U.S. Congress.

In 1980, Congress passed the Adoption Assistance and Child Welfare Act -- known as CWA. The Child Welfare Act has done a great deal of good. It increased the resources available to struggling families. It increased the supervision of children in the foster care system. And it gave financial support to people to encourage them to adopt children with special needs.

The authors of the CWA deserve a great deal of credit for how they dealt with the problems they faced. Their legislation has done a lot to improve the lives of America's children. But while the law has done a great deal of good, I have come to believe that the law is being commonly misinterpreted, with some truly unintended and undesirable consequences.

Under the CWA, for a state to be eligible for federal matching funds for foster care expenditures, the state must have a plan for the provision of child welfare services approved by the Secretary of HHS. The State plan must provide:

"that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home."

In other words, Mr. Chairman, no matter what the particular circumstances of a household may be -- the state must make reasonable efforts to keep it together, and to put it back together if it falls apart.

What constitutes "reasonable efforts"?

This has not been defined by Congress. Nor has it been defined by HHS.

This failure to define what constitutes "reasonable efforts" has had a very important -- and very damaging -- practical result. There is strong evidence to suggest that in the absence of a definition, reasonable efforts have become -- in practice -- extraordinary efforts. Efforts to keep families together at all costs.

There are hundreds of examples I could give you. Over the last several months, I have talked to people all over Ohio who deal with this problem every day. I have asked them the following hypothetical question: "Let's say there's a cocaine-addicted mother who has seven children. The father is an alcoholic. The seven children have been taken away -- permanently -- by the county.

"The mother gives birth to an eighth child. The child tests positive for cocaine. The father is still an alcoholic. What would you do?"

Some said they would apply for emergency temporary custody of the child -- but they would still have to work to put that family back together. Others said a court

wouldn't grant them even temporary custody of the child. One county told me it would be two years before the child would be available for adoption. Another county said it would be five years.

Now, Dr. Goodhand -- who is here today and will be testifying -- in response to a similar hypothetical told me that her department would move immediately for permanent custody. But she said that their success would really depend on the judge assigned to the case.

Now, the answers I got were different from county to county. But one thing is clear: It is the 1980 law, and how it is being interpreted by social workers and judges, that leads to these different results.

In my view, this is certainly not what was intended by the authors of the CWA.

Mr. Chairman, much of the national attention on the case of Elisa Izquierdo has focused on the many ways the social welfare agencies dropped the ball. It has been said that there were numerous points in the story when some agency could have and should have intervened to remove Elisa and her siblings from her mother's custody.

I am not going to revisit that ground. Rather, my point is a broader one: Should our Federal law really push the envelope, so that extraordinary efforts are made to keep that family together -- efforts that any of us would not consider reasonable?

Throughout human history, the family has been recognized as the bedrock of civilization. The family is where values are transmitted. It's where children learn behavior -- develop their character -- and form their personality.

Over the last couple of years, a remarkable convergence has occurred in American social thought. Liberals and conservatives are now in near-total agreement on the need to strengthen the family as an institution. Without stronger families, it will be impossible to avoid a social explosion in which troubled children turn into dysfunctional adults on a massive scale.

But what we are confronting in the terrible stories I have just recounted are not families. They are households that look like families -- but aren't.

If you look inside one of these households, you see some children. And you see some people who -- superficially, at least -- resemble parents. But this is not what you and I and most Americans would call a "family."

In this household, the children are beaten and abused and neglected. Mr. Chairman, what do we, as a society, do about these households -- these households that aren't families?

By 1980, the child welfare system in this country had come under some pretty strong criticism. After many hearings, Congress concluded that abused and neglected children too often were unnecessarily removed from their parents -- that insufficient resources were devoted to preserving and reuniting families -- and that children not able to return to their parents often drifted in foster care without ever finding a permanent home.

That's how the CWA came to be enacted. The phenomenon known as "foster care drift" -- children who get lost in a child welfare system that cannot or will not find them a permanent home -- simply had to be faced and reversed.

Let me interject at this point that I had substantial experience on this issue before the passage of the CWA legislation in 1980. As long ago as 1973, I was serving as an assistant county prosecutor in Greene County, Ohio -- and one of my duties was to represent the Greene County Children Services in cases where children were going to be removed from their parents' custody.

I saw first hand that too many of these cases dragged on forever. The children end up getting trapped in temporary foster care placements, which often entail multiple moves from foster home to foster home to foster home, for years and years and years.

Congress enacted the CWA to try to solve this very real problem. There were good

reasons for the CWA, and the CWA has done a lot of good. There are some families that need a little help if they are going to stay together, and it's right for us to help them. Not only is it right -- it's also clearly in the best interests of the child.

We shouldn't be in the position of taking children away just because the parents are too poor -- or just because there's a problem in the family. If the problem can be fixed, we must try to keep the family together for the children's benefit. It's just that at some point, when it comes to cases of child abuse and child neglect, we have to step in and say: "Enough is enough. The child's health and safety have to come first."

And that's where we are now, in a lot of cases. Fifteen years after the passage of the CWA, I think we need to revisit this issue, and see how the system is working in practice.

I believe we need to re-emphasize what all of us agree on -- the fact that the child ought to come first. We have to make the best interests of the child our top national priority.

In many of the cases we have looked at, it looks like the CWA has been not been correctly interpreted. Try to imagine what the authors of the CWA would have said if they had been asked: "Should Joseph Wallace be sent back to his mother?"

I can't believe that that was the authors' intent. I can't believe that they would say, "In that case, and in every case, the child must be reunited with the adult at all costs."

Reasonable people agree on one point: Nothing -- nothing -- should take precedence over the health and safety of the child. It's common sense. And I think we need to make sure the CWA is interpreted consistently -- and correctly -- to reflect that common sense.

It is my hope that an important new book will spark the national debate that America need to have on this issue. The book is called The Book of David: How Preserving Families Can Cost Children's Lives, by Richard J. Gelles.

Dr. Gelles is the director of the Family Violence Research Program at the University of Rhode Island. For years, Dr. Gelles thought children should be permanently removed from their homes only as a last resort, even if it meant that the children may spend years moving back and forth between birth homes and foster homes. He now says -- and I quote: "It is a fiction to believe one can balance preservation and safety without tilting in favor of parents and placing children at risk." End of quote. He believes that the system is weighted too far toward giving the mother and father chance after chance after chance to put their life in order -- putting the adults first, rather than putting the children first.

Even some social-work professionals will tell you how true this is. Krista Grevious, a Kentucky social worker with 21 years of experience, says -- and I quote: "I think it's probably one of the most dangerous things we have ever done for children." End of quote.

Patrick Murphy is the court-appointed lawyer for abused children in Cook County, Illinois. He says --- and I quote: "Increasingly, people in this business do not look at things from the point of view of the child. But the child is the defenseless party here. We've forgotten that." End of quote.

In 1993, Murphy published an article in the New York Times that put the problem in historical context. I quote from his article: "The family preservation system is a continuation of sloppy thinking of the 1960's and 1970's that holds, as an unquestionable truth, that society should never blame a victim. Of course, the children are not considered the victims here. Rather the abusive parents are considered victims of poverty and addiction. This attitude is not only patronizing, it endangers children."

Marcia Robinson Lowry, head of the Children's Rights Project at the American Civil Liberties Union, sums it up. She says -- and I quote: "We've oversold the fact that all families can be saved. All families can't be saved."

Mr. Chairman, let me make this absolutely clear. I think there's nothing wrong with giving parents another chance. But we have to make sure the health and safety of the child come first. Is that child going to get a second chance at growing up? A second

chance to be four years old -- the age when a personality is already fundamentally shaped?

Jann Heffner, the director of the Dave Thomas Foundation for Adoption, has a useful way of looking at this problem -- the concept of "kid days." When you're three years old, one month of experience does a lot to the formation of your personality. It's not a month that can be taken for granted, or treated as routine.

One helpful way of looking at it is this: If you're fifty years old, one year is two percent of your life. If you're three years old, one year is one-third of your life.

There's some important psychological activity going on with these children. And every day -- every hour -- really counts. Lynne Gallagher, director of the Arizona Governor's Office for Children, says -- and I quote: "It's as though these people think we can put the kids in the deep freeze for awhile...and then pull them out when the parents are ready to parent." End of quote.

We all know how crucial those formative years can be.

Let me return to the work of Dr. Gelles. He says -- and I quote: "It is time to face up to the fact that some parents are not capable of being parents, cannot be changed, and should not continue to be allowed to care for children." End of quote. He advocates changes in Federal laws to protect children. He also thinks that child-protection officials should move to terminate parental rights sooner, thus freeing children for adoption.

I think the time is ripe for these changes. In New York City, Mayor Giuliani has pledged to shift the city's priorities away from family preservation -- and toward protecting children from harm.

But we need to examine how much of the problem we face is a consequence of Federal law -- the lack of precision of the CWA legislation back in 1980. And this is truly a national problem that needs a national response. According to the National Committee to Prevent Child Abuse, child abuse fatalities have increased by 40% between 1985 and 1995.

I think there's something the U.S. Congress should do about that. I think we should make it absolutely clear that the health and safety of the child are the primary concern of social policy.

I think it's time to clarify Congress's intent. While family reunification is a laudable goal, and should usually be attempted, the health and safety of the child should always come first. That, in my view, was the intention of the drafters of the 1980 law. Congress should reaffirm this -- by making whatever clarification is necessary in the law.

It's time for us to break this cycle -- to help children escape their abusers and find a permanent home before they have suffered absolutely irreparable physical and emotional damage. Let's make explicit the commitment of Congress and the American people: The health and safety of America's children must come first.

# # #

Chairman SHAW. Thank you.
Mr. Miller.

STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MILLER. Thank you, Mr. Chairman, and I want to thank you very much for the manner in which you are preparing to look into this problem.

This is a problem, as you will learn today and as you know from your previous experiences, that is very complex. We fought very hard to keep this out of reconciliation, so that this Committee could look at this law in a dispassionate manner to try and see if we could improve on it.

I am very proud that I was the main cosponsor of this legislation back in 1980. But, I am not very proud of how our Nation takes care of abused and neglected children or children in foster care.

Some things change, and some things remain the same. In 1980, we were looking at children over half of which were taken from their homes; in some States, 80 percent of the children were taken from their homes, and at that point there was no further contact between the government that took the children from those homes and the families that lost their children.

At that time, the debate raged about the rights of parents, to defend and protect them against the Federal Government and all of its power, taking children away from their parents and then not providing the rationale or a basis for the reunification.

States and local governments were sued, like Chicago, which sent hundreds of its children to Louisiana and to Florida and elsewhere, with no further contact with the agencies or with the families.

Families sued and finally won the right to be reunified with their children. Children were taken away from their parents when they were having marital problems and abuse problems. People had remarried, started their lives over, and many years later still could not get their children back. Members of this Committee, at that time, were instrumental in getting those children back to their families.

So we said that, when you take a child away from a family, you ought to make some reasonable effort to see whether or not that child can be reunited with that family, because very often the problems that led to the separation were relatively minor, but they were leveraged into large degrees of abuse and neglect or what have you.

We also said you ought to make every effort to see whether or not you can find permanent placement for that child.

And reasonableness? The fight at that time was not for the Federal Government to define it, but the fight was to let the States do it because they did not want the Federal Government making that decision.

Reasonableness, we thought, was like the basis of common law in this country, the "reasonable man" test: What would a reasonable man do with this child? Would you return it to an abusive family? Would you return it to where there is a history of not taking care of their children and drug abuse and alcohol abuse?

I imagine most reasonable people would say no. I think your task will be to separate out questions of competency, questions of evasion of the law, and concentrate on what this law does and does not do.

And, you ought to review each and every aspect of this law. This law has been on the books 16 years, and it ought to be reviewed.

Circumstances have changed with respect to the advent of cocaine and its prevalence in families; the dramatic increases in abuse we see that are drug-related and non-drug-related that, you know, we thought we knew something about, but we certainly did not know about the prevalence of it.

But we have got to go back—as Senator DeWine said—we have got to go back to the child. And what we found and what you find today—you find it today in 20 States that are being sued and some that are under court order—they are lying to the parents about what they are doing with the child; they are lying to the grandparents about what they are doing with the child; they are lying to the court; they are lying to other agencies; and they are lying to the Federal Government.

The State of New York just flatout lied, said it was providing services when it never was.

That is not fair to that child. And we know that those services with respect to that child are the greatest predictor of whether or not that child, in fact, is going to have a successful encounter with the system.

We found a system at that time—and we still find agencies today—where children who should be released for adoption, children who have been cleared for adoption, still languish in this system to their 18th or 21st birthday or whatever period of time that somebody arbitrarily makes up when they are released from the system.

We still find that people have a financial interest in keeping children in the system that should be released for adoption.

This is a huge, complex problem, I am very excited about your willingness to delve into it, because it affects several hundred thousand children a year that encounter this system in an intensive fashion, and, you know, potentially 1 million or more children that could be exposed to this system.

But it is a three-part system. It is how you take the child into the system; it is what you do with the child while they are in the system; and how do you release the child from the system. And in each of those efforts, we have to have a check.

The notion in the 1980 law was that we would have periodic reviews. We said every 6 months you should have a periodic review.

Why did we say that? Because for a child who is 1 year old, that is half their life. For a child that is 2 years old, it is 25 percent of their life. We ought to be asking: What are you going to do with this child for the next 6 months? What is your plan? To get this child back home or to get this child into permanent placement or to find suitable foster care? What is your plan?

Reasonable efforts. Let me just say, it is almost unbelievable to me that reasonable efforts would be what is attached on. I have been to so many conferences and seminars on reasonable effort over the years on this, provisionary, that somehow it drives chil-

dren back into an abusive home. I really have to tell you; I think in the instances that Senator DeWine has raised and others, I question the competency of the people making the decision.

We have seen the outrage, whether it is in Chicago or New York or Los Angeles, the San Francisco Bay area; we have seen that outrage. You have got to ask yourself: What is going on in this system?

This is not about reasonable effort; this is about a dysfunctional system. And I think that is the challenge that you are going to have, to pull this apart and look at this tripartite system as a child encounters it, usually through no fault of their own, and what happens. How do we care for that child, and how do we make it child-centered, so that that child can survive in it with their biological family or in a new permanent setting.

And that is a big challenge. I would be more than happy to work with you. This is a review that hopefully will be comprehensive and is long overdue. And I thank you—you and the other Members of the Committee, for dedicating some time to this effort.

[The prepared statement follows:]

GEORGE MILLER
7TH DISTRICT, CALIFORNIA
2205 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0507
(202) 225-2095
DANIEL WEISS
ADMINISTRATIVE ASSISTANT
COMMITTEE ON RESOURCES
COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES
VICE CHAIR
DEMOCRATIC POLICY COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-0507

DISTRICT OFFICES
387 CIVIC DRIVE, #14
PLEASANT HILL, CA 94523
(510) 602-1880
MARY LANSING
DISTRICT DIRECTOR
3220 BLUME DR.
SUITE 281
RICHMOND, CA 94806
(510) 262-6500
1407 TENNESSEE ST.
VALLEJO, CA 94590
(707) 645-1888
TTY (202) 225-1904

STATEMENT OF THE HONORABLE GEORGE MILLER
on Adoption
Before the House Committee on Ways and Means
June 27, 1996

Mr. Chairman, I appreciate the opportunity to testify before the Subcommittee on the important issue of adoption, and barriers to providing children with permanent placements when they cannot and should not live with their biological parents.

I am here because nearly two decades ago, during my first years in Congress, I became aware of the tragedy of the foster care system in this country, and the lack of opportunity for children in the system to achieve permanent placement through adoption, and made a concerted effort to do something about it. That five year effort, which I initiated with Senator Walter Mondale, resulted in a comprehensive reform of the federal child welfare law in the "Adoption Assistance and Child Welfare Act of 1980." It is from my perspective as the original sponsor of this law that I have some observations about where we were then and where we are today.

My investigations into the status of children in the foster care system in the 1970s revealed an expensive waste of federal funds and young lives. Information provided in Congressional hearings indicated that thousands of children were being placed in out of home care with little thought to the appropriateness of those placements, with inadequate services and poor accountability by child welfare agencies, and with virtually no assurance that the child would ever have a permanent home.

Federal law at that time reinforced all of the worst aspects of the foster care system. It provided insufficient safeguards against the inappropriate removal of children from their families; it provided no incentive--in fact, provided a disincentive-- for placing children with adoptive families. Unlimited funding was available for foster placements, but inadequate funds were available for preventive or reunification services, even with ample evidence that many children were being unnecessarily removed from their homes.

Despite the fact that many children in foster care had special needs and would be expensive for families to adopt, the government provided no assistance for families wishing to undertake this responsibility. Not only was no basic support available, but foster children who were eligible for Medicaid most often lost eligibility once adopted.

All this added up to a system that encouraged impermanent placements, and "limbo" for thousands of children. Further, the "system," with impossibly large social work caseloads operated with virtually no accountability. There was no requirement to review foster placement or to create a case plan for the child. Indeed, we heard that a typical "review" of a child's foster placement consumed less than five minutes.

Congress passed the "Adoption Assistance and Child Welfare Act" (P.L. 96-272) to achieve not only greater cost savings for taxpayers, but also greater permanency for children. We built incentives to reduce or limit the duration of foster care placements while providing a permanent, secure environment for those children who could not return to their homes. Our goal was to provide adequate resources and funding for States to provide preventive and supportive services for at-risk families to prevent abuse and neglect and avoid the initial need for foster placement; and to provide a subsidy to families wishing to adopt special needs children so they would not languish in the foster care system

We also built into this law some protections for children who were in foster care by requiring States, as a condition of receiving Federal funds, to adopt certain procedures mandating the review of the child's placement. In that context, States had to make "reasonable efforts" to avoid placing a child in foster care to begin with or to reunite the child with his or her parents in a timely manner after removal from the parents. Judges had to make a determination that such "reasonable efforts" were made for each child.

It mystifies me that now, some 16 years later, the "reasonable effort" requirement has come under fire as some kind of "liberal" attempt to protect abusive parents, and in fact has *caused* children to incur serious harm or even death at the hands of "the system." It is patently absurd to imply that this provision of law was ever intended to compromise a child's safety or that a court would read it so. The reasonable effort" requirement was always intended to be applied within the context of meeting the child's needs and safety. There is nothing "mandatory" about sending a child back to his or her family, and no "reasonable" person would read it as such. It is true that the Department of Health and Human Services has never promulgated regulations providing guidance regarding what is "reasonable," but I think it can be argued that federal prescription in this area would be difficult and could cause more problems than it would solve. The State of California and many other states have crafted their own standards for reasonable efforts, and there should be no reason why all states cannot do this. In California, after the issue of reunification was carefully studied, a law was enacted that specifies situations where reunification is inappropriate, and authorities must follow a specific process in order to ensure that the situation is evident.

The "reasonable effort" requirements was adopted as part of a much broader structure of the law to ensure that the child welfare system be accountable to the child and his or her legal rights-- that there be a timetable for review of the child's situation and that the child only move to the next level of intervention, including adoption, if there is no other reasonable alterative.

No one can dispute that child welfare agencies make tragic mistakes with regard to the placement of children in dangerous family situations. Although I know it is popular these days to legislate by anecdote, I think it would be a grave error to blame such incidents on the "reasonable effort" requirement. In fact, such tragedies are contrary to the entire intent of the law.

No, this law is not about family preservation at any cost. It is about protecting our children <u>and</u> parental rights, which are sometimes at odds with each other and must be delicately balanced.

What is needed to make a "reasonable effort" requirement work to the maximum benefit of the child and his or her family is adequate resources and adequate services, which have been sorely lacking in many states. While tens of thousands of children throughout the nation have benefited from the case plans, services and reviews mandated since 1980, the current state of foster care demonstrates the intractable nature of this system.

A federal suit against New York's Child Welfare Agency conveys "an unmistakable picture [and] damning portrait of an agency in crisis," according to the New York ***Times*** (Feb. 2, 1996). Not only did children (and their families) fail to receive required services and periodic reviews of placement, but New York officials lied about providing the reviews required by law. The result, not unlike that of the 1970s, is a system filled with children adrift at enormous expense to the taxpayer and to their own futures. That condition is not the result of the federal law but rather the result of efforts to erode its direction and mandate.

But New York is not alone. Cases have been filed in twenty-one states because of their illegally inadequate child welfare program; child welfare proponents must resort to court action to force states to obey the law. Many states have reneged on promises to courts to upgrade their programs after findings of inadequacy in dozens of cases. Federal Judge Thomas F. Hogan in Washington, D.C. (whose foster care program is in receivership) recently condemned "outrageous deficiencies," and an Illinois judge termed his state's program "a bleak and Dickensian picture."

What happened to the promise of the 1980 Act? To be sure, pressures on the system from the crack cocaine epidemic have been tremendous. The nature and severity of abuse and neglect has

worsened and the causes more difficult to treat. Children entering foster care, many more of whom are babies, have more complicated problems than ever before. But surely the condition of the child welfare system is also a result of some states' unwillingness to devote adequate resources to protect one of their most vulnerable populations.

The state of the child welfare system today is not because of the federal law but in spite of it. I am far more concerned about a future federal child welfare program that lacks the basic requirements we established in the 1980 Act H.R. 4, the welfare reform proposal reported by this committee and eventually vetoed by President Clinton, turned a deaf ear to this dismal record by the states and to their young victims as well. This bill would have diluted the goals of the 1980 law in favor of a block grant to allow states to manage their own child welfare programs. It is difficult to see how the foster children of New York, Washington, Illinois or any other of the 20 states that violate current law would benefit by Congress giving total control over the program to the very state agency that lied, delayed or misrepresented to the courts its record in enforcing the law.

Left to their own devices before 1980, the states rarely provided meaningful reviews, or few operated programs to reduce the need for or duration of foster care. Even fewer supported the adoption of children out of costly foster care. Absent the standards mandated by current federal policy, there is a strong indication that many states and local jurisdictions would not only fail to improve their existing, inadequate programs, but would revert to the *status quo ante* in which states regularly disregarded the best interests of the foster child.

The key to wise policy making is not merely to react to a crisis, but to react in a manner that will alleviate the crisis. Blunting foster care reform by relieving local officials of legal accountability of their programs will not remedy the continuing crisis in foster care and adoption.

It is all well and good to experiment with ways to improve welfare administration, as over 30 states are already doing under waivers provided by the Clinton Administration. But no responsible legislation should sanction experimenting with the lives of abused, neglected and abandoned children. Investing in those policies, it is being shown across America, can not only improve the current system, but prevent today's foster children from becoming the parents of the next generation of children without permanent homes.

Chairman SHAW. Thank you, Mr. Miller. We look forward to working with you on this issue.

Mr. Fawell.

STATEMENT OF HON. HARRIS W. FAWELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. FAWELL. Thank you very much. I, too, appreciate having this opportunity.

All of us here this afternoon are certainly united in a common bond to assist those children, who through no fault of their own are victims of an overburdened system, maybe a dysfunctional system, which permits them to fall through the cracks.

Mr. Chairman, it is no secret that adoption rates have declined in recent decades. In 1969, over 360,000 babies were born out of wedlock; almost one in four was adopted. In 1991, over 1.2 million babies were born out of wedlock, yet only one in 25 was adopted.

However, public interest has increased. Close to 2 million couples would like to adopt these children. Because of this vast need for adoption and the large pool of parents willing to adopt, Congress has to develop incentives, it seems to me, to eliminate as many barriers as possible to a speedy and permanent adoption.

While adoption issues and barriers to adoption encompass, of course, a multitude of areas, what I would like to focus on this afternoon is one group of children, what I call "at-birth abandoned babies."

For a number of years, I have sponsored legislation which seeks to expedite the adoption process of these particular babies abandoned at birth or shortly thereafter, in a 3-month period from the date of birth or a 6-month period.

Again, in this Congress, I have introduced the At-Birth Abandoned Baby Act. I believe that we have to develop a system which helps these very special babies abandoned at birth to a fasttrack permanent and immediate bonding with what I refer to as "preadoptive designated parents," who would, at their own expense—and I emphasize that point—be guaranteed expedited adoption proceedings in the proper State court.

There is no doubt that something has to be done about the terrible plight faced by babies abandoned at birth. Our present system, in effect, it seems to me, leaves these most vulnerable babies, those abandoned at birth and often drug-addicted and/or HIV-infected, without any chance of access to immediate bonding with loving parents.

In the present welfare system, as I see it, with the lack of staff and service resources and poor coordination among courts and attorneys and crowded child welfare calendars, babies abandoned at birth simply have nobody to represent them, no one to guide them through the maze of child welfare agencies and laws, to be freed for adoption, so as to obtain the immediate bonding and the love that they so desperately need.

Mr. Chairman, the At-Birth Abandoned Baby Act of 1995 amends title IV, section (e) of the Social Security Act. The bill simply requires that State welfare authorities have to immediately place at birth abandoned babies with suitable preadoptive parents who, in turn, will be allowed to immediately file at their expense

for an expeditious adoption of the abandoned baby in the State court of the proper jurisdiction.

The State court would terminate parental rights and award an adoption decree to the preadoptive parents only, of course, upon proper proofs and after taking into account the rights of all parties involved, including the infant abandoned at birth, the natural parents, the preadoptive parents, and any other interested parties that might intervene in that action.

The bill thus gives babies abandoned at birth not only preadoptive parents with whom to immediately bond, but also the necessary—and this is so important—legal and practical representation and expedited court adjudicatory powers by which they may be freed for adoption and thus placed in a permanent loving home.

I would like to just shortly review some of the sad findings of a comprehensive study conducted by the Department of Health and Human Services on so-called boarder and abandoned babies, which was released in 1993.

This study found nearly 12,000 abandoned babies residing in 573 hospitals throughout 101 counties in the United States which were surveyed across the country in 1991. Tragically, drug exposure could be found in 87 percent of the abandoned babies.

Perhaps the most troubling finding of the HHS study addresses the placement of the abandoned infants. It found that none of the abandoned infants were expected to leave the hospital in the care of their biological parents, and only 6 percent were expected to go into adoptive placement.

Today we continue to hear the heart-wrenching stories of abandoned infants. Less than a month ago, a suburban Washington, DC couple returned to their apartment to find a cardboard box harboring two abandoned infants swaddled in yellow towels and a bedsheet. Within hours, the local police department received telephone calls from people hoping to adopt the two babies who were just several days old.

Mr. Chairman, numerous studies have shown that if abandoned infants are placed into a loving home as early as possible, that baby has a better chance of normal development and a happy childhood.

The problem here is, again, I state that our present system, though well intentioned, leaves the most vulnerable of the vulnerable with next to no chance at all of finding the immediate parental bonding that I think they have a right to and which is so vital to their healthy development as children.

It is for this reason that I believe we should seriously consider passing legislation which at least, insofar as these babies abandoned at birth are concerned, will expedite the adoption process and then be put on the fasttrack procedure. This same procedure plays itself out as a practical matter in many out-of-wedlock births, for instance, in the middle class or upper middle class.

These things are taken care of in a very practical way where representation is afforded for those children, but not the ones who are abandoned and left in hospitals and have absolutely no one to go through that maze of the system as it now exists.

Thank you.

[The prepared statement follows:]

STATEMENT OF CONGRESSMAN HARRIS W. FAWELL

June 27, 1996

First, I would like to thank the Chairman of the Human Resources Subcommittee, Congressman Clay Shaw, for holding this hearing on such a critical issue to the thousands of children languishing in our nation's foster care system. All of us here this afternoon are united in a common bond to assist those children who, through no fault of their own, are victims of an overburdened system which permits them to fall through the cracks.

Mr. Chairman, it is no secret that adoption rates have declined in recent decades. In 1969, over 360,000 babies were born out of wedlock -- almost one in four was adopted. In 1991, over 1.2 million babies were born out of wedlock, yet only one in 25 was adopted. However, public interest has increased -- close to two million couples would like to adopt these children. Because of this vast need for adoption and the large pool of parents willing to adopt, Congress must develop incentives to eliminate as many barriers as possible to a speedy and permanent adoption.

While adoption issues and barriers to adoption encompass a multitude of areas, this afternoon I would like to focus on one group of children: at-birth abandoned babies. For a number of years, I have sponsored legislation which seeks to expedite the adoption process of babies abandoned at birth, or shortly thereafter. Again this Congress I have introduced the At-Birth Abandoned Baby Act (H.R. 1044). I believe we must develop a system which helps these very special babies abandoned at-birth, or shortly thereafter, the right to a fast-track placement and immediate bonding with "pre-adoptive parents" who would, at their own expense, be guaranteed expedited adoption proceedings in the proper State court of jurisdiction.

There is no doubt something must be done about the terrible plight faced by babies abandoned at-birth. Our present system, in effect, leaves these most vulnerable babies -- those abandoned at-birth and often drug addicted and/or HIV-infected -- without any chance of access to immediate bonding with loving parents. In the present welfare system, with lack of staff and service resources and poor coordination among courts, attorneys and crowded calendars, babies abandoned at birth have no one to represent them; no one to hold them and love them, let alone represent their rights in a court of law for the immediate bonding and love they so desperately need.

Mr. Chairman, the At-Birth Abandoned Baby Act of 1995 amends Title IV (E) of the Social Security Act. The bill simply requires State welfare authorities to immediately place "at-birth abandoned babies" with suitable "pre-adoptive parents" who, in turn, will be allowed to immediately file, at their own expense, for an expeditious adoption of the abandoned baby in the State court of proper jurisdiction.

The State court would terminate parental rights and award an adoption decree to the preadoptive parents only upon proper proof and after taking into account the rights of all parties involved, including the infant abandoned at-birth, the natural parent(s), the pre-adoptive parents, and any other interested parties. The bill gives babies abandoned at-birth at least a fighting chance for immediate parental bonding and a permanent home. Currently, they have none.

I would like to review some of the sad findings of a comprehensive study conducted by the Department of Health and Human Services (HHS) on boarder and abandoned babies which was released in 1993. The (HHS) study found nearly 12,000 abandoned babies residing in 573 hospitals throughout 101 counties in the United States which were surveyed across the country in 1991. Tragically, drug exposure could be found in 87 percent of the abandoned infants. Perhaps the most troubling finding of the HHS study addresses the placement of the abandoned infants. The HHS study found that NONE of the abandoned infants were

expected to leave the hospital in the care of their biological parent(s) and ONLY six percent were expected to go into adoptive placement.

Today we continue to hear the heart wrenching stories of abandoned infants. Less than a month ago, a suburban Washington, D.C. couple returned to their apartment to find a cardboard box harboring two abandoned infants swaddled in yellow towels and a bedsheet. Within hours the local police department received telephone calls from people hoping to adopt the two babies who were just days old.

Mr. Chairman, numerous studies have shown that if an abandoned infant is placed into a loving home as early as possible, that baby has a better chance of normal development and a happy childhood. The problem here is that our present system - though well intentioned - leaves the most vulnerable of the vulnerable with next to no chance at all of finding the immediate parental bonding which is vital to the healthy development of the child. It is for that reason that I believe we should pass legislation which will expedite the adoption process for babies abandoned at birth and who, without a fast track process, would be condemned to oblivion. My hope is that we can do the same for all children waiting for adoption.

Mr. Chairman, extensive factual research tells us adoption works! It increases the emotional, physical, and cognitive capacities of the children who are adopted. It improves the life chances of the adoptive child while saving vast amounts of taxpayer funds. Perhaps most importantly, it brings love and happiness, both to the adoptive parents and the adoptive child.

I will continue to make myself available to you, Chairman Shaw and the members of the Ways and Means Committee in the hope of passing the At-Birth Abandoned Baby Act and any other measures which will eliminate the barriers and expedite the adoption of those children waiting for our assistance in foster care.

Chairman SHAW. Thank you, Harris.

Mr. Camp and Mr. Levin will introduce the next panelist.

Mr. CAMP. Thank you, Mr. Chairman.

I know that my colleague on the Committee, Congressman Levin, joins me in introducing to the Committee the distinguished Lieutenant Governor of Michigan, Connie Binsfeld.

Lieutenant Governor Binsfeld has been a tireless advocate for our Nation's youth. She has led efforts to identify and reform problems in order to improve the lives of our Nation's children.

In 1991, she was appointed by Governor Engler to head the Binsfeld Adoption Commission. In July 1995, she was appointed to chair the Children's Commission. Her efforts led to important legislation that helped to reform Michigan's adoption system and dramatically increased the number of children moving into permanent homes.

In recognition of her outstanding public service as an advocate of today's youth, she was presented with The Humanitarian Award by the Child and Family Services of Northwestern Michigan and received the DeVore Committee's "Hear My Voice" Award, and for 1997 she was recognized as Michigan's Mother-of-the-Year.

I know my colleagues will join me in welcoming the Lieutenant Governor to the Committee, and we look forward to your testimony.

STATEMENT OF HON. CONNIE BINSFELD, LIEUTENANT GOVERNOR, STATE OF MICHIGAN

Ms. BINSFELD. Thank you, Congressman Camp, and thank you, Mr. Chairman and Members of the Committee, for inviting me to give testimony today.

Yes, it is true that I have been a strong advocate for children, and when our administration came into office in 1991, I asked the Governor about the fact that we had so many people waiting to adopt and we had so many children in the foster care system, that there must be a problem. He immediately issued an Executive Order and established the Commission on Adoption.

We met for 1 year, and we came out with 67 recommendations. A few of the recommendations that we found were, great bureaucratic delays, lack of financial incentives to move children through the foster care to adoption, a lack of involvement by birth mothers, societal attitudes toward adoptions were quite negative, and there were problems surrounding interracial adoptions.

We recommended stringent procedural timelines on the bureaucratic system, and financial incentives for early placement by the original placement agency. If adoption placement is not found within 8 months after the termination of parental rights, then they must release the child to a statewide adoption exchange over that 8-month timeline so that other agencies, then, would be able to compete, and we put financial incentives in. We found that that worked quite well.

We recommended more openness in adoption. We even recommended parental consent adoption to give the birth mother an active role in the adoption process. I am happy to report that for the years 1991 to 1995, there has been an overall increase in adoption of special-needs children by 44 percent in Michigan and an in-

crease in adoption of African-American special-needs children by 151 percent.

The mission of our children's commission was early permanency for children, which is so vital to child development and a deterrent to those children becoming special needs children.

Among our recommendations were; a more valid assessment of families, so that they can receive immediate help, early intervention, or quick termination of parental rights on those who are unable to change to allow early adoption of the child, improved resources for the caseworkers, more training, better assessment tools, partnerships with the police and the prosecutor's office, assignment of protective service staff to the hospitals that were receiving over 200 referrals of abuse and neglect each year, establishment of multidisciplinary teams for investigation and treatment, and children's attorneys that are better trained and prepared to represent the child.

We found that we faced a new kind of foster care drift resulting from the "reasonable efforts" provision of the Adoption Assistance and Child Welfare Act of 1980. I do believe that act was well-intentioned and may have eliminated some of the problems that existed.

Prior to 1980, foster care drift was caused by taking children from their homes and placing them in foster care and not providing any services to the parents to help reunite.

Today we still have foster care drift, but it has changed a little. Today the "reasonable efforts" to prevent removal or reunite are focusing services on abusive parents, and children are entering the foster care later more damaged and left in abusive homes while workers attempt to prove the unprovable to the Federal Government.

Yes, we do recommend that Michigan define "reasonable efforts," but the fear is still there of losing Federal funding if all of the continued resources are not put forth while children wait in foster care and parents are continually given these services and reunification efforts.

We established in our recommendations to seek termination of parents' rights at the first dispositional hearing without reunification efforts when certain severe abuse has occurred and then aggressively move toward adoption.

We need your help at the Federal level, and we hope that you will please put into law what we hope to do in Michigan, a defining of "reasonable efforts," that you will find in our recommendations in the written testimony.

You and I are the guardians of these children. On behalf of every child who shudders when daddy or mom's boyfriend opens that bedroom door at night, every child who screams from the infliction of pain, children whose nightmares occur when they are awake—in the name of these abused children, I plead for your help.

We do not send domestic violence victims back to their abuser, nor should we be victimizing children by sending them back to their abusers.

Thank you for receiving this testimony today, and I hope the additional testimony we have given you will be helpful to you in your decisionmaking.

Time is short for these little children. There is a chance of childhood. But that window of opportunity is very short. And if we do not address it now, these children will not be saved.

[The prepared statement follows:]

Testimony before the
House Ways and Means Subcommittee on Human Resources
June 27, 1996

Connie Binsfeld
Lieutenant Governor
State of Michigan

Thank you very much for inviting me here today. I consider it an honor to come before the Ways and Means Subcommittee on Human Resources on an issue that has been a driving force in my life since becoming Lt. Governor - the issue of giving children a permanent, loving family through early adoption.

In the first few months of our administration, I had a startling experience that became the foundation of my work in the five years Governor Engler and I have been in office. I was invited to a meeting of people who were experiencing problems with "special needs" adoption of state wards. I was totally unprepared for the experience that awaited me. I thought I was going to meet people who were upset with their experience of adopting state wards. What I found were people who WANTED to adopt state wards, but were unable to because of various bureaucratic roadblocks!

The things I heard that night astounded me. I had believed that there were very few people willing to adopt "special needs" children. What I learned was that families were sometimes forced to go *outside the state* to adopt a "special needs" child! They wanted my help in making state wards more available to the many families who wanted to adopt them. That was the beginning of my work that brings me here today.

When I shared that experience with Governor Engler, he immediately began to take action. He issued Executive Order No. 1991-14 creating the Lieutenant Governor's Special Commission on Adoption. He gave us one year to develop recommendations to address the problems of adoption.

As in all difficult issues, we found that even in Michigan, a model for other states in our adoption process, there were multiple obstacles to adoption, not the least of which is the attitude that adoption is the last resort for children instead of a loving, positive way to build a family.

We focused on voluntary infant and state ward adoptions. They are distinguished by the source of the funds which pay for the adoption services. State wards, because they are the responsibility of the Family Independence Agency Adoption Services (formerly the Department of Social Services), are primarily funded by the State of Michigan. Infant adoptions are paid through fees charged to the adoptive families.

For state ward adoptions, we learned how the public/private partnership for adoption service delivery affects the ability to achieve permanent placements. For voluntary infant adoptions, the major concern was the appropriateness of the adoptive placement and the need of birth mothers to have more control over the placement of their infants.

Most of our report focused on state ward adoption issues where the greatest number of children were awaiting permanent homes. Too many of them were waiting too long to be adopted. We learned how complicated the adoption process was and that the adoption system contains several subsystems and is interrelated with other major systems. Each of the subsystems has its own procedures and problems, and each seems powerless to improve adoptions beyond its own portion of the process. The larger, interrelated systems, including in-home services, foster care, the judicial system, legislative funding system, and the public at large, all impact immensely on the adoption system.

In order to improve adoption services in Michigan, we found that our public/ private partnerships must be extended to include all of the parties involved, the adoption triad (the birth parent, adoptive parent, and the best interest of the child), private and public child placing agencies, the courts, funding entities and the public - a very complex situation.

In many instances, there were no timeline requirements when tasks had to be completed or goals achieved. In other instances, timelines had already been established, but were not enforced. Administrative rules and statutes needed to be changed in order to structure the timeliness of adoptions.

Workers, public policy makers, and court personnel needed better training on planning for children's permanency. Accurate and comprehensive data needed to be collected and shared for informed decision-making to occur. Additionally, the collection and dissemination of this data would assist in the effort to inform the public. We know that when families are aware that children are waiting, they do adopt.

We found that most transracial placements occurred when the recruitment system failed to keep up with the flow of children entering foster care. The systemic problem of family recruitment that causes children to be placed transracially must be addressed, but not at the expense of children who are already bonded. Rather, recruitment efforts must be increased on the foster care side to ensure an adequate number of families are available. We strongly believe that like-race placement, when possible, is optimal for children. We also believe as strongly that permanency for children should not be sacrificed because of it. Early permanency is essential to child nurturing and connectedness. It is basic to child development.

Adoptive services must emphasize helping families with adjustment during and after adoption. As children and families grow and develop together, resources must be available to support and sustain them.

We found that insurance issues had a profound affect on adoption - the issues of coverage of pre-existing conditions of the "special needs" child and the need to have adopted children added to private insurance policies upon adoptive placement.

We took the somewhat controversial step of recommending parental consent adoption, but we insisted on safeguards for the child through private agency home studies and prohibiting exchange of anything of monetary value beyond the established fee structure to prevent the "buying" of a baby. This prohibition is ensured by sworn testimony by the parties during court proceedings.

Our Commission's report contained sixty-seven recommendations. After our report was issued, the Department of Social Services (now the FIA) formed a working group to study and implement the recommended policy changes and the legislature introduced a legislative package to make our recommended changes in statute. I am proud to be able to tell you that in the years from 1991-1995, there has been an overall increase in adoption of special needs children by forty-four percent and an increase in adoption of African American special needs children by one hundred fifty-one percent!

However, until we address the issue of foster care, we will always have problems in adoption. Foster care drives adoption. As long as children are captives of the foster care system, the dream of a childhood in a permanent, loving home will be denied. Because foster care and adoption are inextricably woven, I was lead to a deeper understanding of the effect foster care policy had on permanency for children. I began to hear heartbreaking tales of abused children, of children removed too late from horrifying home situations, of children languishing in foster care as their parents failed and failed again to be rehabilitated by the services they were given.

I was deeply troubled then, as I am still, by the world our children face, a world that so often makes them its last concern. Again I shared my concerns with the Governor and again he took action. He issued Executive Order 1995-12 which created the Lt. Governor's Children's Commission. Our charge was to review state and federal statutes, rules and policies regarding prevention/preservation programs, removal/foster care placement, reunification, termination of parental rights, post termination placement, and adoption of children.

Each member of my Commission came to their duties with the belief that the biological family is the basic and natural structure for raising children. However, in the real world, we know that this is not always possible. Child abuse and neglect has grown at such an alarming rate it is now considered a

national emergency. The U.S. Advisory Board on Child Abuse and Neglect reports that deaths from abuse and neglect of children age 4 and under outnumber those from falls, choking on food, suffocation, drowning, residential fires, and motor vehicle accidents combined!

Society has changed and in many cases government has been left to pick up the pieces. Unless we open new pathways for children of severely abusive homes to flourish and grow, an increasing number of children will be raised by the state. Children will lose something that can never be replaced: a chance at childhood; a chance at a forever family.

The history of child welfare reveals that the foster care system became overwhelmed by the number of children entering the system which resulted in "foster care drift" - a term used to describe years of foster care placement with no permanency for the child. To address the problem, Congress enacted The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). This Act requires that "reasonable efforts" be made both to prevent the need for removal from the family and to provide services to the family so the child can be returned as quickly as possible if removed from the home. Congress hoped, through the creation of the "reasonable efforts" provision, to reduce the number of children removed from their parents. The federal legislation was well intended and may have been appropriate at the time. However, as society changed, due to an increase of drugs, violence and abandonment by birth parents, we have witnessed unintended consequences of that legislation.

We face a new kind of "foster care drift" resulting from the "reasonable efforts" provision of this Act. "Foster care drift" was not eliminated by that provision. It merely changed. Prior to the 1980 Act, "foster care drift" was caused by taking children from their families, placing them in foster care and not providing services to the parent to help them reunite with their children.

Today, however," foster care drift" continues as a variation of its former self. Today, "reasonable efforts" have become "unreasonable efforts" as we provide services again and again to abusive parents. Children are entering foster care more damaged because they are left in their abusive homes while workers attempt to prove the unprovable to the federal government - that the undefined, nebulous "reasonable efforts" have been made to prevent the removal of the children from their home.

Because children are more damaged upon entering the system, our foster care and adoption subsidy costs have soared due to the intensive care these children need. Their damage is compounded as they are shuffled from disrupted placement to disrupted placement due to their behavior and overwhelming needs. They become unadoptable.

We need to challenge the present trend of our child welfare system which is based on the "reasonable efforts" provision that implies that every family can be "fixed" and a biological family, regardless of the severity of its dysfunction, is always the best place to raise a child. I have seen far too many loving and happy adoptive families with children adopted from abusive homes to believe that. There is a placement of choice for every child. The placement may be back in the child's own home, if investigation proves the parents have *learned* rather than simply *complied* with the services they have received. It could be adoption if the biological family can not be saved. However, our current system, instead of focusing on the best interest of the child, directs its attention on the adults. The rights of the adults override the needs of the child. In my opinion, reuniting a child with an abusive parent is nothing less than ordering a beaten wife to return to live with her abusive husband. The abused wife is no longer seen as the property of her husband. It is time we free our children from similar bondage.

Let me tell you a little bit about the children of whom I speak lest you think I'm referring to all the children who come under the supervision of the child protective services. I'm not talking about children whose parents keep a dirty, cluttered house or who don't know how to prepare nourishing meals or have no food in the refrigerator. Nor are they the children whose parents love them but need our help in learning the skills to care for their children. Those families deserve our help and our department works

compassionately and determinedly to provide the services needed to teach them the proper skills to care for their children. It is our duty and moral obligation to help those families help themselves.

The children of whom I speak are the shattered bodies in tiny coffins; the little ones who have been raped; the babies who have been shaken so hard the blood vessels burst in their skulls; the children who have been burned with cigarette butts or set on hot stoves or put in scalding water to "make them behave"; the little faces and bones broken by the people who brought them life or those they allow into their homes.

Generally, the public and state and federal officials continue to regard these stories as rare and tragic events. Let me assure you, from five years experience of working with abused children, they are not rare.

Let me give you just two startling examples of how taxpayer's money is spent on achieving "reasonable efforts" to preserve families. A woman with four felony convictions and who was known by protective services to have abused, abandoned, terrorized and sold one of her children for one year's free rent and twelve hundred dollars cash was flown, on probation, round trip from another state, housed in a motel, provided meals and spending money for weekend visitation with her children. This continued for a period of thirteen months. These children were so traumatized by the visits that they experienced nightmares and bedwetting after the visits. In another case, services were provided for a parent who put her baby's face in scalding water because she was tired of her crying. The child's face was virtually melted and required countless surgeries to try to rebuild her face, but still "reasonable efforts" had to be made and reunification services were offered and visitation, though terrifying to the child, was ordered.

I've told you the problems, now let me tell you some of the recommendations our Children's Commission made that will help our case workers document abuse and establish grounds for early termination, *without reunification efforts* and free our waiting children for early adoption. We have recommended: increased training for protective service workers; field investigations on all complaints; portable computers for field investigations; development of a uniform assessment tool for investigations; increased ability to track families who have moved to avoid further protective services involvement; multi-disciplinary teams of the prosecutor and appropriate specialists to identify and collect enough evidence to sustain the "clear and convincing" burden of proof to terminate parental rights; decentralizing protective service workers to off-site assignments in hospitals that make more than 200 referrals of abuse and neglect per year; development of a data bank with each county prosecutor; and the establishment of a presumption to seek termination of the parent's rights at the first dispositional hearing when certain severe abuse has occurred. These abuses that the Commission determined merit termination are as follows:

> when children have been tortured; there has been severe physical abuse of a child or sibling; a sibling has been killed by the parent(s); the parent(s) has attempted to murder a child or sibling; a child or sibling has been sexually penetrated by a parent; or a very young or severely impaired child has been abandoned by the parent(s). This presumption should also be made in cases when parental rights to previous children have been terminated, or multiple attempts have been made to rehabilitate the family or when substance abuse has been ongoing and has resulted in previous harm to the children and the addiction has proved to be intractable even with appropriate treatment. This presumption that a termination petition should be filed at the first dispositional hearing should only be negated if it can be demonstrated that termination of parental rights is not in the child's best interest.

These are just a few of our one hundred and ninety-seven recommendations that are designed to achieve a permanent family for abused children, whether that is a return to a rehabilitated family or through adoption if the family can't be saved.

But we need your help on the federal level. Without it, we will never be rid of the fear that the federal government may come into our state and tell us that we have not reached that undefined, nebulous standard of "reasonable efforts". We need your support to put into federal law what we have recommended be put into state law. Without it, we are still at the mercy of federal regulators and judicial interpretation. Without federal changes, states will continue to fear that federal money will be lost because we have not met the mysterious and vague standard of "reasonable efforts."

There is such a small window of opportunity to save an abused child. If we allow them to stay in an abusive home for years as we struggle to change their parents, they become damaged. If we leave them in foster care for years as their parents fail repeatedly to change, they become damaged, so damaged that adoption is not possible. When abuse is severe, we must move quickly. Identify it, prosecute it, and terminate parental rights with no reunification efforts. As we are doing this, we should simultaneously and aggressively identify a permanent, loving, adoptive home for the child.

I am the guardian of our vulnerable children by virtue of my moral and my civic responsibility. And so are you, my fellow colleagues. On behalf of every child who shudders when Daddy - or Mommy's boyfriend - opens the bedroom door at night; whose screams are ignored by the neighbors; whose tortured minds and bodies are sick with fear, I ask your help.

Thank you for receiving this testimony today.

Chairman SHAW. Thank you.
Mr. Thomas.

STATEMENT OF R. DAVE THOMAS, FOUNDER AND CHAIRMAN EMERITUS OF THE BOARD OF DIRECTORS, WENDY'S INTERNATIONAL, DUBLIN, OHIO; ON BEHALF OF DAVE THOMAS FOUNDATION FOR ADOPTION

Mr. THOMAS. Mr. Chairman, Members of the Committee, good afternoon.

I am Dave Thomas, and I am here on behalf of the Dave Thomas Foundation for Adoption. Thank you for inviting me to talk to you today. As many of you know, adoption is a subject close to my heart.

I do not claim to be an expert on adoption laws——

Chairman SHAW. Dave, could I interrupt you? I am sorry. Could you pull that microphone just a little closer? We are having a little trouble hearing you.

Mr. THOMAS. OK. How is that?

Chairman SHAW. Tilt it down a little bit.

Mr. THOMAS. OK. Is that better? OK.

I do not claim to be an expert on adoption laws, and there are many people here today who know more about it than I do.

But what I do know is how important it is for every child to have a home and a loving family. I was born out of wedlock and was adopted when I was 6 weeks old, and I know I would not be where I am today without a family to call my own.

I am here today on behalf of the 600,000 children in America who are in the foster care system, including about 100,000 that are available for adoption. One hundred thousand is too many. Even one child without a permanent home is wrong.

Now foster parents are wonderful, and they open their hearts and their homes every day to these children. But foster care was never meant to be a permanent solution, and that is what it has become. Foster children are innocent victims of a system that takes away from their hope and their trust, and it wears them down while they are waiting for a family to love them and a place to call home. Most of them wait years; many their entire childhood.

I believe there is nothing better for a child than to grow up with their birth parents, and everything within reason should be done to keep children with their birth parents, and if and only if it is the right thing to do for the child.

However, too many children remain in homes that are not safe, healthy, or caring. Parents need to accept the responsibility for raising and caring for their children. This is not someone else's job, and it certainly is not the government's job. I would think that we all can agree that government does not make a good parent.

Listen to the odds that the children waiting for adoption are against. Many children go through multiple assessment studies during the adoption process. Why do we need so many studies to learn the same things?

Children are in foster care systems that move them around to four, eight sometimes, different homes and foster homes before they are adopted. I cannot think of anything worse for an emotion-

ally fragile child than to move into a new home several times a year.

I met a little boy in South Carolina who had been in so many homes that he literally could not remember his last name. I met a 13-year-old boy in Chicago who had been in 15 foster homes, and he was sick and tired of being passed around. All he wanted was a permanent loving home, and he was worried that people wanted to adopt babies and that he was too old.

What kind of life is that for a child? What kind of an adult can we expect him to be?

I also met a little girl who told me that she keeps everything she owns, all her toys and all her clothes, in a single pillowcase because she moved so often from foster home to foster home.

These stories need to stop. The numbers keep getting worse, and many foster children in America wait between 3 and 6 years before being adopted. Six years could be half of a lifetime spent waiting to share the love of a permanent family.

I think you agree the numbers are stacked against the waiting children in America. The child welfare system should protect the children first and foremost and ensure that every child has an opportunity to have a loving family and become a productive citizen.

Growing up without your own family is really tough. Experts tell us that children who grow up in foster care are most likely to drop out of school, give birth out of wedlock, go onto welfare, or end up homeless. They also are more likely to enter a life of crime, all because they do not have a stable family that cares about them, one that helps them establish a sense of right and wrong, a sense of self-worth, and pride in who they are.

And the answer to this problem is, one home study, one caseworker, one foster home, and a permanent home in just 1 year. We need an adoption system that lives up to all these "ones", and so do America's awaiting children.

Let me explain. Many adoption communities support these simple goals outlined by the Kellogg Foundation and supported by the Dave Thomas Foundation for Adoption.

Give families the support they need to stay together, but remember that the child's safety is number one. Just one comprehensive assessment should be made for each child and each family. One caseworker or team should be assigned to each child and each family, and an individual who will stand by that child until she or he finds a permanent home.

Children should be assigned to just one foster home and not moved frequently like they are now. And each child should become part of a permanent family within 1 year. We think these ideals are based on common sense and simple understanding. We support them because it is the right thing to do for the children.

This Committee—we ask this Committee to make these your goals as you improve the adoption process. This Committee has the ability to fix the system and to not hold these children hostage. Let these kids know that they are number one in your minds.

Thank you for inviting me, and we look forward to working together with you. Thank you.

Chairman SHAW. Thank you, Mr. Thomas, and I thank all of the panelists for some very fine testimony.

Mr. Camp, you may inquire.

Mr. CAMP. Thank you, Mr. Chairman.

And I think in all of your testimony, what has come through is concern about the "reasonable effort" standard, and I do believe it was meant purposefully to be vague, so that people who actually were most aware of the situation had the discretion to deal with it.

And I just want to highlight, Lieutenant Governor, some of the work of your Commission in trying to establish a presumption to seek termination of parental rights at the very first hearing when certain conditions have been met.

You have in your longer testimony some very specific criteria—for example, when children have been tortured, where there could be a real effort made very, very early on. I think that would go to trying to find early permanency, hopefully within 1 year, Mr. Thomas.

Could you comment on how that is being received or what progress you might have made on that?

Ms. BINSFELD. Of course our recommendations will not be made public until next Tuesday when we present our report to the Governor.

But we worked with the Ingam Bar Association, and we worked to be sure that legally we would be able to recommend that we have changes in Michigan's law which would require that under these particulars, which we cite on page 6 in the long testimony—when these egregious crimes have been committed against a child, that at that first dispositional hearing, they can start the termination of parental rights, and there would not be services for reunification because, believe it or not, much of the public testimony that we received was about children who had been badly scalded, whose parents had attempted to murder them, that had been sexually penetrated—various degrees of serious harm to children—and they were being either left in that home while there was service being delivered to them, or they were taken out of the home and put in foster care and delayed and delayed in foster care while all of the services to rehabilitate the parents were going on.

Mr. CAMP. Is it also the commission's recommendation that in order for the State to further define "reasonable efforts," you would need changes at the Federal level in order to implement this, or is that somewhat unclear?

Ms. BINSFELD. We believe that it would enhance the welfare of children and the protection of children if Congress did define it.

Yes, I know at the State level we like to have flexibility in the way we can use funding, and one size does not fit all. You hear that from us very frequently. But we are finding that in the justice system and with all of the—all of those who are involved in the care of children, that we are continually threatened by them saying that the Congress will not—they may cut off our funding, which we seriously need, that you have provided in the Welfare Act of 1980. And so in order to dispel that, it would be very helpful to the States if you were to define "reasonable efforts."

Mr. CAMP. Thank you.

Mr. Thomas, I know you have traveled the whole country on the issue of adoption. And are you hearing that the "reasonable efforts"

problem is a barrier at times? And if not, are there any other particular barriers to adoption that you would like to highlight for us?

Mr. THOMAS. Well, I think the ones I have talked to is, foster care—they stay in foster care too long. And I think that what I said in my testimony was that you really need to get them out in less than 1 year and have one welfare or social worker or a team working with a child and make it as short as possible, because what happens in a lot of States and cities, it seems like they just stay right in the foster care for a long time, and they just go from home to home, and it is really not fair.

Mr. CAMP. Thank you. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Ford.

Mr. FORD. Thank you, Mr. Chairman.

Mr. Miller, I am sorry I was not here when you gave your testimony, but I looked at one of the paragraphs in your printed statement. You talk about the special needs of children who are in foster care, and you talked about how expensive for families it would be for them to adopt, and the government provides no assistance for families wishing to undertake this responsibility.

You go on to talk about the lack of basic support available, but foster care children who are eligible for Medicaid would lose their Medicaid coverage.

Is it your concern that children should carry Medicaid coverage from a foster care home to an adoptive home? Is there any other form of assistance that you have a concern about?

Do you think this is a strike against these children in foster care, as there is an attempt to move them into an adoptive home?

Mr. MILLER. Well, I think at that time certainly we modified the system. But at the time, if you talked about a child with special needs, in many instances we were talking about a child with some physical handicaps or maybe mental handicaps.

Who was going to absorb the costs for their ongoing needs—and we had parents who would want to take the child, but they did not have the financial wherewithal; they simply did not have money to absorb those costs.

We see this issue now—and I think you addressed it when we had welfare reform in this Committee—about grandparents.

Unfortunately, because of drugs, we have now many grandparents who are in their early sixties who are inheriting the children of their children because their children are unable, unwilling, or should not be allowed to care for these children. And the question is, where does the AFDC payment go?

The dysfunctional parent can use a child to get payment and not take care of the child, but it is difficult sometimes to get to transfer that payment to a grandparent who, again, has no financial wherewithal to take care of the child, but with a little help from AFDC could provide a loving home. It is their grandchild; it is their grandchild.

So, Medicaid, AFDC, the payment support system for children with special needs, or in some cases, just children where there is a lovely home waiting where we—you know, we would make these payments forever to the dysfunctional parent or the abusive parent or whatever, but we will not help out the new adoptive parent for some period of time.

We have got to find a ramp, so that, as Mr. Fawell says, if we can get the child free for adoption, what is the ramp to integrate that child into the family, so financially they can make that transition?

Obviously, health care is the biggest problem.

Mr. FORD. So, you are suggesting that health care should go with the child.

Mr. MILLER. Yes, absolutely.

Mr. FORD. And the same would be true of other benefits that the child would qualify for.

Do you think that would reduce the number of children in foster care?

Mr. MILLER. I think absolutely it has the potential for doing that. You know, there are a lot of wonderful people out there who desire to take children, but do not have the finances to do so.

And we have got to think about the fact that we are probably spending the money anyway, and we are probably spending it with less return in terms of the benefit to the child. We ought to think about how we transfer those resources to the adoptive parent or grandparent or what have you to provide for the care of the family.

I think both in the discussions of welfare reform and in discussions of Medicaid reform, we really have got to keep that in mind, because sometimes it is a little bit of money that allows people to make the decision to go forward with the action, and certainly in the case of special-needs children.

Mr. FORD. Mr. Thomas, could I get you to respond whether or not these large numbers of children who are in foster care should carry some of their benefits with them. For example, if the family that is adopting would not have proper private health coverage would you support the child carrying Medicaid coverage to the adoptive home?

Mr. THOMAS. I do not think I am really qualified to answer that. I just know that being an adopted person or adoptee, that I know that you need a permanent loving home.

Mr. FORD. I know you mentioned the $5,000 tax credit once before when you testified before the Committee.

Mr. THOMAS. Right.

Mr. FORD. I mean, that carries with it——

Mr. THOMAS. And we have done this in our—at Wendy's we have put adoption benefits in for all of our company people, and we have had 24—we have had about 24 people to adopt so far.

You know, it is expensive to adopt. And we have talked to different States and cities and companies, and we are still continuously talking about adoption benefits to encourage people to adopt.

Mr. FORD. Yes. Loving families sometimes come in—at the lower end of the financial ladder.

And, I think that the adoption that Mr. Miller was talking about, would be assisted if the child would remain eligible for the benefits. Families who are poor, working families that might not have all of the things that would be necessary to care for a child with special needs, would need additional income.

Mr. THOMAS. Right.

Mr. FORD. Although such a family would not be able to adopt, it could provide that love that would be needed for some of these children—

Mr. THOMAS. Right. That is absolutely right.

Mr. FORD. OK. Thank you.

Mr. MILLER. You know, if I might, again in this Committee, you have had under discussion sometimes—you think about what do we do with the job training money, the tax credits to try to get people from public assistance to jobs, and do we want to let the States design a package that could go to an employer and say: Here is an incentive to take this person on as an entry-level worker and what have you.

The same sort of thing sometimes: I think we have got to think about families, that there is a lot of money that is being spent out there in some ways, and sometimes it is disorganized and what have you.

Do we want to provide the ability for the States, as they put together services for what reasons and for adoption, a package of incentives to help people who may be, you know, wonderful people, but basically middle class, and they may not have great health insurance themselves, to take on a child with ongoing health needs, and it is just a barrier? They cannot do it for the sake of their own children or their natural families, if you will.

Thank you.

Mr. FORD. Thank you, Mr. Chairman.

Mr. Thomas, by the way, I supported the $5,000 tax credit.

Mr. THOMAS. Thank you. We just need the President to sign it and get it through the Senate. Right, Senator?

Chairman SHAW. Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. Miller, just to follow up on the Medicaid following the child, it should be limited to just the child, just the adopted child in the new family, if the family means are already taken care of, the other family members?

Mr. MILLER. Well, if the family has the finances that is fine.

I know of a number of instances with families where there was not proper disclosure, or what have you, and they inherited a child with serious health problems that taxed their current health care policy. The care of the child created tension within the family.

You know, the people who make these decisions, I do not believe, make them for financial reasons. But there are financial barriers where you just have to look at your own family situation, and say, can we take this child and do this?

Mr. COLLINS. I think that is a good point. I really do. I did not mean that in a negative way. I think you make a good point there.

Senator DeWine, some advocates think that we should establish a time limit for a social service department to rehabilitate a family. Once the time limit has passed, the department would move quickly to terminate parental rights and place the child in adoption.

Do you think we should have a time limit in the Federal or the State statutes?

Senator DEWINE. Congressman, Mr. Chairman, I think one of the great tragedies that I have seen over my professional career—and I started as an assistant county prosecuting attorney about 20

years ago and saw a lot of these cases—and the thing that shocked me then and continues to shock me today is how long it takes us, as a society, to make a final decision to say, we cannot fix this family; we have got to move on.

The point has been very eloquently made here today by several Members of the Committee and several of the witnesses. I think Congressman Miller said it. You know, 6 months for a child is an eternity.

We have eight children. Our youngest is 4 years old. Her personality was very distinct at the age of 2, even 1.

While we take a lot of time in our court system, and we go through all of the paperwork, and we do all of the things that we think we have to do, the child is growing up, and the child is losing the chance to be a child. The child is losing the chance to grow up in a home.

And as we look at the whole question about "reasonable efforts," I think we do have to consider that we have 16 years of experience with that now. And the fact is, this law is being interpreted by courts, by social workers, to in many cases do things—it causes them to do things they would not do otherwise.

The example I gave of the—I made up an extreme example where I said you have seven kids; they have all been taken away from this mother and father; she is still on crack; he is still a drunk; and there is no indication that either one of them is going to change; that eighth child is born—what do you do?

Now any reasonable person would say: Well, let us move, and let us try to get that little baby adopted.

And yet, what I find time and time again when I talk to the counties is, they basically—one social worker expressed it to me very well—said, I am not allowed to use history as a predictor of the future, because I have to demonstrate, when I go into the court—the way my judge interprets this Federal law; the way my judge interprets it—I have to have a plan for family reunification, and I have to have started down that path toward that family reunification, even when I know and everybody with any common sense would know there is not one chance in a million that we are ever going to be able to fix that family. They have to do it.

And I do not think that was ever the intent of the authors of the bill. And I think what we ought to look at—and I am not sure what the precise language should be—but it seems to me that we ought to signal—we should signal from Congress to the people who are out in the field, who have to make the decision, that the best interest of the child has to take precedence, and the safety of the child has to take precedence.

Family reunification is very important. It is a laudable goal, we all want to try that. But if you look at the situation and you come to the conclusion that this just cannot work, then let us move on. The unintended consequence of this law—and it has done a tremendous amount of good—the unintended consequence is, many people are interpreting it rightly or wrongly—I think wrongly—that they have to go through the hoops and loops and do all these things, even in cases where they absolutely know there is no chance of fixing that family. That is the problem.

Mr. COLLINS. Well, then, I take it that you are saying after—and that was very good——

Senator DEWINE. And I appreciate——

Mr. COLLINS [continuing]. That there should be some directive, a timetable, for those who are trying to make those decisions out there.

Senator DEWINE. I do. I do. And I apologize for not coming——

Mr. COLLINS. Oh, you did a good job. That is fine.

Senator DEWINE [continuing]. To the answer very quickly.

One of the things that the law of 1980 has is some time limits in there, which I think have clearly helped.

People in the field tell me that those have helped. I think we need to move further, though.

Mr. COLLINS. Thank you, sir. Thank you, Mr. Chairman.

Chairman SHAW. Thank you, Mr. Collins.

Mr. Miller, you and several of the other witnesses made reference to drug abuse as being one of the big—problems—family problems, which I think anyone who has studied the question would certainly agree with you on.

Drug addiction, when you really have a hardcore addict, even where there is treatment available, the success rate is very, very poor. I mean, it is way down in single digits.

But when you get into a situation like that, where you have a child that has actually been abused, and it was abused while the parent was under the influence of drugs, and the parent is a drug addict, and there is not a sober parent, responsible parent, to give custody of this child to, what is your thought with regard to expediting the termination of parental rights?

Mr. MILLER. That is probably the toughest question you could possibly ask, because each of these families are different.

What I do not think you can do, in dealing with a person who is currently addicted or a person who is in treatment—certainly with a person who refuses treatment, which is prima facie evidence of another problem—you cannot put the child at risk in that situation.

But, if you had a drug addicted parent that did not abuse the child but, maybe, was not able to take care of the child because of the addiction.

That does not mean that the parent does not love that child. If you want to take that child and put the child in foster care and immediately put that parent into treatment—the test is whether or not that parent is in treatment or not, and that works out fine. You want to go for some period of time to see if that is the case.

If that does not work out, I think, as Senator DeWine said, at some point you do have to decide; there is just not the makings of a family here, and what makings you do have, put the child at risk.

The biggest problem we have, I think, for the social service system and, particularly, for the workers is; you are damned if you do, and you are damned if you do not. You can get sued either way on either side of this question. You can get sued because you took my child away, and you put him over there, and I want my child back. And if you put the child back into the home and something happens to the child, you can get sued that way. It is not a very good choice for those people. We have seen highly visible cases where

someone, you know, is going to be held accountable at some point when these things hit the paper.

When we wrote this law, we were not aware that a drug epidemic would affect intact families, because it had not hit us yet. That phenomenon overwhelmed foster care and adoption and a whole series of systems that we had originally set up.

And that is why I welcome this review, because you have to look at it in this context. I was looking through all of the clippings. And that question was much easier to answer in 1980 than it is today, because in some cases it was different drugs.

Chairman SHAW. There was no crack cocaine in 1980.

Mr. MILLER. Essentially that is the problem. There was not. And the behavior and the addiction and the ease of accessability to that drug has changed the whole nature of this.

And, you know, I refuse at this moment to believe that "reasonable effort" is driving all of the problems with child welfare systems, but I also believe that "reasonable effort" is open to review. You know, I do not want to let a review of "reasonable efforts" drive more than it can, because I think there are some elements of this requirement that maybe are inconvenient for the social service agency but really good for the child, and we ought to make sure that we do not throw those out, because this—you know, this should be child centered.

Chairman SHAW. Mr. Fawell.

Mr. MILLER. I did not give you an answer yet.

Mr. FAWELL. If I could just add one point, I think when it comes to termination of parental rights, the cards are stacked against the children.

Chairman SHAW. Speak louder. I am having trouble hearing you. I am sorry.

Mr. FAWELL. When it comes to terminating parental rights, I think the cards are pretty much, under the present system, stacked against the children, and it is not necessarily the fault of the welfare agencies.

They do not have the legal expertise. Nobody really wants to tackle that kind of a problem, but they do not have access to the attorneys who are knowledgeable on this, and the courts are not too interested either.

So as a practical matter, unless there is somebody out there who wants to adopt that child and there is really interest, nobody is going to—nobody is going to ever try to buck the feeling that termination is just—that is hot stuff. You just do not see much movement in that regard.

That is why I feel that when you have a child utterly abandoned when that child comes into this old world of ours, that you are in the position of saving that child. And there, at least, one can reasonably say: We can present this to a court of law for adjudication quickly; that is, the question of termination of the parental rights of the parents who have abandoned that child.

But once that period is over, I think you have lost it then. And that is where the children stagnate. Nobody is about to take that legal problem on.

And I cannot blame the welfare workers. They just are not going to do it.

Chairman SHAW. Well, I think we are all very sensitive to the rights of the parents and reunification and how important that is.

But to see this through the eyes of the child is something that is quite different, and I see the common vein going through all the witnesses' testimony, that the rights of the child have to be considered first and foremost and the safety of that child.

In listening to Dan Burton speak of his very troubled youth—he talked about being subject to parental abuse. And, I am not telling any secrets, he has said this in front of this Committee.

He had an abusive father. And at some point in his life, he was telling me how he had stayed in an orphanage. I think it must have been just a facility to place him in while some things—some turmoil was going on—because I think, he then was placed back with his mother some time later—but he mentioned to me that people would come through the orphanage looking for children to adopt and how some of his friends, when the people would go through and they had been rejected, that they would just lay down and cry.

It is pretty tough. When you think of—you know, we take family for granted. But to think how tough that would be as a child and how sad that is, it is almost like a pet store approach, and it is so sad when you think that these beautiful children and wonderful kids who just want to be loved and want nothing more than a family are rejected and how tough that is on them, it makes your heart really go out to them, which brings me back to Mr. Thomas.

In your testimony, you said: I do not claim to be an expert on adoption laws. And there are many people here today who know more about that than I do. But you have a personal story which you shared with me briefly before we started this hearing.

If you would like to give us some of your background and how you saw it through your eyes as a child who was to be adopted?

Mr. THOMAS. Thank you.

I was adopted when I was 6 weeks old and to a couple in Michigan. And my adopted mother died when I was 5 years old, and my dad remarried. And then he moved through about four States and three stepmothers, but I had never seen my biological mother and father, and I did not really know I was adopted until I was 13 years old. I was very hurt when I found out. I never felt that I was the same as everyone else.

I went from school to school, and, you know, again I decided to leave the foster family when I was 15 and go on my own. And I dropped out of school, which I should have never done, but I was telling——

Chairman SHAW. But you went back!

Mr. THOMAS. Beg pardon?

Chairman SHAW. But you went back.

Mr. THOMAS. I went back 3 years ago and got my GED, and I was adopted right outside of Fort Lauderdale—what school did I tell you it was?

Chairman SHAW. Coconut Creek.

Mr. THOMAS. Coconut Creek High School. I forgot for just a minute. And the class of 1993 voted me "Most Likely to Succeed."

Chairman SHAW. Save that! [Laughter.]

Mr. THOMAS. And I went to the prom, and I was the King and the Queen. [Laughter.]

But, the thing that I have really found is, as you see these children, they will not even look at you.

And I feel so sorry about anyone that does not really have—and I know what I missed in my life, because I—not knowing my biological mother and father—and I would have given anything in the world to meet them—and I did when I got out of the Army, and I did try to look up my biological mother—but I did find her father, which is my grandfather and my grandmother, and I did spend—I guess I—before they passed away, maybe 3 or 4 years, but it still was not like seeing your own mother and father.

But I just know that when you do not have family, and I know that I have five children and 14 grandchildren, and I know what a family—what I missed as a child. And I just feel so sorry for kids that enter this system on a temporary basis, and it becomes permanent.

I think the social workers do a fantastic job. But when you have had too many too long, it is just not fair for these kids, and it is a lifetime, when you talk about how some of these kids go from foster home to foster home, and then to a social worker, it is just not right.

I think we need to adopt what the Kellogg Foundation has been working on, which has been one social worker, 1 year in foster care, and from there, into a permanent home.

But there are a lot of things I do not have the answers for. The bottom line is that every boy and girl deserves a permanent and loving family.

I wish I had all the answers, Mr. Chairman.

Chairman SHAW. Thank you, Mr. Thomas, and I thank the entire panel, and I would like to compliment you, Mr. Thomas, for your corporate responsibility and incorporating into the Wendy's structure such encouragement. It certainly is a most responsible thing to do, for which I think you have set the standard for other corporations to follow.

Mr. THOMAS. Thank you.

Chairman SHAW. Our next panel will be Judith Goodhand, Ph.D., executive director, Cuyahoga County Department of Children and Family Services, Cleveland, Ohio, and she is accompanied by Patricia Newell, who is a foster parent from Cleveland, Ohio, and Deborah Benn, a birth parent from Cleveland, Ohio.

We also have Sister Josephine Murphy, administrator of the St. Ann's Infant and Maternity Home in Hyattsville, Maryland; Patricia Warenda, who is a grandmother from Fort Lauderdale, Florida and, I might say, a constituent of mine; and Robert Dean, who is a foster parent from Omaha, Nebraska.

I would like to point out that there is a hearing going on on the floor on most-favored-nation status for China, which is also in the jurisdiction of our Committee, and which explains why some of our members are unable to be two places at one time.

Ms. Goodhand, please proceed as you see fit. We have all of your full statements, and they will become part of the record of this hearing.

STATEMENT OF JUDITH GOODHAND, DIRECTOR, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, CLEVELAND, OHIO, ACCOMPANIED BY PATRICIA NEWELL, FOSTER PARENT, CLEVELAND, OHIO, AND DEBORAH BENN, BIRTH PARENT, CLEVELAND, OHIO

Ms. GOODHAND. Thank you, Mr. Chairman and Members of the Subcommittee. I am Judith Goodhand. I am the director of the Department of Children and Family Services in Cleveland, Ohio, and I have worked in child protection for 24 years.

I began in Knox County, Ohio, which is a very small rural county; I later moved to an agency in Toledo, and for the past 4 years, I have directed the county agency in Cleveland.

Currently, my agency must respond every month to 1,500 new reports involving children who are abused, abandoned, homeless, hungry, or toxic with drugs at birth. We take custody of close to 300 children each month, and on any given day, we are seeking adoptive families for 700 waiting children.

These are very different circumstances than existed in 1972 in Knox County or even in Cleveland, when we often removed children from their homes to foster care for the slightest of reasons. We took children from their parents too easily and, worse, we kept them indefinitely. In that process, we often lost touch with where and who they were.

In 1972, we did not have 15,000 homeless children on our streets and in our shelters in Ohio, as we did in 1994. We had never even heard of crack cocaine, which did not hit our streets until the late eighties.

The threats to children are significantly different and greater in 1996 than they were in 1972, and the decisions we are called on to make are much more complex. As this Committee opens this discussion on the reasonable efforts standards for agencies such as ours, I ask you to please keep in mind the pressures on social workers every day to make the right decisions about when to remove the child, when to reunite the child with the birth parents, and when to permanently sever the ties between the two.

Social workers need sophisticated training and a broad range of knowledge and tools and skills to protect children today. Our response to that first notice of an incident of abuse or neglect is critical. We must be thorough investigators to determine the appropriate action.

A child's safety must come first. In Cleveland, we now use a structured risk assessment process to help social workers in determining the level of risk to that child. Our goal is to make sure that the most serious cases get quick and intense action. We need to have access to a broad range of preventive services based on what is best for the child and the family, including family preservation. We also need a wide range of placement resources for children who just are not safe in their own homes. We need to provide services to foster and adoptive families who care for our special-needs children. And above all, we must be able to provide adoptive families for those children who can never return home.

There is no one response or service that is appropriate for every child or every family. We need both home-based services, like family preservation and out-of-home services such as foster care.

We often hear and read about what does not work—the child who is not removed and dies of abuse; the child who is reunited and reabused. We do not hear very much about the thousands of children who remain safely in their homes because they receive appropriate services, which is why I urge you to hear well the testimony of Pat Newell and Deborah Benn, who join me here today. They are successful because our system worked for them and for their children. They represent the thousands of children and families who are in safe, secure and stable homes because of systems that worked.

And we rarely hear about the other risk—the risk of growing up without a family, separated from home, brothers and sisters, schools and friends, when children are removed unnecessarily. A review of reasonable efforts should not just focus on just family preservation or reunification or adoption services, because we need all of these services to respond to different levels and different kinds of risks. Most of all, we need safe, secure, permanent families for our children. No system is perfect. We need to improve and reform our system.

In Cleveland, we have been very fortunate to have private funds to assist us in our reform effort. Thanks to a grant from the Annie E. Casey Foundation, we have developed a new program called Family to-Family, which trains foster parents who live in the same communities or neighborhoods as the birth parents. The birth parents and the foster parents work as a team with the social worker for changes to allow that child to return home or, in some cases, to be adopted by the foster parents. This process involves a whole network of community and neighborhood supports for these families.

The key to keeping children safe is to choose the right resource in each case. We know that some children cannot be protected in their own homes even with family preservation or other resources. I do not know anyone who has ever claimed that family preservation is right for all families. But we also know that foster care does not always provide the stability, the commitment or the nurturing that all children need. And I know, with great sorrow, that if we are not able to find adoptive families for the 700 children in our permanent custody, they will grow up without families of their own.

Children need families. We must make reasonable efforts to help families break the cycle of violence, to learn to discipline children without abusing them, and to stop neglect, which is too often related to poverty. As a society, we cannot afford to take children from their homes, breaking family ties, just because they are poor.

If you look at the child welfare system through the eyes of a child, reasonable efforts require reasonable services. Yes, we must do what is best for the child, but permanent families, whether birth or adoptive, are best for children and young people. In fact, we all need families.

Specifically, on barriers to adoption, there are a number of things that could help children who wait too long for families, and I have included several of these items in my written testimony.

Ohio is very lucky to have several national foundations investing in us and helping us to reform our system. Both the Family to-

Family Program, sponsored by the Annie E. Casey Foundation, and the Families for Kids initiative by the Kellogg Foundation are identifying important best practices to approve the child welfare system and foster care and adoption.

We now know a lot more about what parts of the system can be fixed and the new and improved tools we need for reform.

I want to thank you for preserving the entitlement which IV-E maintenance and administrative dollars give to our children in foster and adoptive placements. But we also need to assure that there is a wide range of family preservation services for our children as well. We need both resources and technical assistance to help us to develop and support adoptive families for special-needs children.

I am well aware that this is not a good time to come to Congress and talk about funding needs, but out of the 24 years of my experience in working with children, I am telling you that the situation for our children today is desperate, and they do need your help.

I want to thank you for this opportunity to testify.

[The prepared statement follows:]

U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Human Resources
E. Clay Shaw, Jr., Chairman

Written Testimony of Judith Goodhand
Department of Children and Family Services
3955 Euclid Avenue
Cleveland, Ohio 44115
Phone (216) 432-3390, Fax (216) 432-3379

I am Judith Goodhand, Director of the Department of Children and Family Services in Cleveland, Ohio and I have worked in children's services for 24 years. I began my career in Knox County, Ohio, a small rural county of 45,000 people, later moved to the county agency in Toledo (population: 350,000) and, for the past 4 years, I have directed the county agency in Cleveland. So for 24 years, I have known the rewards and the pain of developing children's services under a broad range of circumstances and conditions.

Today in Cleveland we are working to improve and reform our system in response to dramatically changing conditions. Currently my agency must respond every month to 1,500 reports involving children who are abused, abandoned, homeless, hungry or toxic with drugs at birth. We provide services to almost 60,000 children and their parents each year, take custody of close to 300 children each month and on any given day are seeking adoptive families for 700 waiting children.

These are very different circumstances than existed in 1972 in Knox County or even Cleveland when we often removed children from their homes to foster care or institutions for the slightest reasons. We took children from their parents too easily, and worse, kept them indefinitely. In that process we sometimes lost track of where, and who, they were. In 1972, we did not have 15,000 homeless children on our streets and in our shelters in Ohio, as we did in 1994. We had never heard of crack cocaine, which did not hit our streets until the late 1980's.

The threats to children are significantly different and greater today from what they were in 1972, and the decisions we are called to make are more complex. As this Committee opens discussion on the reasonable efforts standards for agencies such as ours, I ask you to please keep in mind the pressures on social workers and other professionals every day to make the right decisions about when to *remove* the child, when to *reunite* the child with the birth parents, and when to permanently sever the ties between the two. Social workers need sophisticated training and a broad range of knowledge, tools and skills to protect children today. Our response to that first notice of an incident of abuse or neglect is critical. We must be thorough investigators to determine the appropriate action. A child's safety must and always does come first. In Cleveland we use a structured risk assessment process to help social workers determine the level of risk to that child. Our goal is to make sure the most serious cases get quick and intense action. We also need to have access to a broad range of *preventive* services based on what is best for the child and the family, including family preservation, drug treatment, health care, and parent training. If a child needs to be removed to be safe, we need a wide range of *placement* resources for children who aren't safe in their own homes. We need to provide special services for those foster and adoptive families who care for special needs children. And we must be able to provide adoptive families for those children who can never return home. Mr. Chairman and members of this Committee, there is no one response or service that is appropriate for every child, or every family. We do not have a one-size-fits-all system. We need both

home-based services, such as family preservation, and out-of-home services, such as foster care.

We often hear and read about what *doesn't* work: the child who is not removed and dies of abuse, the child who is reunited and reabused.

We do not hear very much about the thousands of children who remain safely in their homes because they received appropriate services, which is why I urge you to pay close attention to the testimony of Pat Newell and Deborah Benn, who join me here today. They are successful because our system worked for them and their children. They represent the thousands of children and families who are in safe, secure and stable homes because of systems that worked. And we rarely hear about the other risk: the risk of growing up without a family, separated from home, brothers and sisters, schools and friends when children are removed unnecessarily. A review of reasonable efforts should not focus on just family preservation or reunification or adoption services. We need all of these services to respond to different levels and different kinds of risk. Most of all we need safe, secure, permanent families for our children.

There are successful programs which protect children at home, and others which place them outside of their homes in foster care. We need to build on these new models. In Cleveland we've been very fortunate to have private funds to assist us with our reform effort. Thanks to a grant from the Annie E. Casey Foundation, we have developed a program called Family to Family, which trains foster parents who live in the same or nearby communities as the birth parents. Birth and foster parents work as a team with social workers for changes that will allow the child to be returned home and, when that is not possible, to facilitate adoption. (Sixty percent of our children are adopted by their foster parents.) This process involves a whole network of community and neighborhood supports for these families, and builds on a partnership with the private sector.

Our first goal is to keep children safe from harm and we must use every resource available to do this. The key is to choose the right resource in each case. We know that some children cannot be protected in their own homes, even with family preservation or other resources. No one has ever claimed that family preservation is right for all families. But we also know that foster care does not always provide the stability, commitment or nurturing that all children need. And I tell you, with great sorrow, that if we are not able to find adoptive homes for the 700 children in our permanent custody, they will grow up without families of their own.

I firmly believe that children need families. And that we should make reasonable efforts to help families break the cycle of violence, learn how to discipline children without abusing them and stop neglect, too often due to poverty. As a society, we cannot afford to take children from their homes, breaking family ties, just because they are poor. If you look at the child welfare system through the eyes of a child, reasonable efforts need reasonable services.

Yes, we must do what is best for the child, but permanent families, whether birth or adoptive, are best for children and young people. We all need families.

Specifically on barriers to adoption there are a number of things that could help children who wait too long for families.

Wendy's and the Dave Thomas Foundation have done a good job developing public/private partnerships around the country with child welfare agencies. With a grant from the Families for Kids Initiative of the W.K. Kellogg Foundation, nine counties are working together on a special Wendy's recruitment project in northern Ohio focusing on five key outcomes described by Mr. Thomas. Quite frankly, the proposed legislation passed by the House on tax credits would not really help children in foster care who are waiting for families. There are

important issues Congress and the government can do on adoption. Over the past twenty years, you have identified many of these problems, but it is time to take another look at what is working. Specifically in the areas of:

- Technology and uniform data collection: Most child welfare agencies still rely on paper systems to track their children and families. Computerization has been too slow in coming to our field. This is why so many children can literally get "lost" in the system. Good management information systems and improved data collection and utilization technologies are key toward identifying problems and finding solutions for the backlog of children in the system. We are just beginning this process in Ohio and it is a hard one. Each state should not have to recreate the wheel, over and over again on MIS systems and data collection. Congress has taken action in this area over the last ten years. But we need more and better technical assistance given the rapid advances in this area.

- Recruitment: The U.S. Department of Health and Human Services' Adoption Opportunities Program provides funds for developing recruitment campaigns featuring special needs children legally free to be adopted. Under this excellent program, our county developed a set of materials that I would like to submit for the record as an example of what others are doing around the country. The program is under-funded and still is just a "pilot." But much more can and should be done. The Federal government could provide ongoing funds for national and regional recruitment efforts. Just as the Army asks people to "Be all that you can be" or the Parks Service has Smokey the Bear telling people "Only You Can Prevent Forest Fires," we could use some leadership on foster care and adoption utilizing both mass media, radio and television spots, and on-going, child-specific recruitment.

- The backlog of Waiting Children: In Ohio and many other states, the log jam for kids in foster care and permanency comes during the home study process. We must be thorough in our investigations when certifying foster and adoptive families. The public expects us to set high review standards and to ensure that children in foster and adoptive homes are truly safe, secure and stable. But a good home study costs between $600-$1200. I fear that without additional resources to help relieve the backlog of children in foster care, we may never find enough homes for all the children who need them.

Ohio is very lucky to have several national foundations investing in us to reform our system. Both the Family to Family program supported by the Annie E. Casey Foundation in six states and the Families for Kids Initiative by the W.K. Kellogg Foundation in 11 states are identifying important best practices to improve the child welfare system in foster care and adoption. We now know what parts of the system can be fixed and the new and improved tools needed for reform.

I urge you to preserve the entitlement which IV-E maintenance and administrative dollars give to our children in foster and adoptive placements. But there is more Congress can do: we also need to assure that there are adequate funds to support family preservation, prevention services, drug treatment, health care and other services. And finally we need both resources and technical assistance to help us in developing and supporting adoptive families for special needs children. I am keenly aware that it is not a good time to come and talk about additional needs. But out of the 24 years of my experience in working with children, I am telling you that the situation of our children today is desperate and they need your help.

Chairman SHAW. Ms. Newell.

STATEMENT OF PATRICIA NEWELL, FOSTER PARENT, CLEVELAND, OHIO

Ms. NEWELL. Thank you, Mr. Chairman and Members of the Committee. I wear two hats as I sit here before you. I am an administrator for a neighborhood family resource center located in the Glenville community of Cleveland, Ohio; I am also a licensed foster parent for the last 5 years.

I came into contact with Ms. Goodhand by way of the neighborhood foster care initiative which is part of the Annie E. Casey Family to-Family grant. I have my written testimony here, and I am sure that those of you who have had an opportunity to read it are familiar with what I have to say.

My story, in brief, is about one young man who came to live with me and my husband 4 years ago. His name is Damu, which I had a difficult time pronouncing. I tell people that the first couple of months that I had him, I had to keep telling myself that his first name is a curse word, and if I can think of that, I can think of his name. We have affectionately come to love Damu very much.

Damu is now with his mother, and it would be too long and too exhaustive to give you a total descriptive chain of events that led up to that, but I do need to say that as I sat here today and listened to some of the testimony that preceded us, it sent a chill up my spine when I heard the statement that we should possibly look at terminating parental rights within 1 year's time. I just actually panicked, and I thought: That is a harsh, harsh statement to make. I understand that it was made out of much love from major advocates for children, but what I thought about was that if Damu's mother's rights had been terminated, within 1 year, she would not be at home with her son as I sit here in Washington, DC, before you today.

Damu's was a situation where his interests were best served by going home. He was one of nine children, a middle child, and quite frankly, was very happy to come to my home because my husband and I had no children and plenty of resources. He was a very intelligent young man, and he assessed that very quickly, decided he had no use for the rest of the family members probably the first week he was in my home; never wanted to see siblings, never wanted to see anybody, which was really a mystery to me because I did not understand how he could not want to see any of the nine children that he had spent the first 10 years of his life with.

What we discovered was that Damu was just looking for a way out of a situation, instead of being given the skills to deal with that situation. At Family-to-Family, we created a situation where I could begin working with his mom. And I really need to say that before I met his mother, I probably thought I was a better parent for him than she, and I based that in large part because I knew that I had resources that she did not have.

One day, we set up an appointment to meet with her, and my life was just radically changed after that. Her son walked into the room, and I watched the interaction between them, and I watched her eyes fill up with water as she grabbed him to kiss him. I looked at that, and I said to myself—many Myrtle Beach vacations later—

I can never replace what she just did. I can never give that child what she just gave him. And in fact, in my written testimony I state that I had never done that; I had never physically engaged him in that way, and especially as he started becoming a young man, a teenage boy, I was very aware of some boundaries, so I was also keeping myself back from physical interaction which he as a child probably really needed, as any child does.

In closing, I just want to leave you with one statement—and I said this before some folk in Columbia a couple of months ago who also were helping make some decisions and shape some legislation—probably in my 40 years of living, I have never done anything more decent and humane and dignified than to help this woman get her son back. It was tireless. It was hours and hours of helping her do the most basic things as to figure out that she had to get her gas and lights cut back on with the gas company, that you actually have to go and present information to them that she was not clear on how to do.

As an administrator of an agency, having her just show up at random in my center—which I had basically encouraged her to do—sometimes was a problem. But when I saw her face when she realized that there was actually hope that her son could come home, and her other five children who still remain in custody, I knew that this was worth whatever it took.

Adoption is an absolutely wonderful thing. I want to make that real clear. I want to also say that I am actually someone who would probably adopt. The reason my husband and I went into foster care was because we had already had three miscarriages and were actually not sure we could have any children of our own; so, I sincerely would have been a candidate for adoption and still, hopefully, am. I do not want to suggest that I do not think it is very, very valuable, because I know that it is.

All I want to say is that it is not the only answer. If the biological parent is given the right support, then going home can be a good decision for the child. Going home certainly has been the right decision for Damu Bridges.

Thank you.

[The prepared statement follows:]

STATEMENT OF PATRICIA NEWALL
CLEVELAND, OHIO
JUNE 27, 1996

Thank you Mr. Chairman, members of the committee for inviting me to testify concerning this vitally important subject which is one that is very dear to my heart.

I wear two hats as I sit before you today. I am the assistant director of St. Martin De Porres Family Resource Center, a private nonprofit agency in Cleveland, Ohio, and I am a foster parent. Our agency was selected as one of the two sites to pilot the Family To Family Neighborhood Foster Care Initiative and I had no idea at that time that as a result of that contract my life was about to be radically changed. In fact my very soul was about to be challenged.

My husband and I opened hearts and our home to a scrawny little 10-year-old boy named Damu Bridges on May 28th 1992. We had no idea at that time how long we would have Damu with us and that seemed relatively unimportant to us. We had no children of our own at that time and we had plenty of room in our home and in our lives for little Damu. Damu was the middle child of a family of nine children and, needless to say, he was enjoying all of the attention lavished upon him by our family and friends. He would often ask us if we could adopt him so that his last name would be Newell like ours. I would always respond by telling him that his parents loved him very much and that they had not given him to us -- that they were only asking us for a little help while they got their lives back in order. Having a professional background in the field of drug treatment I was able to talk to Damu about his father's chemical dependency without ever putting his dad down. Damu never talked much about his mom at first. I later found out that she had abandoned Damu and his brothers and sisters about six months prior to the children being taken from the home by the Department of Children and Family Services. He had a great deal of anger locked inside about his mom leaving him and the other children.

Well, having given you a little background information about Damu I need to talk about how the Family To Family Initiative affected us. An important part of the Family To Family agenda was to begin to bring about more interaction between the foster family and birth parents. I was concerned when I heard this concept being tossed about. After all I had not become a foster parent thinking I would ever have to interact with the child's parents. I knew that this could be risky not to mention potentially dangerous. However, being the type A personality that I am I stepped up to the challenge. I determined that I would be willing to meet Damu's parents as a sort of test case. I would arrange for the meeting to take place at St. Martin De Porres, a safe place, on my own turf. I remember that day vividly. I was a nervous wreck but I tried to appear to be in control. I waited in my office busying myself with paperwork, having given my staff instructions to notify me when Mrs. Bridges entered the building. Finally, the moment had arrived, and out to the main lobby I went. There sat this very docile unassuming little woman. She looked so very scared and I remember thinking that she looked nothing like I had imagined. Up to the conference room we went, not saying a word to one another in the elevator. We sat around trying to make small talk until Damu was brought from school by his social worker. Suddenly there was a knock at the door. Damu walked into the room with a timid look on his face and what I saw after that would change my life. Mrs. Bridges looked into her son's eyes and pulled his little chin toward her and kissed him. It was a gesture that only his mom could make. I could provide Damu with shelter, clothing and food but I knew at that moment that she had just given him something that I could never give him. I was moved to tears just watching her tenderness with him and his respect for her. I didn't know how I would be able to help but I knew that Damu needed to be with his mom.

Four years later on June 17th 1996, Damu Bridges went home. Adoption is a wonderful thing and I applaud the efforts of those who make it happen, but it is not the answer for every child. In reality, there may be too many barriers for adoption of a 15-year-old African-American male. For Damu, permanency was achieved when he went home to his mother. Damu's mom will need a great deal of support and I have pledged to give her that support so that this reunification will be a successful reunification.

In closing, I plead with you members of the government that in our effort to contain cost, and keep children safe, we do not decimate the resources that should be available to provide the supportive services to families to preserve them and to protect children when they cannot protect themselves.

Chairman SHAW. Ms. Benn.

STATEMENT OF DEBORAH BENN, BIRTH PARENT, CLEVELAND, OHIO

Ms. BENN. I would just like to thank you, Mr. Chairman and Members of the Committee, for inviting me here to testify before you.

I am a mother of three. I am also a recovering mother as well. My father was an alcoholic, and I witnessed domestic violence between my parents. As an adult, I was living with my two sons and their father, working and doing well, except I was in a violent relationship. I stayed in this relationship for 6 years. His harassment caused me to get fired, and I became depressed, and one night, I was introduced to crack cocaine.

Within 3 to 4 months, I became addicted, but told myself that I could quit at any time. Finally, things got worse, and I was evicted from my home. My kids and I moved in with a drug-using friend, and I became pregnant by this person.

I had no running water, no gas, no heat. I lived this way for 1 year. I left because of the abuse, and my children and I slept at a bus shelter that night; it was very cold.

Then, Children's Services became involved. My kids were placed in foster care, and I was referred to drug treatment. I was in treatment for 6 months, and they were in foster care for 1 year. I was referred to family transitional housing, and during this time, my children were able to have overnight visits with me.

My oldest son came home first, and when he came home, I got a chance to meet the foster parents, who lived in the same community as I did. She became a great support. Within 90 days, I had my children back.

I lived at family transitional housing for 2 years, and I went back to school to get my GED. During this time, I applied for a Habitat for Humanity house, where I have lived for 2 years, and was hired at family transitional housing to work with children of recovering parents.

I am a part-time student at community college, and I also train new social workers and foster parents for Children and Family Services. My children are recovering as well. My oldest son is in the 10th grade, carries a "B" average and plans to be an architect. My second child is in the 8th grade, is a straight "A" student, and is in the Upward Bound Program at Case Western Reserve University. My daughter is 8, and she is also doing well in school.

It was hard, but because my social worker believed in me and made the effort to help me, I was able to get my children back. I do not know where I or my children would be today if this effort had not been made.

I just want to thank you all again for coming here and allowing me to share my story. It was really hard for me to take my kids down to human services, but it was something I had to do, and I thank God today that there were people out there to help me. There are many women who need help. I was raised in a family with domestic violence, and due to my situation, I do not blame anyone for it. I thank God today that someone was there to help me. There are many women where I work today who have been ad-

dicted to drugs or came out of situations of domestic violence, who through the county and through supportive services like this, have achieved their goals in life and are still working on some of their goals today.

Like I said, through the support services and human services, this has made a big change in my life and in my children's lives as well. And I thank God today that I can see my children and that I was given a second chance to get my life together and become the mother that I should be.

Chairman SHAW. Thank you.

Sister Murphy.

STATEMENT OF SISTER JOSEPHINE MURPHY, ADMINISTRATOR, ST. ANN'S INFANT AND MATERNITY HOME, HYATTSVILLE, MARYLAND

Sister MURPHY. Chairman Shaw, I would first like to thank you and the Committee for having me here, but I also want to thank you for having this hearing on this very important issue because I feel that for years we have swept our children and all of their problems and troubles under the rug.

I have been in child care for 40 years, and at St. Ann's for 8 years, and I have never before seen the horrible degree of abuse and neglect that I see with the babies and children at St. Ann's.

I am very happy to be here today because I am extremely concerned about where we are heading with our children. We are feeding the jail system. I walk through St. Ann's, and I look at the babies there, and I say, "Darling, if I come back in 20 years, I can probably meet you down at the DC Jail."

So, I feel that we have got to do something about it—I am not talking about statistics, I am talking about human beings. These babies are human beings, and our teenage moms are human beings, and our babies and young moms are being horribly abused.

St. Ann's had a 2-week-old baby that had gonorrhea of the throat. We had a 2-year-old baby that had to have stitches for vaginal lacerations because she had been raped. We had a 2-year-old girl whose mother and boyfriend had poured scalding water over her. We had a little boy who came to us, and his chest was all burned. We have babies that come into St. Ann's where people have put cigarettes out all over their little bodies. We had a 10-month-old baby, and I have also seen older children, ages 6 and 7, with their little backs torn up, not any more from just a little whack from a hair brush, but from electric cords, which make deeper cuts.

If you have never seen these little backs, and if you do not know how long it takes to heal, if you have never seen the anguish that these kids go through every time you have to bathe them, and the hurt they endure, you can not understand why—I could just go on and on—I get so upset about the continued abuse. But almost worse than that, to me, is that I have 15- and 16-year-old girls in my maternity programs, young moms in maternity, prenatal and mother-baby. I have been shocked reading some of their records and finding that from ages 1 and 2, many of them have been abused physically and sexually, and we have known about it, agencies have known about it, the schools have known about it, the

courts have known about it, and nobody has removed them. So now, they are pregnant, and they are at St. Ann's, and they feel that nobody cares, and nobody wants them. A lot of these girls can really do well when they are in a structured program, they get into our accredited high school, and in time finish school, many of them go on to college. They finally succeed!

So, I beg you today, I really beg you, and I beg Congress, because they wrote and are responsible for the Adoption Assistance and Child Welfare Act of 1980, to examine this act, which I really think has got to be clarified.

I am not just talking about—although I also mean timelines, too—but I think the act has got to be clarified as to what is a family. Many of the kids at St. Ann's do not have a family. Many of them have a mom on drugs, living in a house with a lot of other drug addicts who move in and out of that house and use these children and abuse them physically and sexually.

We have children who are 5 or 6 years old who have been taking care of a drug mom and other children in the family. A little girl said to me when I talked to her about stealing—she is a great thief, and she is only about 5 years old—"Will you tell me how am I going to feed my baby"—she calls the baby hers—"myself, and my mom, who stays stoned from morning until night if I do not steal food?"

I did not have an answer. I have had kids leave St. Ann's who have begged me not to send them home. A little 7-year-old boy, when I told him that he had to go home because it was a court order, said: "No, you do not have to send me home. You know what is going to happen to me, and you are an adult"—meaning that I should do something about it, I should help him. And yes, I blame our legal system; I blame them probably more than anybody.

We talk about the welfare system, but it is our legal system that is doing these kids in, and I include corporation counsel in that. Many times, cases are not papered, many times, judges do not know all the facts, and this is wrong. We must do something about setting a timeline, and I am not talking about women who smack their children a little bit; I am talking about severe abuse and neglect, and sexual abuse. These children should not go back, but they are going back for the second and third time to the same abuse, many times.

So, we are responsible. We have to tell moms that they must take a stand, they must accept responsibility, and I think it is our legal system that has to do that. So, I beg all of you not just to listen to another group of people talking. I am sick and tired of all the rhetoric and all the meetings and all the other excuses. I beg you to please take some action, to look at the issues, to set goals, to set time lines, to make parents responsible for their children or terminate parental rights quickly and give children permanent homes.

I thank you.

[The prepared statement follows:]

STATEMENT OF SISTER JOSEPHINE MURPHY, ADMINISTRATOR, ST. ANN'S INFANT AND MATERNITY HOME, HYATTSVILLE, MARYLAND

Chairman Shaw and other distinguished Members of the Subcommittee on Human Resources:

Thank you for inviting me to testify before you today as you examine whether the provisions of The Adoption Assistance and Child Welfare Act of 1980 promote adoption in appropriate cases. My name is Sr. Josephine Murphy and I am a Daughter of Charity. I am also the administrator of St. Ann's Infant and Maternity Home.

St. Ann's Infant and Maternity Home began in 1860 and was incorporated in 1863. The Acts of Incorporation were signed by Abraham Lincoln. It began as an infant and maternity home and remains that at present. From it's inception until the present St. Ann's has been a non-profit corporation serving without regard to race or religion. At present it cares for 57 abused/abandoned/neglected children from the District and Maryland. Of these 57 children, 42 are three years of age or younger. Children are accepted 24 hours a day, 365 day a year on an emergency placement basis. There are no requirements except that there is a bed empty. St. Ann's also serves 32 pregnant and parenting single, adolescent young women in their prenatal program and mother/baby program. Infant and regular day care is another program offered to 85 families in the community. We are supported by fees from the agencies that use our services, United Way, Foundations, business corporations and many other friends and benefactors.

I received my M.S.W. from Virginia Commonwealth University and have worked in child care homes as a child care worker or administrator for 40 years. I have been administrator of St. Ann's for eight years.

My testimony will center around some specific cases, some of the problems I see concerning The Adoption Assistance and Child Welfare Act of 1980 and some of my own views about the terrible abuse and neglect of our children.

"Please don't send me home!" This is the cry we have heard more than once at St. Ann's Infant and Maternity Home. It is the cry of little Billy who at age three has suffered severe abuse over a long period of time. When he was just a year and a half old he was taken to the hospital for treatment of third degree burns to the heel and sole of his right foot. He also had a hematoma on the back of his head and bruises on his right jaw. In addition, X-rays revealed old skull fractures. The injuries were inconsistent with the explanation provided by his mother. Nonetheless he was returned home and came to St. Ann's another year and a half later after again going to the hospital and being seen for scrotal swelling and bruises. His buttocks were bruised and he complained of his stomach aching. He also had a rectal fissure and it took almost a year working with the doctors before he had normal bowel movements again. My question is - why was he returned home in the first place after the abuse he had suffered at age one and a half?

"Please don't send me home!" Billy's plea should be a trumpet call to all of us. Never should we send them home - if home means more abuse and neglect. I firmly believe that child protection should take precedence over family reunification. Children need a sense of permanency, some stability and consistency in their lives. They need to be protected and given the same basic right to life, liberty and the pursuit of happiness that the rest of us have. Our legal system that is so quick to advocate and demand through The Adoption Assistance and Child Welfare Act of 1980 that children be returned to their homes fails to take sufficient time to examine whether family reunification is appropriate in the majority of child abuse cases. Many times I believe, if we are looking to child protection, that it is not. The legal system, and I include Corporation Counsel in the legal system, should take a good, realistic look at what is happening to children and have the intestinal fortitude, when it is needed, to terminate parental rights and place these children in adoption. The time has come, and in my opinion is long overdue, for the legal system to accept it's share of the blame for the continuity of the terrible abuse and neglect that we see in the lives of the youngest members of society coming into care today. Many times the courts assume that the best interests of the child subsist within the best interests of the parent. This is wrong! The best interest of the child or if you will, the safety of the child, takes precedence over the best interest of the parent. I am a proponent of long-term OUT-OF-HOME placement for children until a FULL INVESTIGATION is completed and SUFFICIENT REHABILITATION has taken place. The parent should be confronted with the fact

that this rehabilitation takes place within a stipulated time or the child will be placed in adoption. This stipulated time should not drag on for years but the case should be reviewed in six months to see if the parent is really making efforts to change and accept responsibility. Babies should not have to wait years for this to take place!

I am aware that the present trend of our child welfare system is toward family reunification, believing that every family can be "fixed" and that the biological family is ALWAYS the best place to raise a child. I have listened to too many children and seen too many badly abused babies to ever believe this. I do believe that there is a placement of choice for every child. This may be back in their own homes if investigation proves them to be safe and rehabilitation has taken place. It could be in foster care, in adoption or in long-term homes for children. Children entering the system today, for the most part, are extremely traumatized by physical/sexual abuse. Placing them back in their own abusive homes or in unsuccessful foster placement only damages them further.

The best thing for some abused/neglected children is to go into a long-term facility which is a neutral placement where they don't have to relate immediately to another parent substitute figure. I especially think this is helpful for teenagers who have been so horribly abused for so many y ears that they no longer trust anyone. Mary one of the girls in our maternity program had a horrible early childhood but did well at St. Ann's. Her mother was a drug addict with many run-ins with the law who abandoned her at three weeks of age. Her father was an alcoholic who was given custody of Mary and soon remarried, letting the child believe the woman was her biological mother. He was abusive to both his wife and daughter and a divorce soon took place. Mary was devastated when she learned this woman was not her mother and was leaving her. At age eleven Mary began taking care of herself and doing what she could to run the house. Her father suddenly stopped drinking but then began to sexually abuse her. She went to a counselor at school for help and her father was put in jail. She was placed in the home of her father's former wife and that placement did not last long. From there she went into foster care. Mary says of her foster mother, "It was hell living with her". She ran away and went from shelter homes to girls' homes. She developed an "I don't care" attitude. She got pregnant and her boy friend left her - alone and with no place to go. She knew of St. Ann's and sought help there. Mary did well in both the maternity and mother/baby programs, finished school and got a scholarship to college. Many young people, like Mary, wind up in the shuffle of the welfare system, going from one home to another feeling rejected each time they are moved, feeling unwanted, unloved, and that nobody has time for them. In general they feel they are a nuisance to everybody and that the world wouldn't be in the mess it's in if they had never been born. Hence the increased rate of teen suicides. However, over the years I've seen many desperate teens blossom when placed in long-term care and given a chance to stabilize and feel they belong.

As I reflect on what's happening to these adolescents and young children today I come to one unavoidable conclusion: They are present day slaves. I hate to use the word since I thought slavery had ended in our country years ago. I was mistaken. It has just changed its focus. Those in slavery today are our children.

I see it in their eyes when they come into our home. It's a heart-wrenching look of defeat and longing. I can't explain it, but I've seen it hundreds of times. It's become a constant image in my prayer - the eyes of Christ in this distressing disguise. It's what I imagine the look of the slave was, this child with no hope.

They are the little chattels of their mothers who hold the power of life or death over them. They are the slaves of people's perversions, whims and frustrations. They are beaten, burned, bartered, sold, used and abused - just as the slaves of years ago. I worked with a young girl in Virginia who had been traded, like a slave, by her mother for a transistor radio when she was just a few weeks old. In a few months her new mother did not want her anymore and gave her up to the welfare department. She should have been adopted as an infant but instead spent all of her life in the system going from placement to placement.

We see these little slaves often at St. Ann's. Many of them are sexually exploited to gratify the passions of adults who are obsessed with sex; .....Alice, a little two year old who had to have stitches for vaginal lacerations because she had been raped.
Kathy, two weeks old, came to us withgonorrhea of the throat.
Pam who at 15 months of age suffered from venereal warts. She had been sexually abused by her mother's boyfriend and needed surgery because of it. Surgery was scheduled but before it took place she was discharged to her mother and right back to the same situation.

They are burned, oh yes, they are burned. That's what happened to Ben who came in with both hands so badly burned that we sent him to the hospital because the nurse on duty thought his hands were infected. He was hospitalized for six days while the hospital staff worked on his hands. When he came back to us we were told by the hospital that they were not water burns but that his hands had been held over an open fire. When his mother came the following week to visit him he took one look at her and raced off down the hall screaming. He and his brother both accused their mother of abuse, and the aunt admitted that there had been long-term sexual activity between the mother and the boys. Yet they were released to their aunt who had been around while all this was going on and done nothing.

Children today are beaten also, but no longer with a hair brush as in years gone by. The implement of abuse now is the electric cord because "loving" mothers and their boyfriends have found out that it inflicts much more pain and the pain lasts a lot longer. Tommy came in at age seven with his back all torn up in this manner. It took months to heal his "mommy sores" as he called them. As he prepared to go home he wanted to know why we were sending him back when we knew what was going to happen to him. Why indeed! I wish I had been able to come up with a good answer but all I could say was that we were not sending him home but had received a court order which meant the judge had ordered us to send him home. It's nothing but slavery!

This does not happen with every child, but it happens too often for any of us to be complacent. I'm not speaking as a burned out social worker but as one who has become incensed about the plight of children today. We freed the slaves once; it's time we freed the new slaves by making child protection and nurturing the number one priority in our courts, schools and homes. If we do then maybe we won't be trying eight and ten year old children as adults for murder. I don't think age matters, it's just getting big enough and strong enough to do the job. We had a seven year old little boy at St. Ann's who was looking forward to the day he would be big enough to kill his mother's boyfriend who beat him and his younger brothers and little sister and sexually abused them also. They have been back to St. Ann's twice and still the goal is family reunification. Why do we leave children with mothers who can't or won't protect them? Our courts are rather naive to think these moms are going to give up their boyfriends. Maybe we need to clear up the violence in our homes before we can clear up the violence on our streets!

Children are born with a clean slate, all behavior is learned, so what we are seeing played out in our homes, our schools, and our streets today is what they have learned from us - the families, schools, churches, the society that has taught them so well. Children are very quick to learn the bad as well as the good and we are finding that out to our dismay. This is not a minority/white issue, it is not a poor/wealthy issue. It hits all races and classes because our traditions and values, our families have collapsed. Our children are growing up scared, daily exposed to violence and with no support or protection from family because family does not exist for many children. Their family is just a group of people living in the same house and many times these people change rather frequently.

Children have been devalued in our country to the point that their right to "life and liberty" plays second fiddle to their parents' right to the "pursuit of happiness" in whatever form that may take. This devaluing of children occurred gradually and went unnoticed. It began, I believe, when motherhood lost its rightful place as the greatest vocation on earth and fathers became a thing of the past for many children. It began when parents stopped loving and enjoying their children, when they became so caught up in their own pleasureable

pursuits they couldn't even see their children's very basic needs. It began when parents had no time for their children and began to substitute "quality" time for "quantity " time. I had a teenage boy tell me that his parents had given him everything he ever wanted since he had been born except five minutes of their time. He added that he would trade it all in for just a little of their time. We need to speak up for motherhood again whether it be the birth mother, the adoptive mother or the foster mother. What is more important than forming the heart, mind and soul of a child? What profession offers such a challenge or such a great reward?

Every child deserves freedom, the freedom that comes from a happy childhood; freedom from the fear of physical and sexual abuse, freedom from the fear of hunger, freedom from adult responsibilities and worries. Yes, they assume these at a very young age also. They have to just to survive, We took in a little five year old girl and her baby sister and the five year old told us it was hard to realize she didn't have to take care of "her baby" anymore because she had done it since her sister was born. She added that she had also taken care of her mother who, as the child said, "stayed stoned from morning until night". She was also an accomplished thief which means someone had taught her well and she was a quick learner. So we wonder why our jails hold so many juvenile offenders! This little girl is only one among many, believe me. Their emancipation requires our participation in the fight for their basic rights. We have no problem with putting orphans up for adoption. Yet many of the children described above are orphans of the living. Though their parents are alive they are too overwhelmed with their own problems - drugs, alcohol, prostitution and crime - to function as parents in the raising of their children. This gives rise to the terrible abuse and neglect we are seeing today. We wonder about children killing at younger and younger ages. Maybe it's a case of those who have been so horribly neglected and abused finally turning on a society that has treated them so savagely and could care less. Our children are lonely afraid and pushed into adult lives at too early an age. Many come to St. Ann's knowing all about drugs and hiding from the police and living on the streets but they don't know how to jump rope, play dodge ball or ride a bike. Maybe it's time to spend QUANTITY time with them and turn some of them around. Or would we rather continue to leave them to the drug dealers, the rappers and their rock group idols. Believe me these people have plenty of time for them, not because they love them or care about them but because these children represent the almighty dollar to them. It's time to take back the souls of our children and give them all back their childhood. For many it's already too late but adoption could be the road for those that still have a chance.

Now is the time to end this terrible abuse. It's not just stress or the lack of money or health care or the lack of affordable day care that's causing all this. It's our lack of putting some effort into raising children instead of just letting them grow up which is much easier. It's our watering down our educational system until our chilren are bored to tears and find no exhilaration in learning. It's our making a god of sex and not teaching our children it's only a piece of the total love story commitment. We don't need any more reports or congressional hearings. We know the sad statistics. What we do need is for enough of us to get angry, really and truly angry enough to do something about the terrible injustice that is being done to children by returning them to abusive homes and losing another generation to violence and hate. We have to get angry enough to let our legal system and our welfare departments know we won't put up with child slavery any longer. We need to tell our political leaders they should not be talking about human rights issues in any other country until they clean up their own backyard, the backyard that holds the skeletons of too many neglected little bodies already.

I am aware of all the "we care about kids" rhetoric, but I can't help wondering: "Do we really?" Do we care that 1,271 children died last year as a result of abuse and neglect. Do we care that 88% of the victims were younger than five years of age? Do we care that 46% of the victims were one year old or younger? Do we care that most of the deaths were at the hands of parents or caretakers, the very people responsible for keeping the children safe.

Congress and our legal system are set up to protect the rights of ALL our citizens; and children even though they cannot vote, are citizens too. Therefore, those institutions should be the first to take action on behalf of our children in crisis. I feel they need to address the following issues:

THE FAMILY REUNIFICATION ACT should be clarified or changed to put the best interest of the child (child safety) before the rights of the parent. This was an act of Congress, so Congress needs to define what constitutes a family and realize that not every family can be fixed. The rhetoric concerning this Act is great, but the reality for abused children is horrible and cries to heaven for vengeance.

OUR LEGAL SYSTEM must stop sending children right back to abusive and dysfunctional home situations before the home is THOROUGHLY INVESTIGATED and some degree of REHABILITATION has occured. To really insure the safety of the child this should mean that real change has been brought about not just promises made. Our judges, lawyers and social workers have to face the fact that you don't cure a drug addict in a week or a month, and stop acting like this is possible.

OUR LEGAL SYSTEM should set a time limit, a short one, for abused/neglected children to be shuffled around before terminating parental rights and placing those children in adoption. Thousand of children stay in the system for years because judges, lawyers and social workers won't terminate parental rights and give the children a chance at some degree of permanency, stability and normalacy in their lives. Babies need to be adopted when they are babies not when they are older and their little personalities and self concepts have been destroyed.

OUR LEGAL SYSTEM needs to take stronger steps to pursue and prosecute those who murder and sexually abuse children and those who permit it to be done. According to a recently released Justice Department study, most of the crimes against children took place in the home of the assailant or victim. More than three million children nationwide were reported abused/neglected in 1994. Then, of course, there are the tens of thousands of other crimes against children that never get reported or prosecuted. It's easy enough to say children are abused but stop for a moment and think of the pain they endure and have to endure over and over again. Do we want any child to go through this?

Let me say that throughout this article I am talking about severe abuse and neglect and sexual abuse, the kind of abuse that children should never have to endure a second time. I am also talking about a parent who is probably never going to change (we had one child whose mother had been in 19 drug treatment programs), mothers who permit their boyfriends to physically and sexually abuse their children and either take part in the abuse or do nothing to protect the child. There has to be REAL CHANGE. Seven to thirty days in drug rehabilitation and staying clean for a few weeks, going to counseling sessions, coming to St. Ann's on visiting days and getting your little slip in saying you came, none of these things do I see as making a difference if change doesn't occur and the boyfriend isn't really out of the house for good. Promises and talk don't mean anything and don't do anything to change the person or the situatuion. Neither do I feel children have to be returned so mom can keep her housing. We had a very young baby retruned for this reason and came back to us three days later because mom had taken him home and left him locked the apartment alone from Friday until Sunday when concerned neighbors called St. Ann's and were told to notify the welfare department. That baby hadn't been fed or changed during all that time but mom had her apartment. So that's what child protection is all about!

Finally I ask that you DON'T SAY THE WORD MONEY TO ME. It simply infuriates me when we have money for everything else we want including sports stadiums but are always counting the cost of raising children. If it costs so much then how come many poor people raise their children very well on very little. We can't place a money value on our children because each and everyone of them is priceless. I would say though that the mon ey will be spent either when they are older and occupying our jails and prisons. Abused and neglected children are growing up with hate and anger in their hearts and in the future they will feed our prison census ans I think we are already beginning to see. All the money in the world won't help if we don't do something to turn the tide for our children who are drowning in a sea of avuse and neglect that stems from drugs, alcohol, sexual promiscuity and the lack of any family support.

And so I question: When will Congress look at the Family Reunification Act with a "children come first" attitude? When will our legal system hold itself accountable for what's happening to our children instead of blaming it all on the welfare system? When will we as a society see that it is better for our children to worship God than drugs, money and sex? When will we be more concerned with building and updating our educational system than our sports arenas? When will we realize that our children need the loving support of a permanent family? When will we realize that children who are abused and neglected are likely to end on a path that leads to jail? When will we begin to do more than meet and talk?

We say we love children. We say they are the future of our nation. We say they are the most vulnerable members of our society. If we believe it, then we should put some action as well as our money where our mouth is. I'm tired of all the rhetoric, the studies, the meetings and the statistics while our children's lives are wasted and their bodies and spirits broken.

I beg you to please take some ACTION. Thank you for this opportunity.

Chairman SHAW. Thank you, Sister Murphy. Ms. Warenda.

STATEMENT OF PATRICIA WARENDA, GRANDMOTHER, FORT LAUDERDALE, FLORIDA

Ms. WARENDA. Chairman Shaw and other distinguished Members of the Committee on Ways and Means, my name is Patricia Warenda. Thank you for inviting me to testify on behalf of my granddaughter Skye who, on four separate occasions, the courts and social workers have placed in our home because of the treatment that she has suffered at the hands of her biological parents.

I am the maternal grandmother, and on five additional occasions, my daughter and her husband have voluntarily surrendered Skye to our care and custody. Our granddaughter is currently 42 months old. During her lifetime, we have cared for and protected her for 29 months. Seventy percent of her lifetime, she has spent in the safe, secure environment of our home.

Let me briefly give you a snapshot of Skye's situation, which I believe is caused by the Federal law pursuing "reasonable efforts" provisions to keep families together despite chronic substance abuse, child abuse and neglect, and failure of court-ordered family therapy.

Skye was born December 24, 1992 in Sarasota County, Florida. Her biological parents have been unemployed, essentially since her birth, due to drugs. They have been evicted from their apartment for selling drugs to minors.

In May 1994, the Department of Human Resources intervened into the family and removed Skye and placed her with us. The biological parents were ordered to attend family assessment, drug testing and family therapy in July. In September, the court ordered Skye returned with the parents, awarding temporary custody.

This return was based on the belief that children always do better with their biological parents. This return was based on someone's interpretation of a family reunification plan. This return was not based on evidence that the biological family had given up drugs or been successful in family therapy. After all, the removal and return took place in less than 2 months, hardly enough time for a miracle.

Nine months later, the courts awarded the biological parents full custody, despite the fact that none of the prior stated court requirements such as drug testing, counseling or therapy proved successful.

Six months later, Skye is left with neighbors for 1 week, abandoned by her parents with the excuse that they "were going to the store."

Now you see the pattern of abuse that Skye has endured both from her parents and from the social workers who insist on reunification plans. Currently, the Federal law has been interpreted as family rights over children's safety and protection, and whenever that interpretation is made, children lose. Currently, our laws protect the rights of the parents, allowing them unlimited attempts at reunification, without regard to the lack of stability that this creates for the children.

In conclusion, let me say that my case is not an isolated one, but one that represents thousands of children across the country raised

by relatives, grandparents, some raised by foster parents. What is important here is that when children and caretakers have formed bonds, those bonds should not be disrupted. Clear timeframes need to be established to clarify the definition of the reasonable efforts statute.

Thank you for hearing my testimony, and please draft legislation that places children first. Help make my granddaughter Skye the limits of the children trapped in the legal system.

Thank you.

[An attachment to the prepared statement follows:]

CHRONOLOGICAL ORDER OF EVENTS OF SKYE'S LIFE

* December 24, 1992 - Skye is born in Sarasota County, Florida

* August 1993- Skye's biological parents moved from Sarasota to stay in our home in Broward County, Florida because parents were unemployed with no shelter or money for food, maternal grandparent's provided the money needed for food, shelter, and clothing during this period of time

* December 1993- Both biological parent's fired from their jobs for drug abuse, they were evicted from their apartment for none payment of rent and dealing drugs to minors from the apartment

* January 1994- biological parent's living in the back of a van

* January 1994-biological parent's gave Skye over to maternal grandparents while they continued with a lifestyle based on alcohol, drugs, and sexual abuse

* April 1994- biological parent's took Skye to live with them in an apartment with which they shared with 2 herion addicts, the addicts at that time were also charged with dealing drugs. At the age of 16 months Skye was now frequently left alone by her parent's in the house or in the care of the 2 herion addicts who did drugs in front of her

* May 1994- due to reports from neighbors H.R.S. investigates for physical abuse, neglect, nutrition, inadequate surroundings for a minor

* May 1994- as a result of H.R.S. investigation parent's turn Skye over to maternal grandparent's

* June 1994-biological father arrested for buying crack cocaine with food stamps

* June 12, 1994- Skye placed in the emergency shelter of her maternal grandparents

* June 15, 1994- Skye was placed with her maternal grandparents by H.R.S. court order, the court found at this time Skye lived in an environment of documented and admitted open drug use at her parent's home

* July 12, 1994- parents court ordered to attend family assessment, drug testing, and therapy

* September 8, 1994- Skye was returned by the courts to her biological parents under a temporary custody order with the stipulation parents and child were to reside in Broward County to attend the mandated programs recommended by the Child Protection Team report

* September 8, 1994- maternal grandparents are granted liberal, regular unsupervised visitation with Skye by the court

* September 9, 1994- biological father violates court order and returns to Sarasota County

* December 1994- biological mother violates court order and returns to Sarasota County

* February 1995- biological parents receive full custody of Skye via the court, although NONE of the prior stated court requirements such as drug testing, counseling, and therapy were fulfilled by the parents

* February 1995- maternal grandparents granted liberal, regular, unsupervised visitation by the courts

* February through August 1995- Skye resides almost exclusively with her maternal grandparents with occasional visits to her parents, this was due to a variety of reasons in her parents life including:
  * parents had no money for food
  * physical and verbal encounters between parents
  * admitted drug problems of parents
  * unemployment both parents
  * no shelter due to eviction of parents

* August 26, 1995- a neighbor of biological parents in Sarasota County notifies maternal grandparents Skye had been abandoned by her parents 1 week prior with the statement "they were going to the store", maternal grandparents pickup Skye in Sarasota County

* August 28, 1995- doctor appointment for Skye reveals she has head lice, thrush, and a throat infection

* August 27, 1995- maternal grandparents via a phone conversation with biological mother confirmed she had been "drinking heavily, using crack cocaine, pot, and various pills"

* August 27, 1995- biological mother flown to Fort Lauderdale by her parents in an continuing effort to assist in starting over a new life, when mother states she has confirmed proof biological father has been sexually abusing his 15 year old daughter from a prior marriage

* * During this period of time it is discovered by maternal grandparents additional events surrounding Skye while in the presence of her parents these include;

* Skye fell in the swimming pool twice with no adult supervision

* biological father and 1/2 brother hung Skye by her ankles over the toilet dunking her in and out of the bowl for punishment

* Skye was left alone often when she was asleep, while her parents went out

* Skye ate cocaine that had been left out by her parents

* Skye's mother shoplifts in her presence

* parents beat Skye when she gets in their way while their doing drugs

* parents argued with Skye in the car and mother kicked in the windows spraying glass all over Skye

* father threw an alcoholic drink on Skye during an argument with mother

* Skye was asleep in the room during a multi-partner sexual situation of the fathers

* **Skye refers to her daddy's "weiner" and her half brothers** (age 15) "weiner"

* September 18, 1995- biological mother returns to Sarasota

* October 31, 1995 biological mother has a restraining order and divorce injunction processed against biological father citing domestic violence (maternal grandparents pay for attorney)

* November 14, 1995- H.R.S. caseworker phones to see if Skye was in the custody of maternal grandparents, two visits to maternal grandparents home to visit with Skye reveal in the custody of grandparents Skye is "healthy, happy, safe, and well cared for"

* December 1995- biological mother attempts suicide in Sarasota by slashing her wrists with a razor

* January 13, 1996- biological mother arrives at grandparents home without notice to claim her "bambino" following a scene during which the mother appeared to be under the influence of drugs she removed Skye from the grandparents home, mother stressed grandparents could keep Skye if they gave her a "few thousand dollars"- Skye was removed by biological mother from the care of the maternal grandparents regardless of the fact Skye was sick with an allergic reaction

* January 13, 1996 - January 15, 1996 (Holiday Weekend)- grandparents phone over a dozen agencies (repeatedly) to assist in the safe return of child who was in imminent danger

* January 17, 1996- grandparents request emergency hearing for the custodial status of Skye

* January 19, 1996- emergency court hearing in Broward County judge orders H.R.S. to immediately pickup Skye in Sarasota County 250 miles away, due to the fact "the child was in danger, take it to the media if necessary"

* January 19, 1996 through January 22, 1996- H.R.S. in Sarasota County refuses to honor the Broward County judges pickup order

* January 18, 1996- biological mother leaves Skye with biological father to return to her boyfriend

* January 19, 1996-biological mother's boyfriend arrested for attempted suicide

* January 19, 1996- biological mother arrested for stealing keys to handcuffs, off a police officer in the mental ward, while trying to free boyfriend

* January 20, 1996 -biological father breaks into mother's boyfriends apartment and physically beats her at 4:00 a.m. in front of Skye, whom he had brought with him, while at the apartment uses a construction drill on personal items in the apartment stating "if the boyfriend was hear I would have drilled his brain full of holes, father left with Skye

* January 21, 1996- father left a message on the machine of grandparents informing them he intended to kill the mother and the boyfriend

* January 21, 1996 p.m.- biological mother phoned grandparents requesting their assistance to come to Sarasota County and help her get Skye back because the father had Skye in a crack house

* January 21, 1996- grandparents arrive in Sarasota County

* January 22, 1996- grandparents have difficulty finding Skye contacted the police department to enlist their assistance, the police department could not help without the H.R.S.in Sarasota

* January 22, 1996- mother places restraining order on father in Sarasota County, contacts father's probation officer regarding the illegal actions of the father in this matter

* January 22, 1996- parents arranged a meeting with each other and Skye, the police were notified of the scheduled arrival time of the father, when the father showed up 2 hours earlier than agreed upon, the police were not there to assist, following a hostile verbal exchange between the parents the father drove down the street with the mother and Skye hanging off the side of his truck door, during this situation he attempted to run down the maternal grandmother knocking her to the ground with his truck, mother and Skye fell to the ground and he left

* January 22, 1996- grandparents return to Broward County with Skye bringing the mother and boyfriend with them

* January 23, 1996- while preparing to go to court before the judge, H.R.S. and the police arrived at the grandparents home with a pickup order to place Skye in foster care, this order was based upon the original court order dated January 19, 1996, if the grandparents did not comply with the order regardless of the fact it was an error now that the child was safe, they would be arrested and placed in jail, following a phone call by the grandparents to the judge's secretary the court permitted Skye to be brought directly to court with the grandparents and the H.R.S.

* January 23, 1996- upon arrival in court we were greated before the judge with 6 H.R.S. attorney's from out of the county, 4 H.R.S. caseworkers, and a guardian ad-litem, at that time it was determined that an error had been made by the H.R.S. and a child's life had been in danger for at least the past 5 days, and that "H.R.S. would take full responsibilty for their actions without pointing fingers at anyone in their office, and they would take action so that it would not happen to another child again"

* January 23, 1996- temporary custody of Skye was granted to the maternal grandparents by the court

* January 24, 1996- a doctor's appointment for Skye on this date revealed she had a rash, thrush, 2 ear infections, and a fever of 102

* January 30, 1996- biological father was arrested in Sarasota County for violation of probation, spousal abuse, and usage of crack cocaine

* February 8, 1996- biological father has a court hearing regarding the custodial custody of Skye in Broward County. maternal grandparents were granted temporary, legal, and physical custody of Skye

* February 12, 1996- biological father sentenced with 6 months jail time in Broward County

* February 14, 1996- biological mother is cited for domestic abuse when she beats up her boyfiend in Broward County

* February 22, 1996- following a domestic fight regarding lack of fidelity with the boyfriend the biological mother receives staples in her head wound, the boyfriend is in jail

* March 7, 1996- mother involved in domestic dispute with her brother in law resulting in police involvement and her removal from the premises

* May 10, 1996- biological father released from jail in Broward County early due to over crowding

* June 1996- biological mother is pregnant again, although the biological father had a vasectomy over a year ago

* June 14, 1996 through current- biological father makes harrassing phone calls to the home of grandparents

* June 20, 1996- maternal grandparents are granted a temporary restraining order in Broward County due to harrassing phone calls from biological father- biological father served with restraining order in Sarasota County reflecting he may not call, write, visit, or have any manner of contact with maternal grandparents, Skye, or any of the immediate family

* June 27, 1996- maternal grandmother testifies before the Committee on Ways and Means, Subcommittee on Human Resources, in Washington D.C. regarding the Reasonable Efforts of the Public Law 96-272, The Adoption Assistance and Child Welfare Act of 1980

* July 3, 1996-court hearing in Broward County scheduled to grant the temporary restraining order as permanent for one year

* July 18, 1996 - parents granted scheduled court date, due to letter from biological parents to the judge in the case, dated May 22, 1996 asking for custody of Skye, letter states parents are residing together with jobs, in truth parents were together for less than 2 weeks, both are unemployed, mother is back with boyfriend

In conclusion, our granddaughter Skye, is currently 42 months old, out of that period of time we have had the pleasure of having her reside in our care for 29 months. During these months she has thrived, grown, and experienced love. The remainding 13 months have been spent with one or both of her biological parents. Those months have been marked with tremendous episodes of fear, violence, personal jeopardy, risk, and mistrust. On 4 occasions the court has placed her well being with us. On an additional 5 occassions her biological parents have entrusted her well being in our care. Her family background reflects residing with her parents puts her in an atmosphere marked with domestic violence, theft, narcotics, harrassment, sexual abuse, incest, neglect, abandonment, physical abuse, psychological abuse, and aggravated assault charges as part of the family's background. Currently our laws protect the rights of the parents allowing them unlimited amount of attempts of reunification without regard to the lack of stability these children caught in these situations experience. What constitutes reasonable efforts ? We can't legislate love but why aren't children specifically given the right to a safe, permanent, loving, healthy homes ?

Please help make our grandaughter SKYE, THE LIMIT! Draft legislation that places children first.

Children First,

Patricia Warenda

Chairman SHAW. Thank you. Mr. Dean.

STATEMENT OF ROBERT DEAN, FOSTER PARENT, OMAHA, NEBRASKA

Mr. DEAN. I would like to thank you, Mr. Shaw and Members of the Committee, for inviting me to speak on this issue which is critical to the children, families and future of our country.

My wife and I are here today because we have been foster parents for over 3 years. During that time, we have had three children in our home, a little boy who was burned with a curling iron by his mother, a little girl who was sexually abused by her father, and Ann, whom I will testify about today.

I introduce you to our children because it is important that you understand the circumstances that surround a child coming into foster care. These are children who have been physically, sexually, and mentally abused, neglected and abandoned.

I sit on a citizen foster care review board in Omaha and am repeatedly shocked at the horror that these children live with. Nonetheless, year upon year, they float in and out of foster care or from placement to placement.

Ann, who is now 5, came into foster care at the age of one and a half, because her mother, Debbie, repeatedly abandoned her. Ann was a shy, unbonded child who was very scared and insecure.

For the first 2 years Ann was in foster care, visits were sporadic at best, as Debbie was often on the run or incarcerated. During this time, it was remarkable to watch Ann blossom into a loving, caring child. Ann often asked us, "You are never going to leave me, right?"

One and a half years after Ann entered foster care, her alleged father was awarded visits without having to pay child support or prove paternity. Mike is employed and probably could have obtained custody with a simple blood test. He refused, and visits continue today, after another 2 years. Still, no proof of paternity, no blood test.

Over the course of time, Ann became bonded to our extended family, including very proud foster grandparents, aunts, uncles and cousins. She has become an active family member.

In the fall of 1995, the case plan finally was changed to termination of parental rights, as Debbie had disappeared for over 6 months. We were informed that the case plan was being forwarded to the adoption unit and asked if we were interested in adopting. Of course, our answer was yes.

However, at about the same time, Debbie appeared at a homeless shelter, pregnant again, and determined to turn her life around for the third time.

In November 1995, the case plan was changed back to reunification. We are here today for Ann to talk about reasonable efforts. Because of a cruel system, Ann will be forced to go and live with near strangers as she begins her school years. I understand and I believe in reunifying families, but there is a point when those efforts are damaging to children.

Reunification has got to mean that there is a bond before the tragedy of separation. Reasonable efforts must be tied to strict timeframes, and the best interests of the children should be the first priority.

Upon a recent conversation with Ann's caseworker, he told us that the judge's questions in court center on reasonable efforts. In Ann's case, reasonable efforts were surely met years ago. It simply is wrong that a 5-year-old should be in foster care for 3 years while her biological family ignores its responsibility, especially when that child could have been adopted into a family that already loved her.

I want to stress to you that this story is not unusual. In fact, it is probably closer to the norm. Is it any wonder that we are seeing an unprecedented amount of anger from our youth nationwide? Is it any wonder that 10- or 11-year-old kids look to gangs for protection and love?

In conclusion, I ask you to think of your own children and your own grandchildren. Think of how scared and shattered they would be if, at the age of 5, someone came and took them from you, telling them they will never see you again and that you are not really their family.

I come to you today to ask you to make a difference for these children. Thank you.

[The prepared statement follows:]

Committee: Subcommittee on Human Resources of the Committee on Ways and Means
Thursday, June 27th, 1995
Room 1100 Longworth House Office Building, 1:00 p.m.

Chairperson: B. Clay Shaw, Jr.

Testimony Submitted by: Robert Dean, Foster Parent from Omaha Nebraska

I would like to thank you, Chairman Shaw, Ladies, and Gentlemen of the Subcommittee on Human resources of the Committee on Ways and Means for inviting me to speak on this issue.

My name is Robert Dean. I am a foster parent to a little girl who is five years old who has been in our home for almost 3 years. I have seen first hand how a stable loving home has helped this child grow up happy and healthy. I have also seen the pain and confusion this child is suffering while she waits for her mother to prove she can parent this child. She has waited over half her life for permanency; a place to call home with certainty.

For the purpose of this testimony I will refer to her as Ann.

Ann came to our house in late March, 1993. She was almost 2 years of age. She was not yet speaking more than 5 or 6 words and kept a bottle in her mouth at all times. Ann did not know how to use silverware, but could operate a television remote easily. On her first day with us, she sat on the floor, grabbed a bag of chips and can of pop from the refrigerator and pointed to the television and said "watch".

Ann was a scared, shy, 'unbonded' toddler. Prior to being in foster care, she was moved several times, running from police and crawling out of windows with her mother. She was repeatedly left with her mother's acquaintances or relatives too weak to properly care for her. Ann came into the system when her mother left her with a friend and did not return after a couple of weeks. The friend took Ann to her great-grandmother's (Ann's) home. Ann was dropped off without food, clothing, diapers, or any knowledge of where her mother was at. After two months and several unsuccessful attempts to locate her grand-daughter, Ann's great-grandmother called the police.

Ann was placed in our home and we immediately consulted a physician for an uncontrollable, deep cough. We were told than Ann had an extraordinary high level of lead in her blood, 45 (normal range is under 10). The physician stated this is typical for a child that had lived in older neighborhoods, where lead-based paint was chipping off the walls and a baby could put these in their mouth; especially an unsupervised, malnourished, homeless child.

Ann was returned to her mother, Debbie, on 4-6-93; even though she had been arrested less than 1 week before for felony shoplifting. On 8-4-93, Ann returned to our home as the caseworker had found out Debbie was using drugs and alcohol while she was pregnant with her second child, due in early October.

Debbie gave birth to Gloria in September of 1993. At the time of the birth, both Gloria and her mother tested positive for cocaine. Gloria was born 5 weeks premature. Gloria was placed in out-of-home care once she was able to leave the hospital. Gloria has Osteopenia (low bone density) and Hepatitis of the liver. She continues to have problems with her bowels, ears, liver, susceptibility to infection, and food intolerance. She requires careful medical monitoring as any virus, infection, and/or dietary change could place her medical health in jeopardy. Ann was diagnosed as possible FAE, as Debbie admitted to drinking daily while pregnant with her.

Debbie was ordered in juvenile court to complete many services to address her drug addiction, her parenting skills, her ability to find stable legal employment, and her ability to provide a home for herself and her daughters. She was also ordered to attend weekly supervised visits with her daughter.

Debbie did not comply with any of these services and at first she abandoned Ann. Since then her visits with Ann have been sporadic, sometimes she would not show up, other times she was incarcerated.

There is no father's name listed on the birth certificate. However, a man identified as Ann's father, Mike, petitioned the court to intervene in the case in October of 1995. Ann had been in out-of-home care for 2 1/2 years. Paternity has never been established by the court or by genetic tests. A home study on Mike's residence has not been completed. Mike has not completed a bonding assessment nor does he pay child support. In spite of these facts, in 12-95, Mike was authorized by the court to have weekly unsupervised visits for 7 hours. In February of 1996 we learned that Mike had no intentions of pursuing custody or attending further court hearings. Visitation with Mike continues.

Meanwhile, Ann has blossomed while in foster care. She is an outgoing, charming, and helpful 5 year old child. She has quickly become a child with a lot of friends at pre-school/daycare and one who cares deeply for others' feelings. She has developed a sense of pride in doing the right thing and is always eager to please. She has a charming sense of humor and is unbelievably bright.

She has learned the alphabet and can spell and write her own name as well as many others from memory. She enjoys reading, playing games, singing and dancing - so much so, we have enrolled her in a ballet and tap dance class for the last 2 years. Although she can be stubborn at times, testing her new found independence, she will think about her actions and sweetly apologize minutes later.

For seven months, between 2-95 and 9-95, Debbie abandoned the children, she contacted the case manager twice, but left no phone number and did not participate in Court ordered services.

Due to the two years (24 months) of non-compliance with the reunification plan by the mother, the Court on 4-4-95, the case manager on 9-22-95 and the guardian ad litem (the child's lawyer) on 10-16-95 all recommended that termination of parental rights be pursued. The plan for Ann was changed from Reunification to Adoption in September of 1995.

Debbie enrolled in a one-year, New Life Rehabilitation Program on 9-3-95. The program includes a class twice daily, a 12 step program twice weekly, weekly counseling; and weekly parenting classes. She has maintained this program, she completed a 12 week parenting class with Family Services in 2-96 and participates in 5 AA meetings weekly.

Debbie stated she began to comply with Court ordered services in 9-95 because she was afraid of losing her children. She has reportedly been drug free since this time. It has also been reported that Debbie was incarcerated for prostitution just weeks before she enrolled in the program. Currently, the majority of Debbie's time is spent in structured activities, with a network of strong support to assist her. Even so, the caseworker has admitted that she loses her temper with him and is very impatient. Debbie has not yet shown she can be self-sufficient, maintain a stable life-style, support herself and third her baby, while maintaining her sobriety.

Debbie's new son presently lives with her in a 2 bedroom apartment. She receives ADC (amount defined by the number of children living with her), housing assistance, Medicaid, gas money, food stamps, etc. to survive.

Due to this Debbie's spurt of compliance, the new case manager (the fourth casemanager for Ann), has returned the plan for Ann and Gloria, on 3-13-96, to Reunification.

Ann has been left to grow up in out-of-home care for 3 years, or 55% of her life, while her mother has drifted in and out of her life. Ann's only stability has been us, her foster parents (whom she chose to call "mom" and "dad" in late 1994). She is visibly bonded to us and considers our family, friends, pets, home, etc., her own.

Ann is indifferent about the visitation she has with Debbie and Mike. She does not talk about it unless asked. Even when asked, her answers are short and not with a lot of feeling. She will lie awake and ask one of us to 'protect her' or make comments like, "I will miss you", "you're my mommy too, right?", and "you'll always be my mom and dad, that never changes". She seldom sleeps though the night; she will be moaning/crying and saying things like, "they are coming to get me". We let her know that we are there, she reaches over, grabs us, and holds on tightly as she goes back to sleep. On occasion, she has stated, "I couldn't find you, I thought I would never see you again." Ann always asks for reassurance that we will return to pick her up from visits and daycare; and specifically wants to know what time.

In 2-96 a new casemanager, Jim, was assigned to the case. Jim has only met Ann twice (introduced at a restaurant with us and once dropping off papers at Debbie's home) since he was assigned the case. We have asked him to review the file to get a clear picture of the history of the case and to please consider the effects on the children involved. Within three weeks of taking the case, Jim approved visits to occur at Debbie's house before he had inspected the environment.

Visits are not on a set schedule. Ann is taken to visit her mother whenever it is convenient for Debbie. The visitation schedule has been changed and re-arranged often at the very last minute to accommodate Debbie and the visitation worker's schedule. No thought seems to be given to taking Ann out of pre-school or other planned activities she may be looking forward to. In one instance, Ann was taken by Teri to receive medical treatment for a bug bite which made her entire hand abnormally swollen from the fingers to the wrist. A message was left for both the visitation worker and Debbie that the visit may be delayed. The worker did not meet up with Ann and Teri as requested; and the visit was missed. In a phone conversation one-half hour later, Debbie ranted about the visit being missed and how important her time was with Ann. She did not inquire about Ann's condition until the very end of the conversation.

Debbie is scheduled to finish her rehabilitation program in August of 1996. In September she will gain the custody of Ann. She will gain the custody of Gloria in October. Debbie will not have proved the ability to live without the structure her program has provided her, the ability to maintain a job or stable environment, or the ability to parent her children.

Will Debbie be able to lovingly accept that the children she abandoned, have come to know and love other persons as their stable family? Will she be able to gain their trust in her and protect their innocence?

Reunification has to mean that there was a bond before the tragedy of separation. In the case of Ann and Gloria, the facts show they were never "together" before out-of-home placements were found. Reasonable efforts must be tied to strict time frames; and the best interests of the children should be the first priority.

I wish I could say this is an isolated case but it is not. In Nebraska, I volunteer my time and serve on a local foster care review board. I review the permanency plans for children in out-of-home care and along with my fellow board members, I make recommendations to the legal parties regarding the case. My board review cases of children in out-of-home care every month like my foster daughters. My personal experience with my foster daughter and my experience of reviewing hundreds of cases of children from my community has led me to the conclusion that "child protection" and "child advocacy" must be made the primary focus of our child welfare system rather than reunification.

The data collected by the Foster Care Review Board on children in out-of-home care shows that in Nebraska, as of June 18, 1996, out of the 3,360 children in out-of-home care:

- 41% (or 1,360 children) of Nebraska's state wards have been removed from the home for abuse and/or neglect at least twice
- Of the 194 state wards under the age of 5 who have been removed from the home on more than one occasion;

  157 have been in foster care twice
  32 have been in foster care three times
  3 have been in foster care four times
  1 child has been in foster care seven times

- Of the 2,940 state wards returned home during 1995, 336 (11%) were returned to foster care within the first 5 months of 1996.

To preserve families, The Child Welfare System often exerts a great deal of effort on parents who through their actions, (abandonment, disregard to court orders, continued drug use, sporadic attendance to visitation, etc.) tell the professionals involved in the case that they are not interested in parenting their children. These lengthy, expensive and frustrating reunifying efforts hurt the children involved by extending the chaos and instability that may have brought the child into care in the first place.

I believe it is possible to strike a balance between parental rights and best interests of the child. The policy of reunification can be qualified to ensure that parents who are habitual drug abusers, violent physical and sexual abusers, mentally ill, or who abandon their children, are kept to a strict time frame to rehabilitate themselves, if the court determines rehabilitation and reunification to be in the best interest of the child(ren), so the child(ren) have a chance to attain permanency.

I would respectfully suggest to the committee that the qualifications and restrictions applied to the policy of reunification outlined in the Utah Law §78-3a-311, be amended to the Federal Law, P.L. 96-272.

Utah Law §78-3a-311 is as follows:

(1) The court may make any of the dispositions described in Section 78-3a-39, place the child in the custody or guardianship of any individual or public or private entity or agency, order protective supervision, family preservation, medical or mental health treatment or other services.

(2)(a) Except as provided in Subsection (3), whenever the court orders continued removal at the dispositional hearing, and that the minor remain in the custody of the Division of Family Services, it shall order that the division make reasonable efforts to provide services to the minor and his parent for the purpose of facilitating reunification of the family, within a maximum time period not to exceed 12 months from the date that the child was initially removed from his home by the division.

(b) Any physical custody of the minor by the parent during the period described in Subsection (a) does not interrupt the running of the period.

(c) At the expiration of the 12 month period described in Subsection (a), a dispositional review hearing shall be conducted by the court in accordance with Section 78-3a-312. If at that time the child cannot be safely returned to the care and custody of his parent without court supervisions, a permanency plan for the child shall be finalized. If the child clearly desires contact with the parent, the court shall take the child's desire into consideration in determining the permanency plan.

(3) Because of the state's interest in and responsibility to protect and provide permanency for children who are abused, neglected, or dependent, the Legislature finds that a parent's interest in receiving reunification services is limited. The court may, under any circumstances, determine that efforts to reunify a child with his family are not reasonable, based on the individual circumstances, and that reunification services need not be provided. In any case, there is a presumption that reunification services should not be provided to a parent if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

(a) the whereabouts of the parents are unknown, based upon a verified affidavit indicating that a reasonably diligent search has failed to locate the parent;

(b) the parent is suffering from a mental illness of such magnitude that it renders him incapable of utilizing those services; that finding shall be based on competent evidence from mental health professionals establishing that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months;

(c) the minor has been previously adjudicated as an abused child due to physical or sexual abuse, that following the adjudication the child was removed from the custody of his parent, was subsequently returned to the custody of that parent, and the minor is being removed due to additional physical or sexual abuse;

(d) the parent has been convicted of causing the death of another child through abuse or neglect;

(e) the minor has suffered severe abuse by the parent or by any person known by the parent, if the parent knew or reasonably should have known the person was abusing the minor;

(f) the minor has been adjudicated as an abused child as a result of severe abuse by the parent, and the court finds that it would not benefit the child to pursue reunification services with the offending parent;

(g) the parent's rights have been terminated with regard to any other child;

(h) the child was been removed from his home on at least two previous occasions and reunification services were offered or provided to the family at those times; or

(i) if any other circumstance that the court determines should preclude reunification efforts or services.

(4) (a) Failure of the parent to respond to previous services or comply with any previous treatment plan, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, whether a parent continues to live with an individual who abused the child, any patterns of the parent's behavior that have exposed the child to repeated abuse, or testimony by a competent professional that the parent's behavior is unlikely to be successful, are relevant factors to consider in determining whether reunification services should be ordered.

(b) The court shall also consider whether the parent has expressed an interest in reunification with the child, in determining whether to order that reunification services be provided.

(5) If reunification services are not ordered pursuant to Subsection (3)(a), and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court may order the division to provide reunification services. The time limits described in Subsection (2), however, are not tolled by the parent's absence.

(6) If a parent is incarcerated or institutionalized, the court shall order reasonable services unless it determines that those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for minors ten years of age or older, the minor's attitude toward the implementations of family reunification services.

and any other appropriate factors. Reunification services for an incarcerated or institutionalized parent are subject to the 12 month limitation imposed in Subsection 2 unless the court determines that continued reunification services would be in the child's best interest.

(7) If, pursuant to Subsection (3)(b), (c),(d), (e), (f), (g), (h), or (i), the court does not order reunification services, a hearing shall be conducted within 120 days of establishment of a permanency plan for the child, in accordance with Subsection 78-3a-312(3).

I would like to thank Chairman Shaw, Ladies and Gentlemen of the sub-committee for allowing me, as a foster parent, to share my personal experiences with the child welfare system and the policy of reunification with you.

I respectfully urge you to change the Federal Law, P. L. 96-272, from directing child welfare agencies across the country to pursue reunification in all cases of children in out-of-home care - at all costs, to a policy that considers "the best interests of the child" first and foremost.

Please look at this legislation through the eyes of the children it affects. Every day I see the pain and upheaval in one little girl's life caused by this legislation and its interpretation that parental rights have precedence over what the parents have done or what the child's best interests are. I hope by sharing her story with you, you too will see the necessity of qualifying the pursuit of reunification.

Thank you for your time.

Chairman SHAW. Thank you, Mr. Dean.

Chairman SHAW. Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman, and I do want to thank all of the witnesses for your very important testimony. It is very helpful to us.

Sister Murphy, we heard that the Commission on Children in Michigan is going to be recommending some specific situations where reasonable efforts—where there will be a presumption that parental termination can occur at the very first hearing, and they involve the most serious of cases, similar to the kinds that you mentioned.

Do you think that that will be enough, or do you think that time limits are also important to have—and we are talking, of course, about the most serious cases. Do you think those are needed as well?

Sister MURPHY. I do think time limits are also needed because I have worked in many States, with all ages and both sexes, and I have actually seen children who were raised from birth to graduation from high school at 18 years of age, in the system, one little girl who, as a baby, was traded for a radio by her own mother to a neighbor because the mother did not want the baby but wanted the radio. The neighbor kept her a few months and gave her to the welfare system. I had that child when she graduated from high school. She could have gone out of the system when that second woman turned her over to the welfare system; there was nobody else who wanted her. But she never had any parents, and she never got out of an institution. That is only one case, and I am not going to waste your time with a whole lot of them, but there are many more.

I personally feel that a mom should be given 6 months to start shaping up, and at the end of 6 months, I think the case should be reviewed, and if mom is still into drugs and has made no effort to do anything about herself, then I think parental rights should be terminated, and that child should be put up for adoption.

The reason I speak so strongly for the young child is because, believe me, at St. Ann's, I have 5- and 6-year-old children who are hardly going to make it in a home outside unless they get some help, so, they are ruined. And if we let them float in the system until they are 7 and 8, you can just forget it.

That is why I think we have got to do something about timelines, and also, we have to clarify, and I strongly suggest that we clarify what is a family. Most of the kids at St. Ann's do not have what we call a family, I do not think.

Mr. CAMP. Thank you.

Mr. Dean, I practiced law in this area and represented both parents and children, and the kind of situation you have been living is not uncommon at all. And when it is the most serious of crimes, I think it is easier to look at a dramatic cutoff and a timeline.

What advice do you have for the Committee as we look at the kinds of situations like you have been facing? When do we decide that the parents are not committed and that it is time to move on?

Mr. DEAN. I think there are probably a couple of things that need to be looked at. One is that I think the age of the child does make a difference. Certainly, the parents should have much less time

with little children than perhaps with older children who have had some time to create a bond. Even though that bond may not be a real quality bond, it is some sort of a bond.

Little children—I do think there must be some absolutes. Without absolutes, it is just up to everybody's interpretation. And part of the problem is that each judge interprets things a little bit differently. In our case, how can anybody make the case that almost 4 years in foster care is anywhere near reasonable? It is not in her case. She did not see her father for 2 years when she was in foster care—almost 2 years—and her mother has repeatedly abandoned her. There is nothing reasonable about it.

So, I do think there has got to be some set timeframes that have to be met. Without that, I think you just—in our case, what happened was that Ann's mother, every time we would have a court hearing, would come back and check into a drug treatment center, or she would check into a homeless center or something, and that would be just enough to get through another 6 months inside the system. And repeatedly, we offered—we said we would adopt her, we would assume all the expenses with that—anything—we would have done anything.

I did not have a chance to go into it today, but Ann has a little sister who was born a crack-addicted baby.

Mr. CAMP. I saw that in your written testimony.

Mr. DEAN. And she was not in our home because she needed to be in a home where they were able to provide her with 24-hour-a-day nursing care. But we offered the same with her, to keep her and her sister together and take care of them. We would have done anything, any amount of money would not have made a difference, and still would not.

Mr. CAMP. Well, that is one of the concerns I have. No matter what we write into the law, it is going to be implemented by the courts and by others, and there is an inconsistency there, and some courts and some judges are willing to make decisions, and others are not. Some get the adequate information, and others do not. It is very difficult.

I see my time has expired. Thank you, Mr. Chairman.

Chairman SHAW. Thank you, Mr. Camp.

Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

Ms. Warenda, the picture of Skye with a smile on her face—I assume that picture must have been taken at your house?

Ms. WARENDA. Yes, it was.

Mr. COLLINS. The other children in the picture are grandchildren?

Ms. WARENDA. My grandson.

Mr. COLLINS. That is great. I happen to be the proud grandfather of five, with the sixth one on the way.

In your testimony, you document a very tragic story of Skye and the fact that the Federal law keeps requiring her to be returned to her abusive parents. Do the courts and the social workers give you any specifics as to why they make plans to return your granddaughter to the biological parents?

Ms. WARENDA. Yes. They tell me reasonable efforts, that as long as the biological parents show some interest, even if it is just a

telephone call, a card, or asking information from other family members, it is considered reasonable effort.

Mr. COLLINS. Have you dealt with more than one social worker?

Ms. WARENDA. Yes, I have.

Mr. COLLINS. Do you see varying approaches by the different social workers, or are they all kind of in line with each other?

Ms. WARENDA. That is a difficult question. I have had a social worker who at times believed that the child's biological parents' rights should have been terminated; however, when it was told to the HRS attorneys, it was a different story. He said he had to abide by the law.

Mr. COLLINS. Are these social services that the biological parents have been provided by the social worker?

Ms. WARENDA. Yes, most definitely. They have had therapy at McDonald's; they have had parenting classes which consisted of one class, not by a certified teacher; they have had many, many opportunities with drug rehabilitation; they have paid an agency in our area, after showing up once in 9 days, to have a paper signed indicating that he was drug free. They were given urine tests, which they considered urine "drops," I think. They call them ahead of time, notify them to come in on Friday at 4 o'clock. They spend $30 and drink a special tea so the urine specimen comes back clean.

The father also used his 14-year-old son's urine when the 14-year-old was straight—he isn't anymore. The biological mother at times refused to have the test taken because she said she was not requesting them and would not pay for them.

Mr. COLLINS. That is all I have, Mr. Chairman. Thank you very much. I thank each of you for your attendance and your testimony.

Sister, I have heard about your home, and I would think it would be very interesting for Members of the Committee to someday visit with you. Thank you very much.

Sister MURPHY. Thank you.

Chairman SHAW. Ms. Benn, you have heard the testimony of some of the other witnesses. You have testified about a case where family reunification has worked very well. Could you tell us what your attitude was from the day your children were taken away from you and how long they were away from you before they were brought back, and at what point did you go into drug treatment?

Ms. BENN. At the time that I took my children down to human services, they had come out a couple of times. The social worker was very nice. She was willing to work with me, and she told me that she would set up a case plan, and within 1 year's time, I had to follow the guidelines in the case plan that she set up.

At that time, she gave me a referral for treatment, and my children were placed in foster care. They stayed in foster care for 1 year, and I stayed in treatment for 6 months.

After I completed my case plan, I went back to court, and they said I did what I was supposed to do, and I was still working hard. I had to find housing, affordable housing. At that time, they let one child come back at a time, but at the same time, the support services were still there, and they had worked together with family transitional housing, which is another program with support services. So the support services were there, and the foster parent was

there as well, working with me. And like I said, within 90 days, I did receive my kids back.

It was hard—I think some people do not really understand cocaine addiction and that it can be hard—it has to be within that person to want to make a change in his or her life, and for me, that is what I wanted. I wanted another chance. I knew I could be a good mother, and I just wanted another chance to get my children back and be the mother to them that I had not been.

Through treatment and social services, it helped me. I think a lot of parents just need a chance. I am not saying it should be 6 or 7 years down the line for them to get their lives together, but at the same time, I feel they need a chance. I do not know the timeframe. I know the timeframe for me was 1 year because I really wanted it, and I worked with family transitional housing, and I worked with——

Chairman SHAW. The timeframe may have been 1 year for you, but what you are telling this Committee is that you started out on the road to recovery upon the realization that you were going to lose your kids, and you realized you had hit bottom, and you started to pull yourself up right from the beginning. Is that correct?

Ms. BENN. Yes.

Chairman SHAW. It took you 1 year to climb out of that hole, but you made it.

Ms. BENN. Yes.

Chairman SHAW. Based upon that, I do not see your story or your position conflicting with what Sister Murphy is saying or what Mr. Dean is saying, because you were showing a real desire to come back, and that certainly was reasonable cause to hold your children for family reunification and not sever the parental ties that you had with those kids.

I ask you this because I do not want the record to show that the other witnesses were being unduly harsh because your kids would have had reunification, I think, under the scenario and under the opinion that has been expressed by the other witnesses.

Mr. Dean, I find somewhat of a dilemma here with your story, and the dilemma is simply that we have heard other witnesses on the other panel talk about the tragedy of moving these kids from one foster home to another. As I heard that testimony, I turned to Dr. Haskins and I said, "How much of this goes on and why?" And he said in some cases, it is the norm because the purpose of doing that is to keep the kids and the foster parents from becoming attached to each other, and that appears to be exactly what has happened in your particular case.

If you end up being the adoptive parent of this child, then it will have been for the better, but if you do not become the adoptive parent of the child, it is going to be very tough on you and the child.

It is a terrible dilemma that this Subcommittee finds itself in. In my opening statement, I said something about the wisdom of Solomon. As I recall in my Bible, Solomon threatened to cut the baby in half before he figured out which parent was the proper person to take that child. Obviously, we cannot look to the way Solomon approached it, but we certainly need some answers here, and this panel has done a great deal to tell us the tragedy of what happens when things go wrong.

And Ms. Warenda, as a grandfather, I certainly understand the feelings that you have, and the fact that you do see that this child is at risk with her biological parents, and I wish the courts the wisdom of Solomon in trying to figure this out. By the way, Skye looks a lot like you.

Ms. WARENDA. Well, thank you.

Chairman SHAW. Thank you all.

Mr. Camp.

Mr. CAMP. Mr. Chairman, what I also heard from Mr. Dean's testimony was that maybe there will be a separate standard the younger the child, or a different time limit the younger the child. And maybe, the time limit would vary as the child gets older, and maybe also based on the severity of the abuse. I think that was very helpful. Thank you. I want to thank you for that.

Chairman SHAW. In my opinion, though, if you look at something like what Sister Murphy has told us about the 2-year-old youngsters who show physical evidence of having been raped—at that point, I see no parental rights that should be protected. I mean, that child is gone from that home as far as I am concerned, you would not even want to think about putting that child back in that home. The only thing you would think about as far as that parent is concerned is how many years should that parent be put away for doing such a horrible act in an inhuman way.

I thank all of you for being with us.

Chairman SHAW. Our final panel includes Hon. D. Bruce Levy, Administrative Judge in the Juvenile Division, 11th Circuit, in Miami, Florida, which makes him either a constituent of mine or something very close to that; David Liederman is executive director of the Child Welfare League of America, Washington, DC; Laureen D'Ambra is a child advocate for Rhode Island, Providence, Rhode Island; and Peter Digre is Director of the Department of Children and Family Services for the County of Los Angeles.

Judge, if you would lead off, we look forward to your testimony. We have your full testimony which will be made a part of the record, and we would invite you to summarize or proceed as you see fit.

STATEMENT OF HON. D. BRUCE LEVY, ADMINISTRATIVE JUDGE, JUVENILE DIVISION, MIAMI, FLORIDA

Judge LEVY. Thank you for the opportunity to be here today. Let me apologize; I did not have an opportunity to prepare written testimony for today. I will submit it later, and I would ask the indulgence of the Committee——

Chairman SHAW. The record will be kept open for you and for all witnesses who might want to present additional comments.

Judge LEVY. For just a few moments, being the only judge on this panel and hearing the broad sides that have been made at the judiciary, initially, I have to agree with Senator DeWine. We must accept a lot of that responsibility; that when Public Law 96–272 was passed, the idea of the reasonable efforts test I think was made specifically vague, with the idea that it would be applied differently to different situations, different locales, but in effect what it did was to cause a tremendous amount of confusion throughout

the judiciary. And there have been efforts to remedy that, but I do think there is need for improvement.

There has been a lot of comments about having to view this situation, which is such a complex situation. I think, looking through the eyes of a child, everyone is in agreement with that. I asked that a picture be brought up earlier—does the Subcommittee have that—I do not think they knew who I was, so your staff was reluctant to take the picture—that is it. I would ask that you take a look at that for a moment and pass that around.

Do you think that that child would be adoptable?

Chairman SHAW. I think they would stand in line for that child.

Judge LEVY. That is my child, and I took that child with me to a foster care event in Dade County, because I go to those events as the administrative judge, and she was there, most of the population were termanated parental rights, TPR, cases, and were available for adoption. I would say they were 98 percent black or African-American, and there was a group of potential adoptive parents there—they sat on one side of the room, the children were on the other side of the room, and most of the people wanted to know if they could adopt my daughter, but not many people came up to the minority children and were concerned about them. One little 12-year-old who was in my division, who came up to me—a little black girl—and said, "Judge Levy, why don't any of them want me?" I had no answer for her.

I think when you talk about looking at this through the eyes of a child, are we looking at it through our eyes, or are we looking at it through the child's eyes? I think the age of the child is very important. Infants who come into foster care are very easy to adopt because people want infants. It is when children have reached the age where they have formed real attachment to their parents that it is not so easy.

In conflict with the statistics that I heard earlier, I do not believe that physical abuse is the number one cause of abuse in this country; I believe it is neglect. When we break these bonds of attachment that children have, when we say, especially in neglect cases, that family preservation is not worth it, after this body spent $2 billion 2 years ago to support those efforts, puts a child in a situation where they are in out-of-home placement—and they suffer grief just the way any one of us would suffer grief at the death of a significant other—they are moved from placement to placement, they are separated from siblings and there is no significant visitation. Because of lack of resources, when children are removed under those situations, they become delinquent, and we have the statistics now to prove it. And among males, they become violent delinquents; they have school problems, they drop out, they become depressed, they are more likely to move to substance abuse and instability concerning employment. So, I think the issue is to look at the age of the child and the kind of abuse we are dealing with.

I said that the judges must accept a lot of the responsibility, and I think that that is correct, because I think it usually takes about 10 years for a Federal law to filter down to people in the pits. I am one of the people in the pits, and I have seen all the horror stories. A lot of judges do not understand what "reasonable efforts" means, and it does need to be spelled out, but it needs to be spelled

out according to the risk that is involved. The risk that is involved is always the safety of the child, that is always paramount, and it must be paramount, irrespective of the number of services. Even though the statute says that—does that mean my time is up?

Chairman SHAW. Well, the red light does indicate that the allotted time is up, but that buzzer has nothing to do with the light, and I have been very lenient with the red light, so you may continue. The buzzer means that we are going to have to leave in a couple of minutes to go over and vote, and then we will return.

Judge LEVY. Oh. I will try to be brief. I do not want to cut off any of the other individuals.

I think that if you are going to formulate a test, you must bear in mind the risk involved and the type of abuse that is involved. Families can be preserved in neglect cases with proper services. Children do not have to be traumatized, and foster care traumatizes children; I think everybody here is in agreement with that.

So, when you think about a test, if you want to formulate a test for reasonable efforts, think about that balance. "Reasonable efforts" means the safety of the child as weighed against the services that are appropriate, available, and can be placed in the home. And even if those services can be placed in the home, if that danger still is not removed, then that child has got to be removed from that home. That is the thing that judges do not understand. In many cases, they do not understand that in an emergency situation, irrespective of services, a child can be removed.

I want to get to two other specific issues. We have talked a lot today about the safety of children. The thing that has driven 96–272—and in my State, the number of placements into foster care has dropped, and the number of adoptions has gone up—is the fact that Congress has made the States comply. And from what I have heard today, Congress intends to keep that hold over that situation.

Gentlemen, if you block grant funding for IV–E and IV–B funds, you will gut Public Law 96–272; you will allow the States to go back to where they were before this statute, and all the things that you talked about accomplishing today, you will never see, because you will have no way to control what States decide to do with those funds.

When it comes to adoption, I agree. As a member of the National Council of Juvenile and Family Court Judges, I have taught judges about dependency. I have taught my own judges about dependency. And, I think that thinking has got to change. I think that 18 months is too long. I think it should be a 1-year limit. I think that agencies do not aggressively recruit adoptive parents. And contrary to popular belief, children do not come into the system most often as babies; they come in at about the age of 5. Trying to find adoptive parents for 5-year-olds is not as easy, but State agencies must be aggressive in doing that. They must be creative.

When you have situations of severe abuse, you can dual-track a case. Even neglect cases can be dual-tracked, so that it can be reunification or termination of parental rights. If, after 1 year, it does not work out, you are set to TPR the case.

For some reason, the idea exists that some children are not adoptable. That idea has got to be removed from our heads. Every child is adoptable if we try hard enough. We have to make States eliminate the category of "long-term foster care." Do you know what that means? It means they have given up; they have given up trying to find permanent loving homes for children. The same thing goes for the category of "independent living." We have to make them stop the fear of having failed placements in adoptions. Everybody fails; if you fail, it means you do not try.

Workers do not speak to kids. Kids do not understand adoption. They come to court, and they tell me, "This child does not want to be adopted." Do you know what that means? It means that nobody has taken the time to tell the child that adoption means he or she is going to have a safe place to live, with people who care about them. It is amazing to me that counselors do not talk to children, and enough judges do not talk to children. Children and foster parents should be mandatory at judicial reviews. They are the ones who have the most influence on the decisions that we make.

There was a lot of discussion earlier about specific situations, about expedited TPRs. Mr. Chairman, our State, the State of Florida has four provisions for expedited termination of parental rights: first, abandonment, where the State can file in 6 weeks; second, where there is a pattern of parental conduct that shows that no services could remedy the danger to the child, immediate filing of TPR; third, egregious abuse, abuse that is so terrible that there is no point in wasting everyone's time and everyone's efforts; and finally, that a judge at any review can order the department to file a TPR petition. Those are the kinds of things that need to be put into the statute.

We need to concentrate on older children. We have got to utilize the Metzenbaum Multi-Ethnic Placement Act of 1994, which prohibits State agencies from receiving Federal assistance for denying foster care, or adoptive consideration, on the basis of race, color, national origin, of either the child or the adult. Many States are lax in doing this; some do not do it at all. Race is always a consideration, but the major consideration is the best interest of the child. Every child deserves a permanent, loving home.

This act, if we want it to, could be the most significant adoptive legislation if there were proper compliance and implementation. But there is no hammer to bring it down. You have the power to do that.

Subsidized adoption—if I leave here with one point today, the only point I want to make, is that foster parents usually are the ones who adopt. There is a disproportionate number of African-American children in foster care. They are not the cute, little red-headed girls running around like that. These people want to adopt, but they cannot afford it. Tax credits do not do them any good. And when State agencies say that long-term foster care is better, what it means is that these kids grow up, and after they turn 18, they cannot come back and say to their kids, "Come and meet my mom and dad. Let's go see them for Christmas. Come and meet your grandparents." To me, that is tragic.

We currently have half a million adoptable children——

Chairman SHAW. Judge, I am going to have to interrupt you, or I am going to miss that vote that is across the street.

We will recess for just a few minutes. Congressman Camp has gone over to vote early, so he will gavel the meeting back to order.

We will recess for approximately 5 minutes, and perhaps when Mr. Camp comes back——

Judge Levy. All right. I have only about 30 seconds more, anyway.

Chairman SHAW. OK. We will stand in recess for approximately 5 minutes.

[Recess.]

Mr. CAMP [presiding]. The Subcommittee will come to order.

Thank you. I understand that when we recessed, Judge Levy, you were testifying. We do have a time limit in this Subcommittee. If you could wrap up your remarks in about 30 seconds so that we could hear from the other witnesses, I would appreciate it.

Judge LEVY. I will.

Mr. CAMP. Thank you.

Judge LEVY. All right. We have the tools at this time to attack the growing problem of out of care placement and adoption. We can have speedy permanency for children, the question remains, will we use them or abrogate this responsibility that we accepted as a nation 15 years ago?

If we do, we will have abandoned our commitment to children and pay the consequences in the quality of their lives and the documented outcomes of how their actions will affect us, as a nation.

Thank you.

Mr. CAMP. Thank you.

David Liederman, Executive Director, Child Welfare League of America.

STATEMENT OF DAVID S. LIEDERMAN, EXECUTIVE DIRECTOR, CHILD WELFARE LEAGUE OF AMERICA, INC.

Mr. LIEDERMAN. Thank you, Mr. Chairman.

First, let me thank you and others for maintaining the full entitlement for IV–E for adoption assistance and foster care. We appreciate that.

Mr. CAMP. You and I have talked about that.

Mr. LIEDERMAN. Yes, you and I have and we appreciate that you moved in that direction and we are grateful.

Mr. CAMP. Thank you.

Mr. LIEDERMAN. Let me start out by saying that it's our opinion that reasonable efforts or any of provisions of Public Law 96–272 do not impede good practice. Indeed, we believe that if the provisions of Public Law 96–272 were carried out, as intended, it would speed up the resolution of many cases in the system.

The whole notion of regular case plans, periodic reviews, the implementation of good management information systems, all of the provisions that were intended in Public Law 96-272 to move cases toward permanence is what it's all about.

And the question is, are we going to implement the law the way it was intended or are we going to keep falling short?

I think it is a little gratuitous to try to blame Public Law 96–272 or the reasonable efforts provision for our inability to place children in adoptive families. It is really off the point.

Mr. Chairman, I think we need to talk about the lack of political support at the State and county level to properly deal with things like extremely high caseloads, poorly trained workers, low pay for child protection workers and other caseworkers. You know, as you and I have discussed, the Child Welfare League of America has been doing national standards for 60 years and we have standards for child protection and case loads for child protection workers.

There isn't a jurisdiction in the United States that meets the League standards, and the League standards are not onerous. The point is that you cannot hold a social worker accountable when a social worker has 60, 70, or 80 cases. And you know, from your own experience, that when you have that many cases, all you're doing is pushing paper, you cannot possibly do good case work.

Reasonable efforts does not mean unreasonable efforts, it means reasonable efforts. And as Judge Levy said, and I want to second what he said, it means you make reasonable efforts to keep kids with their families if you can do it safely. And the safety consideration is a major consideration, because there isn't anyone that I know in the 850 agencies of the Child Welfare League of America that wants to put any child at risk by trying to make unreasonable efforts to keep kids with their own families.

And in my 40 years, almost—I know I do not look that old—in this business, I do not know of a single social worker that has killed a kid in the child welfare system. I do not know of a single judge that has killed a kid in the child welfare system. And I do not know of a single Congressperson that has killed a kid in the child welfare system.

We are all in this together. It is not about trying to lay blame at the feet of people who are trying to help kids and families. Mr. Chairman, I do know about lousy case work. I also know about judges who are overloaded and who are inadequately trained. And I also know about poor and unprepared lawyers. All are factors that contribute to bad decisions or, in many cases, no decisions that are made and negatively affect children and families in the child welfare system.

So, what can we do? I think we can do two things. We can make sure that reasonable efforts work to protect children and to achieve permanence as quickly as possible. It would be nice if the Department of Health and Human Services were mandated to Federal guidance and give assistance to the States.

It's incredible to me that here we are, 16 years later, and we have no Federal guidance to the States on what constitutes reasonable efforts. We have left it up to each State to make their own judgments which, we think, doesn't make a lot of sense.

We can make sure that the Federal Government monitors the State's reasonable efforts and tries to keep track of what States are doing and is of assistance to States by providing technical assistance and positive help to States to implement the reasonable efforts provision.

The second thing we can do, and this would be extremely important is to make adoption work and remove the barriers to adopting

children, particularly children with special needs. There are 20,000 children who have special needs who have been freed for adoption. There are another 69,000, almost 70,000, kids who could be freed for adoption in the near future. And we need to remove the barriers to adoption. We need to make sure that the legal barriers are removed, that courts give priority to children's cases, when setting dockets, hearing cases, issuing decisions, scheduling and hearing appeals.

We need to remove the agency barriers to adoption. I do not understand why we do not identify kids early on in the process that look like they are going to move in the direction of adoption and make sure that we expedite that process and move as quickly as we can.

We need to recruit, as I'm sure that Peter Digre is doing in Los Angeles, we need to recruit a diverse group of foster and adoptive parents on an ongoing basis, so that we have a ready supply of families to care for special-needs kids. We need to ensure that the child welfare staff are properly trained and that they have a manageable caseload.

And, finally, Mr. Chairman, we need to remove the financial barriers to adoption. And, again, I agree with Judge Levy when he talked about the financial barrier. The folks that are most likely to adopt special-needs children are foster parents and working families. And they are generally folks who do not have a lot of money.

They are folks who need financial help and they need to know that there will be ongoing financial help. They need to know that the kids have their health care needs met, they need to know that they have other services available so that the kids get what they need.

I would put in a word for the Senate version of the Adoption Tax Credit and I would hope that the House would support it. As you know, we were concerned with the tax credit passed by the House because it was not targeted. We felt, as again Judge Levy pointed out, that a non-targeted tax credit is not going to do a whole lot to help kids who are in the child welfare system. The Senate Finance Committee, in its wisdom, has adopted a special targeted tax credit for people who adopt special needs kids and it would be permanent in the law and we hope that you would support that when it comes to you.

So, again, let me thank you for the support that you have given us. We appreciate it a lot. I think this hearing is indicative of the fact that this is a very complex subject. And, why we have been saying all along that we didn't believe child protection belonged in the welfare bill because of what you've heard today at this hearing. It's very complicated, it's very involved, it needs to be treated the way you're trying to treat it—intelligently, with people having an opportunity to discuss the problems from various points of view, and we should keep child protection out of the welfare debate. It does not belong in that debate.

Thank you.

[The prepared statement follows:]

STATEMENT OF
DAVID S. LIEDERMAN, EXECUTIVE DIRECTOR
CHILD WELFARE LEAGUE OF AMERICA
JUNE 27, 1996

Mr. Chairman and members of the Subcommittee, I am David Liederman, Executive Director of the Child Welfare League of America (CWLA). Our 900-member agencies across the United States and Canada work to improve conditions for children and families in crisis and at risk. Nearly 400 of our agencies provide adoption services that enable children to secure loving families. I appreciate the invitation to testify at this hearing and commend your interest in strengthening the federal commitment to help more children find homes through adoption.

Adoption is a vital service in the array of efforts needed to protect and care for abused and neglected children. "Reasonable efforts," as embodied in P.L. 96-272, The Adoption Assistance and Child Welfare Act of 1980, do not impede good child welfare practice. "Reasonable efforts" on the part of agencies and the courts can promote and sustain appropriate and timely adoptions of children in need of wonderful families.

"Reasonable efforts": What they are; what they are not

The Adoption Assistance and Child Welfare Act of 1980 requires that "reasonable efforts" be made to prevent the unnecessary removal of children from their families. If children's safety is jeopardized and they have to be separated from their families, efforts must be made to secure permanence for children either by reunifying them safely with their families or finding them another home that is safe, loving and stable.

CWLA continues to support the principles contained in P.L. 96-272. The law's emphasis on making reasonable efforts to allow abused and neglected children to remain in their own homes with their own families, if it can be done safely, is central to providing real assistance to troubled families and their children. "Reasonable efforts" are essential to good practice and a tool for achieving success for children and for improving the child welfare system.

"Reasonable efforts" became part of P.L. 96-272 because at that time, foster care was virtually the only option available and there was recognition that alternatives were needed. Placing children in an overwhelmed, under-serviced foster care system was not then and is not now conducive to positive outcomes for children. In fact, there were many instances then, as now, of children being removed unnecessarily from families. It is important to recognize that children almost always are traumatized by removal from their own family.

P.L. 96-272 contains procedures and fiscal incentives, albeit inadequate, to meet the goals of protection, permanence for children and family support:

- Provision of preplacement and postplacement services to keep children safely in their own homes or reunite them with their families as soon as it can be done safely.

- Requirements of case plans, periodic reviews, management information systems, and other procedures to ensure that children are removed from their homes only when necessary and are placed with permanent families in a timely fashion.

- Increased support for adoption, including the establishment of adoption assistance programs, specifically federally funded subsides for adoption of children with special needs.

"Reasonable efforts" affirmed the importance of family for children. In many jurisdictions across the country, progress has been made in introducing family-focused, child centered services in response to abuse and neglect; thousands of children have been able to remain safely at home or safely returned to their homes after being placed in out-of-home care.

The reasonable efforts principle has had a positive impact overall and has contributed to a number of improvements in the child welfare system (Reasonable Efforts Advisory Panel, 1995):

- a reduction in the amount of time children spend in out-of-home care

- an overall decrease in the number of placements each child experiences
- more goal-oriented planning for children and families
- expansion of needed services
- better family preservation practices, and
- greater emphasis on decision-making that takes into consideration the unique circumstances of every child and family.

Despite improvements and progress, the nation's collective response to abused, neglected and abandoned children is failing to provide both protection and appropriate living arrangements for many children. There are many reasons for this, not the least of which is the tripling in the number of children reported abused and neglected since 1980 and the failure of state, federal and local budgets to keep pace with this rise.

Many are removed from their families prematurely without reasonable efforts having been made. Some are not removed quickly enough. Many unnecessarily remain in foster care because of inadequate reunification efforts. Other children are reunified but without adequate follow-up services to their families, resulting in re-abuse and removal once more. Some children and youth are placed in facilities appropriate to their needs, others are placed in programs that are too restrictive or not restrictive enough. For some children, known to be living in dangerous or threatening conditions, little or nothing is being done. High staff turnover rates, low pay, inadequate training, inadequate supervision, etc., lead to poor casework practice in many cases, despite good intentions.

This is not to say that one form of intervention is necessarily better than another; placement should be based solely on the child's needs with some requiring more intensive intervention than others. All of these services are valuable. The issue is which ones are appropriate to the child's needs and family circumstances. In the first instance, the state must examine in good faith whether a child can, with proper support, safely remain at home.

> *In San Diego, a mother with a substance abuse problem had her three children removed and placed in three different homes, each far from the other. Mom was told she could get her kids back if she got drug treatment and ended her drug use, got training and a job, and visited the children on a regularly scheduled basis. Mom ended drug use, got a full-time job, but couldn't visit her children because one foster home was at least three hours from the other and she had to keep her job. This was not a prescription for possible success, but a catch-22, a setup for failure.*

A great deal of confusion and lack of clarity have occurred because the U.S. Department of Health and Human Services has never issued formal regulations and guidance. Without that guidance, states have had a lot of room to interpret the provision and to flounder.

The "reasonable efforts" clause does not, however, mandate unreasonable efforts. Nor does it support family preservation or family reunification at all costs. All decisions need to be guided by sound practice and good judgment of all involved on a case by case basis.

As Jean Price, the chairman of CWLA's National Advisory Committee on Adoption, described in a hearing before this subcommittee last year, there are certain factors that are fundamental to all effective social services for children:

- The first responsibility is to attend to a child's safety and protection. For some children and families, family preservation services and family reunification services are not indicated and should not, in fact, be pursued. Other families, perhaps as many as 80 percent of those who come to the attention of the child protection system, can be helped to gain the skills they need to live together safely or to come to another resolution that benefits the child, including placement with another family or in another setting.

- Whenever it can be done safely, it is important to strengthen family ties, keeping children connected to their family of origin. It is vital for all people, but especially for children, to be part of a family. Roots are important to children. "Where do I come from?" "Where do I belong?" are questions that all children and youth ask. As a matter of fact, many troubled adults are still struggling with this question.

- Children need permanent living arrangements. They do not do well when they are moved from place to place with no sense of the past or the future. Children need legal protection as part of their own families, or through adoption.

Reasonable efforts remain key to permanency planning. There is consensus that "these efforts, however, are to be pursued *only* when consistent with a child's health and safety. The biological family is to be the placement of choice, ***provided the family responds to help and will be able to provide proper care within a reasonable time after state intervention." (Reasonable Efforts Advisory Panel, 1995)***

The Family Work Involved in Reasonable Efforts Can Improve Outcomes

Research in child welfare, children's mental health, and child development all point to more positive outcomes for children when parents are involved (Dartington Social Research Group, 1995; Lunghofer, 1995; Pine, Warsh and Malluccio, 1993; Wittaker, 1981).

- When a child can remain safely at home, supportive and crisis services can help to stabilize the family and improve skills and resources so that the child can be spared the trauma of having to leave home and community.

  Glenda and John, young, first-time parents, were afraid that they would permanently lose custody of their infant son after he was hurt falling from his father's arms in the shower. When John was charged with child abuse, the court ordered the couple to take part in a home visiting program, participate in counseling and parenting classes. The home visitor scheduled twice-weekly visits so John could learn to bathe, feed, clothe, and play with his son safely. The couple gained confidence and skill in parenting, and were helped to form a positive and supportive relationship with Glenda's parents, with whom they were living and who had temporary custody of young Johnny. The couple have since regained custody of their young son and they stay in touch with the home visitor to report the latest milestones in Johnny's development.

- In-home social services, by their very nature, are "up-close and personal." By engaging the family and spending time in the home, there is increased opportunity for observing abuse and neglect than with standard child protective services. Thus, when families, who on the surface appear to be "low risk," present more serious problems, there are professionals already involved who can respond in an appropriate and timely manner and ensure child safety.

  Family support and family preservation workers frequently report that, by spending "real time" with families in their homes and communities, they are able to learn about and observe more serious problems that may be present, including sexual abuse and domestic violence. Because they know more about the family, and have formed a relationship with at least one caretaking adult, they are able to mobilize the family to develop a protective plan for the child which may include moving the nonoffending adult and children to a safe place, removing the adult responsible for the abuse, or removing the child temporarily or permanently.

- When a child cannot remain safely at home, parental and family involvement are key to either a successful reunification or another permanent resolution for the child. For example, according to one of our providers of services to abused children and their families,

David, an 11-year old boy who had been in residential treatment for several years because of his destructive behavior suddenly began to make dramatic progress when it was learned that his birth father—with whom he had had little contact—was eager to build a father-son relationship. Over a period of months, with much support and assistance from the worker, David and his father learned to know one another and live together. David's dad received coaching and guidance on parenting. David learned, through many home visits, how to get along in a family and with peers in the community. Now David is at home with his dad.

- When reunification is not possible, working with the family often can lead to an optimal resolution for the child, through adoption, guardianship, or long-term care with relatives. By working with the parents and other family members, the agency can help them to find a caring and permanent solution for the child.

Debbie, a 7-year-old, came to live with the Hart foster family because she had been abused and neglected, and as a result of her serious acting out behaviors in school. Debbie's mother, Jeanine, was concerned about her daughter but unable to break away from a live-in boyfriend who was physically abusive with Debbie. Through supportive counseling and a positive and supportive relationship with Debbie's foster parents, Jeanine was able to come to terms with the situation. She agreed to voluntarily release Debbie for adoption, and worked with the counselor to arrive at a visitation and contact agreement with the Harts, who subsequently adopted Debbie. Now Debbie is at home with her adoptive family, June and Ray Hart, and she is able to have contact with her birth mother. Her acting out behavior has disappeared and she is performing at grade level for the first time.

When, in the process of working intensively with the family, it is determined that staying together or reunifying the family is not in the child's best interest, the agency is far more prepared to demonstrate to the court that the parents are unable or unwilling to care for their children and to develop and implement a permanent plan for the child.

When it is determined that a child cannot be reared by the birth parents, steps toward adoption should proceed without delay. In still too many instances, that, unfortunately, is easier said than done.

Children in Need of Homes

In most states in the U.S., adoptions are done by licensed voluntary or public agencies, or by independent practitioners. Independent practitioners may include attorneys, physicians, social workers, and others with few qualifications.

- An estimated 20,000 abused, neglected, abandoned, or orphaned children with special needs are currently legally free and awaiting permanent and loving adoptive homes, with another 69,000 children likely to need adoption in the near future. As parents with AIDS die, there will be even more children needing permanent families through adoption.

States are the legal parents of these children, many of whom have been abused, neglected or abandoned by their families. These children need permanent families and it is our duty to help find them appropriate families that can best care for them.
Seventy-two percent of the children awaiting adoptive placement in 1990 had one or more special needs: medical, developmental, behavioral or psychological.

Addressing Barriers to Adoption

While there are thousands of couples waiting to adopt infants, the opposite is true of the thousands of children in foster care who are waiting for adoptive families. Far fewer families than needed have been recruited for the large numbers of children with special needs.

To secure a sufficient number of adoptive parents available for children with special needs who are in the public foster care system, there must be more public recognition of the need that these children have for permanent families and that parents can, with professional help and the necessary resources, effectively parent them.

Legal system barriers to adoption

Currently children wait an average of two years and five months for termination of parental rights to be completed by the courts. This is not responsive to the needs of children. It is essential that courts give priority to children's cases when setting dockets, hearing cases, issuing decisions, scheduling and hearing appeals. The federal government can help by urging state courts to enact time standards that will ensure prompt handling of all children's cases.

Agency barriers to adoption

If child welfare agencies are to eliminate agency barriers to adoption—so that children needing adoption can be adopted without delay—priority needs to be given to:

- identifying those children very likely to need adoption at the time they enter care and moving promptly toward adoption for these children;
- recruiting a diverse group of foster and adoptive families on an on-going basis to be available for children with special needs;
- ensuring that staff are hired who can respond to children's needs, including a range of cultural and language needs;
- providing that all child welfare staff are trained in the full range of child welfare programs from family preservation to adoption; and
- establishing a service mix and staff caseloads that can meet the needs.

These barriers do not exist in the child welfare agency alone, nor are reasonable efforts the responsibility of only the child welfare agency. Other agencies, including health and education agencies, as well as the courts are key partners in planning for and achieving successful outcomes for children.

Continued national leadership and adequate financial resources are essential if we are to ensure that these barriers are removed and that children who cannot return to their families can be moved to adoption in a timely way.

Financial barriers to adoption

A major barrier to adoption of children with special needs is financial. These children need multiple services in order to adjust to family living and become part of the adoptive family.

In many instances, the most suitable families for these children—ones who are committed to meeting their needs—are families of modest or low income who cannot afford to pay for the daily needs and often extensive medical services for these children without assured help. The title IV-E Adoption Assistance subsidy provides some of that assurance. It is available wherever the child and family reside.

The pending adoption tax credit proposal with the targeted assistance to families adopting children with special needs as provided in the bill as passed by the Senate Finance Committee, offers important additional help to find homes for children who are waiting.

Adoption can be encouraged by confronting these legal, financial, and procedural barriers, and by implementing reasonable efforts well.

Eliminating "reasonable efforts," as some have suggested, is not a solution. Getting rid of those two words will not solve the problems that really impede adoption and other successful outcomes for abused and neglected children or those at risk of abuse or neglect.

Making Reasonable Efforts Work

The following elements must be in place in order for "reasonable efforts" to enhance opportunities for successful child outcomes and to serve as a tool for improved practice and decision making:

Written federal guidance to clarify for states what is meant by "reasonable efforts," including:

- a core list of services and supports that a state must develop as evidence of its capacity to make reasonable efforts;

- when reasonable efforts are appropriate and those instances when they are not required--i.e., that they are not required when they compromise the safety of the child and that reunification efforts are not necessary, or "reasonable," when the chances of family reunification are remote; and

- standards of performance for state child welfare systems that will provide a meaningful and predictable role for DHHS in its oversight of state agencies receiving federal funds for child welfare services. States vary widely in their performance and capacities. National standards should be adopted to improve practice and outcomes. CWLA for many years has been the principal national agency responsible for developing child welfare standards. Our 11 volumes of standards are recognized by child welfare professionals throughout the world as constituting "best practice" standards. Unfortunately, there remains a wide gap between the excellence contained in these standards and what actually occurs in practice.

Federal monitoring of state reasonable efforts. Federally conducted program audits are an important means of ensuring that states are working conscientiously to both keep children safe, to keep them connected to their families, and to achieve permanence for children. Legal actions have found that more than 20 states have failed in many ways to properly care for children, including making reasonable efforts when appropriate.

Intensive preventive services. Communities providing intensive preventive services have been especially successful with reasonable efforts. Some have had particular success with speedy adoptions and other permanent placements for children unable to return home. Federal encouragement of family preservation and support efforts is important to reinforce these state and community efforts (Reasonable Efforts Advisory Panel). To carry out these efforts, it is imperative to bring to bear adequate resources for staffing, training, and agency coordination to make sure the job can get done.

Interagency collaboration and support. Successful reasonable efforts, like effective child welfare services, cannot be implemented by the public agency alone. All service providers, the courts, and the legal community must work together to ensure that children and their families are receiving appropriate services and to enable timely and sound decision making in their behalf. Court assessment and improvement is not only vital, but unlikely to occur in any widespread manner, without federal funding and encouragement. (Reasonable Efforts Advisory Panel, 1995)

Informed and consistent court involvement. Courts should continue to make determinations about agency reasonable efforts to preserve and reunify families. (Reasonable Efforts Advisory Panel,1995). Court effectiveness depends upon proper judicial training, reasonable court caseloads, and a genuine interest and commitment to child and family work. It also is imperative that judges be assigned to regular child welfare caseloads as opposed to having a revolving assignments which prevent following a case over time.

Training, protocols, and supervision of agency workers to

- conduct accurate assessments regarding child safety, family capacity and motivation, and family strengths and resources;
- intervene effectively when safety is a concern;
- develop an appropriate service plan that meets the needs of the child and family;
- engage the family in making the needed changes;
- obtain or develop needed resources;
- document progress and problems;
- work effectively with legal counsel, the courts, and with other service agencies to move the case to an optimal resolution for the child.

Reduced caseloads so that workers have the opportunity to make reasonable efforts and do best practice in their work with children and families.

These are the basics of good casework practice and without them there will never be sufficient protection for children at risk of harm. These elements are essential for increased safety and success for children. With more than three million children reported abused or neglected, "reasonable efforts" are an essential tool if children are to remain safely with their families. The alternative is to bring many more thousands of children unnecessarily into care with all the associated trauma and costs that this option generates.

In the last decade we have learned in specific detail what good and effective "reasonable efforts" look like. There is a great need for HHS to catalog those experiences and transmit them to all jurisdictions so they can be implemented properly. It is equally important that benchmarks of performance be set in each state so that all parties have clear and appropriate expectations and responsibilities and make the necessary investments to keep children safe. That will enhance the appropriate and timely adoption of children in need of homes as well as help children who can remain or be reunified safely with their families.

With current and increasing demands, we need a system with all the options and we need them to work well. I look forward to working with the Subcommittee to make sure that happens.

Mr. CAMP. Thank you very much, I appreciate your comments. Ms. D'Ambra, child advocate, State of Rhode Island.

STATEMENT OF LAUREEN D'AMBRA, CHILD ADVOCATE, STATE OF RHODE ISLAND, PROVIDENCE, RHODE ISLAND

Ms. D'AMBRA. Mr. Chairman, thank you for the opportunity to address this distinguished Subcommittee and thank you for conducting this hearing on this very important issue. I am Laureen D'Ambra and I am a child advocate for Rhode Island. I have been in this position for 7 years now, and before that, I was legal counsel for DCYF, our Rhode Island Child Welfare agency for almost 9 years.

In my capacity, in both capacities I have worked closely with child advocates, legislators, judges and policymakers in our State to strengthen termination of parental rights statutes, and to codify case law regarding reasonable efforts.

We heard, this afternoon, some horrific stories. I am acutely aware of many of those same stories that I hear during the child fatality investigations that we review in our office, and I think Sister Murphy and others vividly described those horrific situations.

In Rhode Island we have had a great deal of public outrage regarding how children are treated in our child welfare system. That public outrage has been turned into legislative initiatives and policy action to protect and safeguard children in our State.

Rhode Island has long recognized the need for permanency planning for children. In fact, in 1986, the Rhode Island Supreme Court upheld statutory provisions of parental unfitness, due to conduct toward any child of a cruel and abusive nature. The court held in this case that reasonable efforts were not necessary.

In accordance with Public Law 96–272, in a case involving a mother who had been convicted of delinquency murder and first degree child abuse of her 9-month old baby, parental rights of all five of her children were terminated by the family court without any reasonable efforts having to be made, given the fact that this constituted cruel and abusive treatment under the statute.

In 1994, we had legislative initiatives that were the result of a subcommittee initiated by the chief judge of the family court that I served on. The family court, now, because of those legislative enactments, the family court can terminate parental rights when the parent's rights have been terminated previously and the underlying conditions still exists. If the court finds that it is improbable that additional services would result in reunification, reasonable efforts to reunite are not required.

The case that was a catalyst for that law involved a mother who was convicted of murdering her young son. She then gave birth to three more children after her incarceration and subsequently abused them.

This statute recognizes the absurdity of reunification under these circumstances and the need to protect children from chronically abusive parents.

A second provision of our new laws involves substance abuse. The law states that for a period of 12 months if a child is in care

due to parental substance abuse, it shall constitute prima facie evidence of a chronic substance abuse problem at trial.

This legislation was intended to address the escalating number of cases of abuse and neglect due to parental substance abuse. Parental substance abuse in crack cocaine has certainly overwhelmed our entire child welfare system throughout the country. This law has allowed Rhode Island to quickly move to terminate parental rights in cases where there is chronic substance abuse. This also would involve parents who are unwilling or unable to be rehabilitated.

Another provision of our new laws involves the best interest of the child. In determining the best interest of the child, the court must now give consideration to the child's placement in foster care, integration into the foster home and the length the child has been placed, as well as the preference of the child if the child is able to state a preference.

Passage of Public Law 96–272 was never intended to require reasonable efforts at all costs. State initiatives, such as those in Rhode Island, have better defined the intent of this Federal mandate in an effort to balance the rights of families but not at the expense of vulnerable children.

Another provision that we incorporated into our new laws included specific timelines, and I know there was extensive discussion today about establishing timelines.

What we have done in Rhode Island, given the alarming statistics regarding a lack of permanency for numerous children in State care, the Rhode Island General Assembly established specific timeframes to expedite termination proceedings in its recent amendment to Rhode Island General Laws, 40–11–12.1, to institute proceedings for adoption when a child is less than 10 years old and the child has been in the care of the department for a period of 12 consecutive months. I believe the Rhode Island General Assembly recognized the fact that 1 year in the life of a child can certainly be an eternity.

Last, as part of the new initiatives, we enacted a guardianship statute. The impact of a delay in permanency planning whether due to age, race, sibling groups, medical, emotional or behavior problems is certainly devastating. Each child who feels alone and abandoned wants nothing more than what most of us take for granted—the continuity and security of belonging to a family.

Recognizing this pattern of children being stuck in the child welfare system, the General Assembly enacted legislative changes in order to more easily facilitate guardianships through the family court. Provisions in this statute acknowledge the fact that permanency planning for older and/or difficult to place children may be achieved through guardianship rather than adoption.

In conclusion, our office last month released a report after we reviewed four child fatalities involving children who were in the care of the State. We are an ombudsman office, and as part of our statutory duty we do conduct child fatality investigations of all children who die in State care.

The Children in Crisis Task Force, as it is called in that particular report, is especially concerned about what happens to children who are removed from their families only to remain in child wel-

fare placement for an extended period of time. Efforts to provide secure homes to children in out-of-home care, who too often experience placement disruptions and delays in permanency planning, must continue.

Thank you, again, for the opportunity to testify today before the Subcommittee concerning State initiatives and the initiatives that we have taken in Rhode Island to better define reasonable efforts in accordance with the Adoption Assistance and Child Welfare Act of 1980.

[The prepared statement follows:]

TESTIMONY OF LAUREEN D'AMBRA, ESQUIRE
CHILD ADVOCATE FOR THE STATE OF RHODE ISLAND

SUMMARY OF TESTIMONY

The State of Rhode Island, Office of the Child Advocate, investigates child fatalities of those children who die while involved with the child welfare system. Through the work of child fatality review panels, and in collaboration with legislators, judges, policy makers and child advocates from a range of professional disciplines, Rhode Island has strengthened termination of parental rights statutes and codified case law. The purpose of these laws is to move children toward permanency planning as was intended by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).

R.I.G.L. §15-7-7 allows the Family Court to terminate parental rights when the parents' rights have been terminated previously and the underlying conditions still exist. "Reasonable effort" to reunify are not required if the Court finds that additional services would not result in reunification. A second provision states that when a parent has been unable to provide care for a child for a period of twelve months due to substance abuse, it shall constitute prima facie evidence of a chronic substance abuse problem. The third provision mandates that the Court consider the child's placement in foster care, integration into the foster home, length of time that the child has been placed, and the child's preference, if the child is able to express a preference in determining best interest of the child.

The Rhode Island General Assembly has also passed amendments to R.I.G.L. §40-11-12, that gives the Family Court the authority to appoint a guardian of the person of a child who has been placed with the Department of Children, Youth and Families, and allows guardianship subsidies. This statute provides "permanency planning" for older and/or difficult to place children through guardianship rather than adoption.

Last month, the "Report of the Children in Crisis Task Force" was issued by the Office of the Child Advocate. The Task Force reviewed the death of four children involved with the child welfare system. The Task Force concluded that public awareness of the needs of children, and the action of policy makers is essential if we are to appropriately protect children and provide stability through adoption when reunification is not possible.

Rhode Island's legislative enactments facilitate termination of parental rights and ensure timely adoptions. Passage of P.L. 96-272 was never intended to require reasonable efforts at all costs. State initiatives such as those in Rhode Island have better defined the intent of this federal mandate in an effort to balance the rights of families, but not at the expense of vulnerable children.

Dear Mr. Chairman and Distinguished Members of the Committee:

Thank you for the opportunity to speak before the Subcommittee on Human Resources of the Committee on Ways and Means regarding the provisions of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272). I am Laureen D'Ambra, testifying as the Child Advocate for the State of Rhode Island. I have served in this capacity for the past seven years. Prior to that, I served as legal counsel for the Department of Children, Youth and Families, the state child welfare agency in Rhode Island, for nine years. I have worked closely with child advocates, legislators, judges, and policy makers in our state to strengthen termination of parental rights statutes and to codify case law regarding reasonable efforts. The impetus for these legislative initiatives were crucial questions that emerged in the course of our statutorily mandated child fatality investigations. During these investigations, experts from within the community examined the cases of children who died while in the state's care.

Panel members addressed circumstances under which a child should be removed from a family that poses a risk of abuse or neglect. Additional issues of major significance include the following:

1. How can we better define "reasonable efforts" in accordance with federal and state law, in the best interest of children?

2. How can we identify and expedite cases that require termination of parental rights?

3. How do we facilitate timely adoptions for those children who are permanently removed from their families?

The Office of the Child Advocate is a state funded and operated ombudsman office for children in the care of the state. In accordance with our mandate, we protect the legal, civil and special rights of our most vulnerable population: abused and neglected children; those with serious emotional and behavioral problems; and those in the juvenile justice system. Since its inception in 1980, the State of Rhode Island, Office of the Child Advocate has reviewed the cases of all children who have died while involved with the Department of Children, Youth and Families. The Office has studied these tragic cases, and determined systemic changes that can be made to improve our child welfare system and reduce the numbers of children who die from abuse or neglect.

In the course of our work, we have looked intensively into the cases of children who are able to remain at home with services to prevent abuse and neglect and correct the problems that create risk. We have also considered the cases of children who could not remain safely at home, and required out-of-home placement and reunification planning. We have studied those situations where parental rights were terminated to allow the adoption of children.

We have also reviewed cases such as those of Eric D., a child returned to his biological father who killed him a month later. Eric had little contact with his father due to delays in establishing paternity. Three year old Eric had resided with his foster mother since birth. He was returned to his father based upon a need to comply with P.L. 96-272, based upon father's request to participate in a plan for reunification. Eric's case is a reminder to all of us of the vulnerability of young children, and the horrible reality that parents or caretakers can deliberately and violently kill their children. Cases like this involving similar tragedies led to the formation of a task force convened by the Chief Judge of the Family Court to consider legislative initiatives that would expedite termination of parental rights.

Rhode Island has long recognized the need for permanency for children. In 1986, the Rhode Island Supreme Court upheld statutory provisions of parental unfitness due to "conduct toward any child of a cruel and abusive nature." The Court held that reasonable efforts were not necessary in accordance with P.L. 96-272, in a case involving a mother who had been convicted of delinquency murder and first degree child abuse of her nine month old baby. Parental rights of all five of her children were terminated by the Family Court.

The newly formed Dependency/Neglect/Abuse Subcommittee continued the initiative by recommending the introduction of three bills in the 1994 session of the Rhode Island General Assembly that strengthened the existing laws with regard to termination of parental rights.

I. DEFINING REASONABLE EFFORTS IN ACCORDANCE WITH P.L. 96-272:

R.I.G.L. §15-7-7, "Termination of Parental Rights", allows the Family Court to terminate parental rights when the parents rights have been terminated previously and the underlying conditions still exist.

This enactment is an acknowledgement that some parents whose parental rights to another child had been terminated continue to lack the ability or willingness to respond to services that would rehabilitate them. If the Court finds that it is improbable that additional services would result in reunification, reasonable efforts to reunify are not required.

In Rhode Island there had been public focus on a case involving a mother who was convicted of murdering her young son. Upon her release from prison, she gave birth to three more children and subsequently abused them. This case triggered the passage of this provision of the legislation. This statute recognizes the absurdity of reunification under these circumstances, and the need to protect children from chronically abusive parents.

A second provision of this new law states that when a parent has been unable to provide care for a child for a period of twelve months due to substance abuse, it shall constitute prima facie evidence of a chronic substance abuse problem at trial.

All are aware of the impact that parental substance abuse has had on the child welfare system. Brief, time-limited interventions have not been successful in many cases. Recovery is not able to be addressed in a permanent way. Typically, children have moved in and out of care, or cases are kept open for years, as the patterns of relapse stymie the efforts of a system designed to intervene and resolve issues. This legislation was intended to address the escalating number of cases of abuse and neglect due to parental substance abuse. This law has allowed Rhode Island to quickly move to terminate parental rights in cases where there is chronic substance abuse.

The third provision of the law mandates considerations by the Family Court in determining the best interest of the child. The Court shall give consideration to the child's placement in foster care, integration into the foster home, and the length of time the child has been placed, and the preference of the child, if the child has capacity to express a reasonable preference.

When the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) was passed, many of us hoped for a radically reformed child welfare system. In some ways, this promise has been fulfilled. Programs that are comprehensive, sensitive to ethnic and cultural issues, cognizant of the social environment, and individualized to the problems and needs of each family will work in the vast majority of cases. However, passage of P.L. 96-272 was never intended to require reasonable efforts at all costs. State initiatives such as those in Rhode Island have

better defined the intent of this federal mandate in an effort to balance the rights of families, but not at the expense of vulnerable children. The law does not require preservation of families if children are in dangerous environments. The best interest of the child must outweigh all other considerations.

II. IDENTIFYING AND EXPEDITING TERMINATION OF PARENTAL RIGHTS CASES:

Despite these state initiatives, however, we are seeing a failure related to "permanency planning." Children remain in the system too long, despite many years of efforts to implement the P.L. 96-272 through case plans, court reviews, and time lines. Some children spend so many years embroiled in the process of reunification that they are frequently older if and when they become free for adoption. There are very few adoptions among children in the older age group, especially among those who are in residential programs rather than foster homes.

A 1995 Rhode Island survey of children legally free for adoption, conducted by the Office of the Child Advocate, indicates that the mean time that a child whose parental rights are terminated has been in state custody is 5.9 years, clearly not what was envisioned in the enactment of P.L. 96-272. These cases demonstrate that the mandate for reunification should be a qualified one: families need not and should not be given unlimited chances to regain custody of their children. Cases should be triaged to identify appropriate treatment plans and realistic time frames for implementation. A trained professional staff knows quickly when reunification efforts are futile.

Given the alarming statistics regarding a lack of permanency for numerous children in state care, the Rhode Island General Assembly supplemented existing law by establishing specific time frames to expedite termination proceedings in its recent amendment to R.I.G.L. §40-11-12.1, "Family Court review." This Act requires the court to order the Department of Children, Youth and Families to institute proceedings for the adoption of a child if the child is less than ten (10) years of age and the child has been in the care of the Department for a period of twelve (12) consecutive months, unless the court determines it is not in the best interest of the child to do so.

III. PROVIDING PERMANENCY THROUGH ADOPTION:

Another delay in permanency planning is evident for children from minority populations. We have had little success in locating an adequate number of adoptive homes or visiting resources for this group. Rhode Island has placed a strong

emphasis on the importance of placing children within their own cultural community. As you are aware, however, from recent Congressional action on this issue, minority families would have to adopt at a much higher rate than the general population to satisfy the need, given the number of children free for adoption. According to the 1990 Federal Census data, the percentage of black persons in Rhode Island is small, (3.9%), yet almost half of the children available for adoption are black (39%).

Given the over-representation of minority children in placement, it is critical that child welfare systems review what they are offering families of color in terms of family preservation and reunification services. Service providers must be culturally competent to assess the family's strengths, as well as its limitations, and to successfully engage the family in a service plan.

The impact of a delay in permanency planning, whether due to age, race, sibling groups, or medical, emotional or behavioral problems, is devastating. Each child who feels alone and abandoned wants nothing more than what most of us take for granted, the continuity and security of belonging to a family.

Recognizing this pattern of children being "stuck" in the child welfare system, the General Assembly enacted legislative changes in order to more easily facilitate guardianships. Amendments to R.I.G.L. §40-11-12 "Awarding Custody" gives the Family Court the authority to appoint a guardian of the person of a child who has been placed in the care, custody and control of the Department of Children, Youth and Families and allows subsidies for guardians of handicapped or hard to place children. Written consent of the parent or parents previously having custody of the child is required.

Provisions in this statute acknowledge the fact that "permanency planning" for older and/or difficult to place children may be achieved through guardianship, rather than adoption. In certain cases, termination of parental rights may not be feasible or in the best interest of the child.

IV. CONCLUSION

In an Office of the Child Advocate report released in May of 1996 reviewing the death of four children, the Children in Crisis Task Force focused on resource issues as a barrier to appropriate planning for children in state care. At a time when child deaths due to abuse and neglect illustrate the vulnerability of children born into troubled families, appropriate resources must be the focus of public policy. Ironically, the professional environment

in which service providers try to do their jobs often has a painfully close parallel with many of the families that they serve. They struggle with limited resources, and may be overwhelmed by tasks that are too great and burdensome for these individuals to accomplish.

However, it is important to note that some of the weakest areas in the child protection system may be addressed and alleviated by policy and procedural changes that often do not require additional funding. A continuing effort to improve decision making and coordinate service provision will strengthen the safety net for children, and maximize use of limited resources available to states. These efforts will help to prevent unnecessary removal of children, and to move decisively to protect those at risk.

The Children in Crisis Task Force is especially concerned about what happens to children who are removed from their families, only to remain in child welfare placement for an extended period of time. Efforts to provide secure homes to children in out-of-home care, who too often experience placement disruptions and delays in permanency planning, must continue.

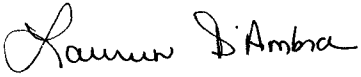
When community-based services are needed, they must be used efficiently so that every dollar committed to children's services will improve their lives. We do not simply need additional resources; we need effective ones. Interventions should be planful, appropriate and timely. They must follow the guidelines for programs that have been proven to be successful. Child welfare experts have clearly demonstrated the type of services that best meet the needs of at risk families. We need to structure our system accordingly. Prevention and reunification services must be provided on a consistent and predictable basis. Written case plans should be approved by the Court at regularly scheduled reviews. When efforts to effect reunification are not successful, we must move competently and expeditiously to terminate parental rights and facilitate adoption.

I endorse the efforts of programs like Families First, a foster care and adoption recruitment campaign recently begun in Rhode Island. Programs like this work to build public awareness and interest in foster care and adoption. Encouragement of corporate and community support to families who adopt children is crucial. Recruitment of foster and adoptive families is necessary if we are to accomplish the goals of placing children with families who will provide love, nurturance and support. Health care packages and tax incentives can further facilitate our ability to identify and recruit families to care for children in need of homes.

As Rhode Island's Child Advocate, I am fortunate to be able to carry the message to policy makers and the public that there exists a crucial need for resources for children at risk. In addition to financial and service-related resources, however, we must open our homes and hearts to this growing number of needy children. I hope that through this testimony their voices will be heard.

Thank you again for the opportunity to testify and to provide written testimony concerning state initiatives to address barriers to children being placed for adoption under the Provision of the Adoption and Child Welfare Act of 1980.

Respectfully submitted,



LAUREEN D'AMBRA, ESQUIRE
CHILD ADVOCATE
OFFICE OF THE CHILD ADVOCATE
260 WEST EXCHANGE STREET SUITE 002
PROVIDENCE, RI 02903
(401) 277-6650

DATED: JUNE 27, 1996

Mr. CAMP. Thank you.

Mr. Digre, the director of the Department of Children and Family Services of Los Angeles County.

We do have a vote on. I thought what we would try to do is get through your 5-minute testimony and recess for a few minutes. I would go over and vote and I know that I have some questions and I think some of the other members stayed over there for the second vote.

But, if you would like to begin with your testimony. Thank you for coming here.

STATEMENT OF PETER DIGRE, DIRECTOR, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, COUNTY OF LOS ANGELES, CALIFORNIA

Mr. DIGRE. Thank you, Mr. Chairman.

Thank you for this opportunity and thank you, again, for the Child Protection Entitlement. Reasonable efforts is a worthy concept. In California, family reunification is successful about 78 percent of the time for infants and 80 percent of the time overall.

However, at least 22 percent of the time that infants are reunified they are subjected to new episodes of abuse or neglect. Further, the number of children growing up without legally permanent families continues to grow.

Of the infants going into foster care, fully 30 percent of them slip into the long-term foster care system, as opposed to being adopted or reunified. Long-term foster care, without adoption, is not stable and it's not permanent.

The University of California found that 83 percent of toddlers entering nonrelative foster care had a change of foster homes within 6 years and 62 percent had three or more foster homes. Adoption, on the other hand, creates life-time parents.

In California, only 14 finalized adoptions are set aside annually out of 15,000, literally one out of 1,000.

Finally, thousands of children reach 18 in foster care without parents each year and most instantly become independent. This is nearly impossible.

I am 52 years old and my mother still keeps a bedroom for me. I will never become homeless, but 45 percent of 18-year olds who emancipate, do.

I would like to suggest three ways that the law should be strengthened. The first way is to emphasize that child safety is always the first priority. We often engage in futile, but not reasonable efforts. Make in the law a simple statement that our first priority is always child safety and reinforce it in these ways.

Reinforce it by stating that reasonable efforts must not place a child in danger. Require judges, hearing officers and child abuse workers to state why they conclude that a child will be safe in his or her situation. Require lawyers, who represent children, to advocate only for decisions which are consistent with child safety.

The OBRA 1993 family preservation efforts merit special attention. They have unleashed commendable creativity. However, at the same time, no attention has been paid to basic standards that would improve child safety.

The State plans for family preservation must include specific standards, including clarification that the first priority is always safety, risk assessment to exclude dangerous families, a high level of child visits to supervise safety, and comprehensive services to enable families to protect their own children.

In Los Angeles, we have developed 28 community family preservation networks but we exclude families with histories of violence or sexual assault. And these programs must visit the children up to 16 times a month to make sure they are safe and they must provide 23 key supports that families need.

Our program works about 85 percent of the time. We have seen 30 percent fewer children going into foster care and child deaths have declined in Los Angeles for four consecutive years.

Finally, in terms of child safety, I would like to suggest that the State IV–E plan requirements should include specific child safety standards for the whole child welfare system, including child visitation, pediatric examinations for abused children, timely emergency response, background screening of alleged abusers, risk assessment and training for caretakers and child abuse workers.

The second way I think the law should be changed is to emphasize much more strongly legal permanency through adoption. As I said, foster care is tragically unstable, while adoptions are completely stable. Congress should act to make sure that more children are adopted.

First, reject unreasonable efforts. There are parents for whom reasonable efforts are unreasonable. These include parents who maim children, parents who have lost other children to permanent placement, parents who sexually assault children, and other parents.

Second, as I enumerate in my written speech, require reasonable efforts for adoption. The concept of reasonable efforts applies only to preserving and reunifying families. It should also apply to getting children adopted.

The third way the law must be improved is to improve the life opportunities for kids who grow up in foster care. Declare national goals for these children, including that they will leave with a place to live, opportunity to continue their education, employment, and clothing. And require that the States explain, in their IV–E plans, how they will achieve this.

Require, in those plans, that the State specify how they will pull together local, State, Federal and private sector employment, housing and scholarship opportunities for these kids. In Los Angeles, we are developing housing programs with foundations and HUD, we are creating thousands of jobs for foster youth through the Job Training Partnership Act and the private sector, we are encouraging everybody to hire these kids, including hiring 70 of them ourselves, and we are blending private contributions with all the scholarships available, so, this year 500 foster youth will be able to go to college.

And, please, consider dropping the age for independent living from 16 to 14. Congress should and must act to improve safety, increase adoptions and create opportunities for young people who emancipate. Hundreds of thousands of children desperately need

you and Los Angeles County is ready to work with you on this very, very important agenda.

Thank you.

[The prepared statement follows:]

STATEMENT OF PETER DIGRE, DIRECTOR, LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES JUNE 27, 1996

I. INTRODUCTION

Chairman Shaw, Members of the Subcommittee. Thank you for the opportunity to testify today on the subject of federal adoptions and child welfare policy. My name is Peter Digre and I am the Director of the Los Angeles County Department of Children and Family Services, a public child protection agency which, during 1995, responded to more than 170,000 reports of child abuse and neglect. My Department is the largest child protection agency in the country. Today, and every day, I am personally responsible for the protection and care of more than 70,000 children. In addition to providing child protection services, my Department also is a full-service adoption agency. Each year, we are involved in the adoption of approximately 2,100 children.

I have 31 years of experience in administering state and local child protection programs in several of the most populous jurisdictions in the country.

In recognition of the importance of preserving families and in responding to the problem of numerous children remaining in the foster care system and growing up without legally permanent families, the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) required child protection agencies to engage in "reasonable efforts" to prevent a child's removal from home after they were abused or neglected, and to enable the reunification of families once children had been removed. The momentum to provide "reasonable efforts" was greatly enhanced when OBRA 93 created a block grant of funds for "family preservation and support" under Title IV-B of the Social Security Act.

No one can fault the legitimacy or worthiness of the goal of preserving and reunifying families. Indeed, in California family reunification is successful approximately 78% of the time for infants or 84% of the time overall. However, we cannot ignore the fact that at least 22% of the time infants who are reunified with their families are subjected to new episodes of abuse, neglect or endangerment. Further, our Department of Children and Family Services' studies indicate that the likelihood of a child returning home declines precipitously the longer a child stays in foster care. For example, in 1995 only 5% of the children in foster care longer than 24 months were reunified.

In addition, the original problem of numerous children growing up without legally permanent families continues to grow unabated. Long-term foster care without adoption is not stable and not permanent. The Child Welfare Research Center at the University of California found that 83% of toddlers (ages 1-2) entering non-relative foster care had a change in foster parents within six years, and 62% had three or more foster homes. Almost one out of three had five or more foster homes. Again, long-term foster care is, tragically, neither stable nor permanent, and the numbers grow every day.

Adoption, on the other hand, creates lifetime parents. It is commonly not understood how remarkably stable adoption is. In California, only an average of 14 finalized adoptions are set aside annually out of a potential pool of 15,000, a rate of less than .1% or one out of 1,000.

The final tragedy of children growing up without lifetime parents occurs when they grow up and leave foster care, in

most states at age 18, and become fully independent without a family to rely on. This is nearly an impossible task, one that my 18 year-old daughter could not have achieved and one that I do not believe I could have achieved. Indeed, I am 51 years old and my mother still keeps a bedroom in her house for me. I will, therefore, never become homeless, but some studies indicate that as many as 45% of 18-year-olds who leave the foster care system do become homeless at some point.

Based on the above, I am not ready to abandon "reasonable efforts" or "family preservation", however, the law must be vastly strengthened to:

- emphasize that child safety is the first priority;
- emphasize legal permanency and concomitantly decrease the numbers of children growing up in long-term foster care;
- improve the life opportunities of those children who do grow up in foster care.

II. EMPHASIZE THAT CHILD SAFETY IS THE FIRST PRIORITY

The word "reasonable" is often read out of "reasonable efforts" creating a situation in which children are placed in danger and re-abused in the name of family preservation and reunification. In short, we too often engage in "futile efforts" which are inherently unreasonable and small children pay the price.

This can be corrected with a simple statement of legislative intent indicating that in all child welfare decision-making, our first priority is child safety. This should be reinforced in three specific ways:

1. Specifically state in the statute that "reasonable efforts" do not include efforts that place a child in danger;

2. Judges, hearing officers and child abuse workers must make specific statements of facts which indicate why they conclude that children will be safe in family preservation or reunification decision-making;

3. Lawyers and guardians ad litem who represent children must advocate only for decisions which are consistent with child safety. This clarifies a significant legal ambiguity since some lawyers assume that they must represent the wishes of the child client even if the child's wishes were incompatible with safety.

The OBRA 93 family preservation and support efforts deserve special attention. In Los Angeles and throughout California and the United States, they have unleashed commendable creativity in the development of networks to preserve and strengthen families. At the same time, too little attention has been paid to well-known and basic standards that would vastly improve child safety. We are left with a thousand pilot projects without a core program making any definition of family preservation impossible.

The legislated state family preservation and support plan requirements should include specific standards, including 1) clarification that the first priority is always child safety, 2) careful risk assessment to exclude dangerous families, 3) a high level of in-home visits to supervise children's safety, 4) a comprehensive range of services to increase families' capacities to protect their own children, and 5) partnerships with the community.

For example, in Los Angeles we have developed 28 Community Family Preservation Networks (CFPNs). Families with serious histories of violence or sexual assault are excluded unless the perpetrator can be removed.

Community-based networks must visit each child in their home either four, eight or sixteen times a month depending on the intensity needed.

Each CFPN must organize 23 key family supports, including drug treatment, housing, day care, transportation and jobs and other income supports, as well as the in-home visitation.

Our emphasis on community partnership both leverages existing resources on behalf of these families and builds a continuing community of support around them.

We have found that these high standards create the best possible outcomes:

- 85% of the time we are able to successfully preserve families in this program.

- During the first three years of our original twelve programs, 30% fewer children went into foster care in the communities they covered. The growth of African-American children in foster care was stopped dead, even as other groups showed rapid growth.

- Despite the implementation of the family preservation programs, child deaths declined in Los Angeles County for four consecutive years, from 61 in 1991 to 39 in 1994.

Finally, the need for good standards for child safety applies to the whole child protection program and not only to family preservation and support. Consequently, enhanced Title IV-E state plan requirements should include:

- minimal standards for in-home visitation;

- forensic pediatric examination for physically and sexually abused children;

- regular pediatric care for foster children;

- a timely response and resolution for each allegation of abuse and neglect;

- background screening of alleged abusers and foster and relative caretakers, including criminal and abuse screening;

- risk assessment;

- training for foster parents, including relative caretakers and child abuse workers.

III. EMPHASIZE LEGAL PERMANENCY

As indicated clearly above, foster care is tragically unstable while finalized adoptions are nearly completely stable. A child who is adopted has parents for his/her life. A child who grows up in foster care will probably have many caretakers and will not have any assurance of a family and home after he/she turns 18. Adoption is to be vastly preferred to long-term foster care.

Congress can do the following to ensure that more children achieve legal permanency and that fewer enter long-term foster care.

1. Reject unreasonable efforts. Recognize in the statute that there are classes of parents for whom "reasonable efforts" and family preservation and reunification are or may be inherently unreasonable. These include:

   - parents who kill or maim children;

   - parents who aggressively sexually assault children;

   - parents with histories of violent criminal behavior;

   - parents who abandon children in life-threatening circumstances;

   - parents with long-term and chronic addictions.

   In such situations, it is usually futile and unreasonable to endanger children by making efforts to preserve or reunify their families. Children in these circumstances should have the right to a safe family for life by being adopted while they are still young.

2. Require reasonable efforts for legal permanency. Strangely, the concept of "reasonable efforts" applies only to preserving and reunifying families and does not address the compelling need of children to have permanent parents for life. It is imperative, and rather simple, to require states to make reasonable efforts to find adoptive homes for children without safe families.

IV. IMPROVE THE LIFE CHANCES OF CHILDREN WHO GROW UP WITHOUT PERMANENT HOMES

Each year, thousands of youth who have grown up in foster care emancipate to independence without reliable and legally permanent families.

Many of these children face homelessness, many have highly incomplete educations and many will become involved in crime to support themselves. Since we did not provide permanent families for these children, we owe them the basic opportunity to succeed as adults. Congress should:

1. Declare national goals for children who must become independent after aging out of foster care.

   These goals should include:
   - a place to live;
   - opportunity to continue education;
   - life skills training;
   - employment or income;
   - access to health care;
   - adequate clothing;
   - availability of records, including educational history, driver's license, citizenship status, foster care history, health history;
   - ties to community mentors.

   The state's plan to achieve these goals should be incorporated in the Title IV-E plan.

2. Encourage states to develop employment, housing and scholarship opportunities for emancipating foster youth.

   States should be required in their IV-E plans to specify how they will target local, state, federal and private sector employment, housing and scholarship higher education opportunities for the special population of emancipating foster youth.

   Some of the initiatives we are developing in Los Angeles include:

   - blending public and private housing programs and foundation resources to create 400 apartment beds for emancipated youth, spearheaded by a very substantial grant from the Weingart Foundation;

   - using the Job Training Partnership Act (JTPA) and the private sector to create jobs for all older foster youth. Targeted employment efforts should generate 2,000 jobs this year for older Department of Children and Family Services foster youth;

   - encouraging local government and contractors to hire emancipating foster youth. My department has hired over 70 such youth with excellent results, including the use of 30 of them to be Emancipation Assistants to help younger children prepare for independence;

   - encouraging blending private contributions with college, state and federal scholarships to enable emancipating foster youth to go to college. This year my department has requests from 500 of our 800 emancipating youth for college scholarship assistance, and we will be able to honor all of them, thanks to the generosity of our community.

These and other efforts would be enhanced if Congress would lower the age for participation in the Independent Living Program from 16 to 14 to allow us to engage youth earlier in preparation for this most difficult transition.

V. CONCLUSION

The Adoption Assistance and Child Welfare Act of 1980, supplemented by OBRA 93, laid a substantial foundation for child protection. However, the experience of the past sixteen years has shown numerous ways in which the law must be improved in order to increase child safety, emphasize legal permanency through adoption and create basic opportunities for foster youth who emancipate without legally permanent families.

Mr. CAMP. Thank you, Mr. Digre. I appreciate that and the Subcommittee will be in recess.

[Recess.]

Chairman SHAW. We will resume. I know that Mr. Camp is coming back. He indicated that he had some questions that he wanted to pose to the witnesses.

I will ask a few questions. I apologize to the last three panelists for the time that I was out voting, but I knew this other vote was coming up and I thought the best thing for me to do was to wait and do that and then I could try to move the hearing along as quickly as possible.

Judge Levy, you were here, I believe, to hear the testimony of the two previous panels?

Judge LEVY. Yes, I was.

Chairman SHAW. And, as I understand from your testimony, you have got trouble with the language of the existing law as to what is reasonable and trying to balance the rights of the biological parents with the prospective adopting parents.

Judge LEVY. I think it is vague and I think it has caused problems for judges because of its vagueness. I think, though, in listening to this Committee, that if provisions are made for specific types of situations, and the term has been used, fast track. And fast track is a very good term for it.

And as I was explaining, like we have in Florida, there are certain cases that should be fast tracked. A child is completely abandoned. That child, after 6 weeks, can be put up for termination of parental rights and immediate adoption.

If there is a pattern of continuing abuse where no services are going to be helpful, that case can be put up for termination of parental rights. If the abuse is so egregious that case also, immediately, forget it, no dependency petition, straight to termination of parental rights.

Risk is always the factor. And, I think that we, in the national council, have tried. The most troublesome area is substance abuse. You were very correct when you spoke with the mother that was here earlier, it's convincing a parent that their children are more important than that little bag of white powder. It is a very troublesome issue, but the example that I heard earlier, a cocaine-addicted mother giving birth to her 8th cocaine baby. I mean that, to me, is ridiculous.

Chairman SHAW. That's a whole other subject and I did some work on that some years ago. I mean this whole tragedy of a cocaine baby, I think anyone would agree that to me is prima facie child abuse.

Judge LEVY. The use of cocaine is one of the problems in Florida, and there is no hard evidence that cocaine, in and of itself, is child abuse. That's what makes it difficult to prove at the time of trial. And it puts the State or whomever is prosecuting those particular cases in a very difficult situation. So in many cases they are more interested in getting the mother in treatment and delaying the timeframes that could be involved because they have difficulty proving that that really is abuse, neglect, or abandonment.

Chairman SHAW. Several years ago I was at the neo-natal unit in Broward General Hospital and my wife and I were in there and

we were looking at—there was actually a larger population of cocaine babies at that time, than I understand there is today—but one of the babies, I mean they just shake. It's an awful thing to see. They look like little spider monkeys, they are so tiny.

Judge LEVY. Well, there's no question that they can be premature and that they can go through withdrawal but they just completed a study in Miami. I do not know if you saw it in the paper, I do not know if they still read the Harold in Fort Lauderdale, or not. But, at a local facility, the Linda Ray Center——

Chairman SHAW. Did you say, do they sell the Harold in Fort Lauderdale?

Judge LEVY. I said, do they still read the Harold in Fort Lauderdale?

Chairman SHAW. Do they still even deliver it? [Laughter.]

Judge LEVY. OK. A study on the kids were 3 years old at this point, and they were cocaine exposed and it did not show any developmental delays at that point in these children. So, it's hard at this point. I do not think there is enough hard evidence.

I think the suggestion that was brought up earlier that if you have got 12 months where the parent doesn't make any efforts at rehabilitation with the prima facie evidence, perhaps, of neglect, it is a very good idea. And it would give the State enough power to go in and get that adjudication.

Chairman SHAW. Yes. It's hard to nail those things down, but earlier studies did show that these youngsters are disruptive in class, they have attention disorders. I mean you are running into all kinds of things, but a lot of that could be from the type of home that they're coming from because of the use of drugs in those homes. So, it's always hard to really nail that down.

But, to complete the story that I was talking about, the nurse was explaining to us that the mother of this little cocaine-addicted baby had a tatoo on her arm that said, "Cocaine" that was larger than the baby.

And while we were there in the neo-natal unit, the baby died. It was something that made quite an impression upon me as just to the total confusion of the situation.

Judge LEVY. I think substance abuse issues are probably the most difficult issues to deal with, because it is such a difficult area, and——

Chairman SHAW. But as I mentioned to one of the earlier witnesses, George Miller, the success rate of cure is very dismal. And Ms. Benn was testifying to us and she evidently, at an early time, made the decision to take her children rather than take the drugs, and things have turned out very well and she said her kids are really great students and I'm sure she's proud of herself and of them.

But, unfortunately, my guess is that hers is the exception and not the rule.

Judge LEVY. I think you are right.

Chairman SHAW. Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman.

Mr. Digre, I want to thank you for being here, I think you get the long-distance award today. I know you have testified before

this Subcommittee on other occasions, and you always give very good and informative testimony. I just had a question about something.

You mentioned that legislative intent regarding child safety should be clarified in statute. I wonder if you have any specific recommendations for changing Public Law 96–272? If you wanted to later submit any written recommendations for the record, certainly that would be possible. But I wondered if you have any ideas today?

Mr. DIGRE. Yes. I would just say very clearly a statement of legislative intent that child safety is always the first priority. And I probably would qualify reasonable efforts by saying a little more strongly than it does, that reasonable efforts must not place children in danger. Just make that as a definitive statement.

I would say something in there that judges and child abuse workers must state explicitly, when they make decisions, why they conclude children will be safe. Just lay it out why they think kids are going to be safe.

I think a serious issue is lawyers who represent children are very confused about what they should be doing and I think it should be clear that they should only advocate for the decisions that are consistent with children's safety.

I think there are a lot of parents—and I thought Senator DeWine was so eloquent on this—people who maim children, people, as we've said, have lost lots of children to permanent placement, people who sexually assault children, and others, we should just give up on. We should just move straight to adoption and give those poor children a chance because there is no technology in this world that can change people like that with any assurance.

So, I think there are groups we should just give up on. And, finally, I think very explicitly, we should say that reasonable efforts, the State should be required to make reasonable efforts to get kids adopted. If you look at the way the law reads now, reasonable efforts are for family preservation and reunification. And I think there should be a very clear statement that there must be reasonable efforts and a plan to get kids adopted.

Those are some of the specific kinds of things that I would suggest.

Mr. CAMP. We had earlier testimony about having a presumption of termination of parental rights for particular crimes. That is kind of along the lines of what you were saying. But also about time limiting and particularly with regard to very young children. Could you comment on those?

Mr. DIGRE. Totally, totally in favor of it. I mean there are people who commit acts of such danger that they just—it's just totally dangerous and unreasonable to give them a second chance. And children grow up—hey grow up very quickly and childhood is over.

So, for maybe, 6 to 12 months, all the chance that anybody realistically should deserve. Maybe for older kids, 12 months with a possible extension to 18 months. That's our California current law.

But, some time limits, just to structure the accountability, are absolutely essential.

Judge LEVY. Can I just add one thing?

Mr. CAMP. Thank you.

I have limited time and maybe if the gentleman——

Chairman SHAW. You may take as much time as you need.

Mr. CAMP. Thank you. I will be happy to get to you but I just wanted to ask Mr. Liederman a question kind of along this line.

You mentioned in your testimony about the reasonable efforts standard and that some of the confusion is a result of the fact that no guidelines have been issued in 16 years to give us some understanding.

What would you have Congress do? Would you have Congress require the Department of Health and Human Services to develop written Federal guidance in statute and have us pass a law requiring them to do that? Or maybe rewrite the law with some of the clarifications we have heard about today regarding safety and danger and time limiting possibly?

The third option is to do nothing, which I do not think anyone here is advocating. But what are your thoughts on that just briefly, and then I will go to Judge Levy.

Mr. LIEDERMAN. Well, I think I mostly agree with Peter in terms of what he has laid out but, you know, I think you would all agree that there is a limit to what you can do in the law. You know, I think you can write certain things into the law around child safety, you can write certain things into the law around making reasonable efforts to expedite adoption. You can do certain things in the law but then the Department of Health and Human Services does need to develop a process that results in Federal guidance being provided to the States and the counties to help them to understand what the law really means.

And, I do not think that it would be presumptuous at all for this Subcommittee to instruct the Department of Health and Human Services to issue Federal guidance on the question of reasonable efforts. I mean we have all had enough experience.

I think where there is agreement, there is no disagreement that any child who is in an unsafe situation should be left in that home. OK? If you cannot, if I'm the child protection worker, you have been a child protection worker, and if you cannot go to sleep at night and know that that child is safe, or you have any question in your mind that that child is safe then you are not doing the right thing by leaving that child in the home.

So, but, again, it is a judgment call. It's a judgment call and it's a hard judgment call in some instances. And you have to balance that against the fact that most of us know, from a child development point of view, that the best place for kids is with their own family.

And as Peter pointed out in his chart, the success rate has been reasonably good with family preservation and family reunification for a lot of families. But there is that percent where it hasn't worked and where kids have been left in unsafe situations and the question is, how do you address—you know, you do not want to throw the baby out with the bath water. The notion is a good notion. The notion of keeping kids with families, where it is possible, is an absolutely good notion, where it can be done safely.

And how you do that is not easy. But that is why I think the Department of Health and Human Services should begin a process where they bring people together from around the country who

have had a lot of experience with this and they try to quantify and put down on paper, what can we all agree to that it means? Because we all agree, in principle, with what we would like to see happen.

Mr. CAMP. Thank you. Judge Levy.

I do not mean to put you on the spot, I thought you had a couple of comments to make.

Judge LEVY. I do. I wanted to show you something that is a product of the National Council of Juvenile and Family Court Judges that I asked to be distributed and we sent a bunch of them up here.

It was really a protocol for handling child abuse and neglect cases developed by the National Council and it is based on a model that was developed in Cincinnati, Ohio. And there have been a number of model courts set up now throughout the country that stress really intensive services or decision for removal within 30 days before the case comes to court, guidelines that the case is set for trial within 30 days, disposition within 30 days, limiting the time for case plans to 1 year, and holding to those particular time limits.

And it is really a document that is worth looking at. And every place that I've been and judges that we've given them to have shown tremendous interest in this particular area. I think it can serve as a valuable resource.

Chairman SHAW. Judge, I'm pleased to be able to tell you that we did send a copy of that publication to every Member of this Subcommittee.

Thank you for bringing it to our attention.

Let me ask one final question to Ms. D'Ambra, speaking of fatalities and what you have been able to do. I have your written testimony here. But in the course of conducting the fatality reviews and reviewing the work of the Rhode Island Department of Children, Youth and Families, have you discovered situations in which either the Federal law or the State legal precedent have been misunderstood or misapplied by the Department legal staff and/or cases such that a caseworker might believe that their mandate is to make every possible effort, every possible effort for reunification?

Ms. D'AMBRA. Yes, Mr. Chairman, unfortunately there have been many such cases in which workers and attorneys for the Department did interpret reasonable efforts to mean every effort possible for years and years. One of the cases that I cite in my written testimony was a fatality report that we issued in 1994, the Eric D case, and that was the case in which the father had absolutely no contact with the child for almost two-and-a-half years of his life. And the child had been in foster care with the same foster mother for that entire time period. The mother had a very serious drug problem and had virtually abandoned the child.

The father had denied paternity initially and then when the Department went forward with termination of parental rights, he claimed that he had a right to reunification. And if the Department had closely looked into the past of this particular father, they would have learned that there were other incidences of very serious child abuse, that under Rhode Island law, where it would have con-

stituted cruel and abusive treatment, reasonable efforts would not have to have occurred.

That child was with the father for less than 1 month and the father killed him and has been convicted by a jury in Rhode Island.

Chairman SHAW. In reading over your testimony it seems that Rhode Island has come a significant way as far as drafting legislation to fill in some of the gaps and some of the problems that other jurisdictions might have in the interpretation of the Federal statute.

Do you have any suggestions as to changes that we might want to make in the Federal statutes in order to accommodate the concerns that Judge Levy and others have as to the severing of the biological parents' rights?

Ms. D'AMBRA. Yes, Mr. Chairman, I believe it would be feasible to better define reasonable efforts and to include in the Federal law codification of some of the changes that we have made in Rhode Island and certainly many of the issues that have been discussed at today's hearing with regards to substance abusing parents.

For example, if a child has been under care for 12 consecutive months due to parental substance abuse, that that would constitute prima facie evidence at trial of chronic substance abuse. If a parent is unable or unwilling to be rehabilitated then, I think, certainly 1 year is more than enough time to make that determination.

And setting timelines. We have established timelines for children under age 10 who have been in the care of the State for up to 1 year, where the Department would be required, by the family court, to file a termination of parental rights petition unless there is an actual finding that it is not in the best interest of the child.

I think also better defining best interests of the child so that when a child has been in a foster home for a long period of time and has a preference to stay in that foster home, that these factors are all considerations that are looked at in defining best interest of the child.

And, then, of course, the most obvious is what we have talked about involving the parent who has already abused a child and the act of child abuse is so heinous that it would constitute cruel and abusive treatment, then there absolutely should be no reasonable efforts. And that is what the law requires in Rhode Island and this law was upheld by the Rhode Island Supreme Court.

Additionally, if a parent has previously had their parental rights terminated and the same conditions exist, it is really ridiculous to have the Department start all over again in making reasonable efforts. So, we have in Rhode Island a statute where the family court would have to make that determination that reasonable efforts are not feasible and the Department would not have to make those efforts for subsequently born siblings.

Chairman SHAW. Excuse me for talking over your head but I have a question for Mr. Dean. In your situation had the biological parents' rights been severed and then reinstated?

Mr. DEAN. They had never been severed.

Chairman SHAW. OK.

Well, thank you very much and I thank this panel. We certainly appreciate the time and appreciate your waiting it out this late, starting at 1 o'clock.

We have certainly shown that we have got some problems here that we have got to address. One of the things, Judge Levy, we do not want to take away your discretion by being overly descriptive, because we certainly will never be able to replace the judgment of a judge who is looking into the witnesses, eye to eye. But, obviously, we have left too many holes open where the judiciary has been concerned about the interpretation of the law. And it is a very serious thing to terminate parental rights, there is no question about it.

And you certainly do not want to err in that regard, but I think, Mr. Liederman, as you said in your statement, if you are worried about that child one bit, then you've probably made the wrong decision.

Thank you very much, the hearing will be adjourned.

[Whereupon, at 4:42 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

Lynda Carter Cajoleas, RN, MSW
11300 West Road Roswell, GA 30075 770 998-5106

Licensed in Georgia and Florida

April 18, 1996

Federal Lawmakers
The Capitol
Washington, DC

re: Proposed addition to family reunification mandate

To Whom It May Concern:

The deaths of at least five children each day in America as a result of child abuse and neglect compel me to ask for your assistance. These five deaths are only the confirmed child abuse and neglect deaths. This number does not include children who die as a result of abuse and neglect yet whose death certificates inaccurately cite other causes of death. Nor does this number include children who are maimed or whose injuries result in lifelong vegetative states, mental retardation, character disorders, and numerous other mental, physical, spiritual, and moral illnesses. Death can be the most merciful outcome for many of these children. The ones who survive to a "chronological" adulthood experience the effects of abuse to varying degrees forever. The fact that some are astoundingly resilient and go on to make our world a safer place for children does not diminish the collective shame we should feel by our current lack of zero tolerance of child abuse and neglect.

Why your assistance? We know the intent of the P.L. 96-272 was not to increase abuse, neglect, and murder of children. Yet in every state of our country many children have been inappropriately reunified with their perpetrators as judges and caseworkers cite the federal reunification mandate as justification for their decisions. I believe you could greatly decrease the number of abused, neglected, and murdered children by a simple addition to the mandate. Families at risk do need assistance to preserve their families as long as this assistance does not place a child in harm's way. We must, however, preserve the child first.

Please amend current reunification legislation to include the following list of circumstances where reunification attempts shall not be allowed:

1. There is a medically verifiable deficiency of the parent's physical and mental health of such duration and nature as to render the parent unable to provide adequately for the physical and mental needs of the child.

2. There is excessive use of or history of chronic unrehabilitated alcohol and/or substance abuse and misuse with the effect of rendering the parent incapable of providing adequately for the physical and mental needs of the child.

3. A newborn baby is abandoned or born drug addicted or with fetal alcohol syndrome.

4. There is a conviction of the parent of a felony and imprisonment therefor which has a demonstrable negative effect on the quality of the parent-child relationship.

5. There has been egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, mentally, or sexually cruel or abusive nature, including neglect and abandonment.

6. There has been injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.

7. The court is unable to show through clear and convincing evidence the child's physical and mental welfare will be protected through reunification.

Respectfully submitted on behalf
of every child in need of protection.

Lynda Carter Cajoleas

Lynda Carter Cajoleas

LCC/ccr

Patricia A. Flory
747 Sequoia Lane
Azusa, CA 91702
818/334-7731
July 9, 1996

Philip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 10515

Attention: Honorable E. Clay Shaw

RE: HEARING ON BARRIERS TO ADOPTION 7/12/96

Dear Honorable Shaw:

The Child Welfare Act of 1980 (P.L. 96-272) is in dire need of critical evaluation and consideration. The "reasonable efforts" clause for "reunification" is interpreted in the State of California to be the primary goal for the Department of Children's Services as well as the Judicial System dealing with dependency cases. "Reunification" is the aim both for children who have been with birth parent(s) and for those who have been abandoned, therefore having nothing to "reunify".

I am a children's advocate and have been actively working in this area as a volunteer for over 2 years. I cannot begin to tell you how many caretakers I have spoken with who have loved and cared for children in California and throughout this country, who see children treated only as chattel, with little, if any, concern of the child's best interest but placing total and supreme effort in "reunification."

I would like to site my own situation as a foster parent. On Dec. 1, 1992, I received a foster child who was 8 months old. She had been abandoned by her mother in the hospital at birth. According to hospital records, the child was born 3 weeks premature, but weighed only 3 lbs., 7 ozs. The baby was drug addicted and fetal alcohol syndrome. Two and one-half weeks after birth she was placed in a foster home.

This child came to me at 8 months of age weighing 13 lbs., was a "failure to thrive" and the original foster family had asked for her removal because "she wouldn't sleep at night." The only contact she had with her biological family was one visit by her maternal grandmother and the child's sister when she was approximately 1 month old. During the time I had her there was no contact from the family.

After 2 or 3 months the child began to thrive and blossom. She was very personable, friendly and a joy for all who came in contact with her. I was told by a retired nurse after I had had her for about 6 months, that the child would have died had she not been loved and cared for by me.

When the child was 15 months old the Children's Service Worker (CSW) "found" the mother. She was on the streets and was an alcoholic and drug addict with at least a 15 year history. She had given birth to 4 other children, one was a SIDS and the other three children had been raised by the maternal grandmother who had legal guardianship.

The birth mother went to court saying, "I want my baby back, I'll do anything." The court ordered her into a 90 day rehab. program. From Sept. through Dec. of 1993 the mother had sporadic 1 hour monitored visits. The mother was transported to these visits by either the rehab center or the CSW. The child would regularly react

behaviorly after these visits. She had "night traumas" which had never happened prior to the monitored visits. I regularly reported behavior changes, but the CSW's total focus was on the mother and "reunification".

Weekly 1 hour monitored visits continued through March of 1994. In April the court ruled that the child would have unmonitored week-end visits. Needless to say the child suffered with serious emotional and behavioral changes after these visits. She would scream and cry hysterically on the way home after the visits. The case worker who was assigned from the Foster Family Agency went with me to pick her up from a visit and personally experienced the hysteria. The case worker described it as "psychic trauma". Again this was regularly reported to both the Department of Children Services and to the minor's attorney in Dependency Court.

In April or May of 1994, I called the Department of Social Services in Sacramento and spoke with Marjorie Kelley who is directly responsible for Children's Services in this State. I explained to her the situation and she asked if the court had set up a "program" for the mother. I replied, "Yes." She then said, "Then the program for the mother is what will be considered." I responded, "Do you mean that the program is more important than the best interest of the child?" She did not respond, but her silence affirmed my question. I simply do not understand why a "program" is more important than a person.

Because I reported these behavioral changes and tried to represent the child, I became considered a "troublemaker" and "interfering with reunification". During the last days of the hearing, on May 31, 1994, I was on the witness stand answering questions. Many of my responses began with "If it is in the best interest of the child. . ." At one point, the supposed father's attorney directed a question to me: "Putting aside the best interest of the child. . ." I was so shocked that I was in Los Angeles County Children's Court and being told to put the child's interests aside. To me this phrase, "Putting aside the best interest of the child. . ." is the summation of the interpretation by Children's Services and Dependency Court of the Child Welfare Act of 1980 (P.L. 96-272).

As you know, there is money involved. The County receives Federal money for "reunification". To me this is fundamentally wrong. It puts a price tag on children. As in my case, CSW's spend far more time with parents, tracking them down, shuttling them to court, to visits, etc. The title "Children's Service Worker" gives the impression that the child is the priority. This is a misnomer. In my case, I had the child for 18 months and the "Children's Service Worker" visited only 2 times in my home.

A post script to this: One week after the case was closed in Dependency Court, the mother was back on the streets, high on drugs and showed up with the minor at the DSS office requesting AFDC. No action was taken. The County had its money - "successful reunification", the maternal grandmother apparently was taking care of the child, so all the adults were happy. No one cared about the child. The case was not reopened.

I was denied visitation - "It will hamper the bonding. . ." I have been unable to learn anything about the child except through sources at the Los Angeles Commission for Children and Family Services, and of course I'm not supposed to know that information - "Confidential".

Children who come into the system because of neglect and abuse, but as soon as they are in the system, a program is set up to "reunify" with the family. I have seen numerous children who have been placed in the "system" because of abuse, but then abused even more by the "system" which is supposed to "protect" them.

Personally, I think that there should be no money involved from the government

to the state/county for reunification. The child(ren)'s needs: psycological, emotional, and physiological, should constantly have the highest priority. If these "families" want "reunification", they should make the first step. The adult(s) should contact the department - not the department finding the adult(s). If the adult(s) can afford an attorney, they should have to pay attorney fees.

I have seen cases where the biological parent(s) make more money than the caretaker, they pay no support for the child, but if the caretaker wants to defend the child, an attorney must be hired (and then of course, the system goes after the caretaker saying he/she is a troublemaker, because they have hired someone from the "outside"). If birth families truly want their child(ren) who have been removed from their homes, it is their responsibility to request assistance.

I firmly believe that in my "daughter's" case, had the Children's Service Worker, not actively gone out to find the mother, had the CSW not physically taken the mother to court and told her what to say, the trauma to the child would never have happened. I believe that the child would have continued to thrive and be nourished and now have a safe, secure and loving environment in which to flourish. Can you imagine being abandoned 4 times by the time you are 3 years old? My child was abandoned at the 1) hospital; 2) by the first foster family; 3) by me at the order of the court and then 4) again by her mother. Is this meeting the needs of the child? Is this healthy? Is it making a better society? Is it creating a secure future for our country?

In Los Angeles County we have Family Preservation, of which you are probably aware. This program has incredible funds from the Department of Children and Family Services to "assist" in "family reunification". The most recent numbers that I have seen for this program is around 40% success rate. For the amount of money, time, and effort involved (which affects only about 300 families in a county that has close to 70,000 children in the system), a "40% "success rate" seems extremely low to me. I know of no business or organization in the private sector which would be able to continue with these figures. As a taxpayer, I am appalled and disgusted to see our money being spent to support such inadequate systems as Family Preservation and Children's Services as they currently operate.

Please understand that though this is my own personal experience it is repeated over and over and over and over in the State of California and in the United States.

In my work as a children's advocate I have spoken to the L.A. County Board of Supervisors, been to Sacramento several times to speak with legislators. I was in Washington, D. C., in April to speak with legislators regarding the criminal way we as a nation are treating our nation's children. I, along with others from California, spoke at length with The Honorable Ed Royce, who has a heart for children and carried legislation in the State of California to better protect children.

I sincerely hope that this Committee Hearing will consider and recommend at the least, serious changes if not a complete overhaul of the Child Welfare Act of 1980 (P.L. 96-272), placing the needs of the child(ren) as the highest mandate.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Patricia Flory
Children's Advocate

Grandparents as Parents, Inc.

July 6, 1996

Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: Hearing on Barriers to Adoption, June 27, 1996

To Whom It May Concern:

Grandparents As Parents, Inc. offers support groups for kin caregivers. I answer a "warm-line" for relatives concerned about safety of kin and have been in the system off and on for seven years due to the idea of "family reunification." "Family preservation" is another program within the system that is causing death and injury to children.

Some examples I have heard include the 4 month old infant who starved to death with a full case of formula in her home. Her mother was "addled on drugs" and in a family preservation program that had supplied the formula but didn't see that the child received it.

Lance Helms' grandmother had contacted us about visitation and her concerns for his safety. Lance was murdered a year later by his father's live-in girlfriend when he was <u>unified</u> with his heroin addicted father. He was still in the system and returned several times after abuse was reported.

A three year old girl has been returned to mother several times only to go back to her grandmother when she has been injured. The baby's mother said she was "not ready to be a mother" but the judge ordered the baby returned to her. Grandmother had her back in a short time when the mother said "pick her up before I hurt her." The grandmother already has guardianship of the older brother of the little girl because his mother has stated she does not want him. He was severally abused before the grandmother got him. The father is just out of prison and has threatened to harm the people who are trying to protect his children. They are living in fear of their lives.

A little boy with Cystic Fibrosis has been in the system for 5 years. He lives with his grandmother who has given up her job and social life to care for this medically fragile boy. The uncertainty of being returned to his mother who is a drug addict who smokes in his presence and does not do his medical

treatments when he spends time with her is always there. How long should we keep a child in suspense?

My grandson had lived with us most of his life. His mother had beaten him three times before he was six months old and abandoned him at two years of age. Eight years later and a $35,000 mortgage on our home trying to protect him he was given to his mother. The comment by the judge was "his mother has an unresolved drug problem and the boyfriend is alcoholic" but he was sent to live with them.

For the next four years he was knocked around, yelled at and not provided food. He ran the streets to get away from violence in the home. He finally ran away from home and was placed back with us.

In our home he was always loved and cared for but he is among the "walking wounded." He was four years behind in school when he was returned, with no study skills and no desire to learn them. He never smiles and seems to have little remorse when confronted with wrongdoing. He has lost all faith in adults because of the many who have failed him. Not only his mother and father but social workers, judges and attorneys in dependency court whose job was to protect him. The officials did not listen when he told them where he wanted to live and later when he reported abuse to the judge he was told "learn to live with it."

Now that he is soon to be fifteen he has the usual teenage feelings compounded by the abuse of the last four years. He arrived with only the clothes on his back and no one would try to retrieve his things. How many adults could walk away from all their personal belongings and not be bitter? He is in group therapy with other teenagers trying to deal with the anger. He does not wish to see his mother and she has had no contact as she has once again disappeared and once again he is trying to pick up the pieces of his life.

One agency in San Diego, CA assisted in 2,000 reverse guardianships last year of children whose relatives can no longer deal with older children with behavioral problems. These problems were caused by drug exposure before birth, no stability, physical and emotional abuse and the many other unspeakable horrors they have been exposed to in their short lifetimes.

The Adoption Assistance and Welfare Act of 1980 (P.L. 96-272) was enacted to address the national problem of the growing number of children in out of home placement. The original concept was that there is a unique bond between a child and its parents. We are finding this is not necessarily the case. Family reunification and family preservation are joint

problems in furthering the cycle of abuse. A fifteen or more year drug habit or mental incapacities are not cured in 18 months. Prior abuse is an indicator of future abuse.

We are asking that this act be amended to place the physiological and psychological welfare of the child above all else.

Agencies (hospitals, Child Protective Service, doctor's offices, schools, etc.) should be required to exchange information regarding a child.

Attorneys for the child should be required to speak to, and obtain information from, social workers. Confidentiality laws may be beneficial in certain circumstances but they frequently do not protect, but rather are harmful to an abused child.

More attention than we currently see should be paid to what children say and/or play out.

We need to remember, reunification cannot take place when there has never been unification. Also not all families can be helped with a family preservation program.

We know the intent of the Family Preservation Act and the reunification mandate was not to increase abuse, neglect, and murder of children. Yet in every state many children have been inappropriately reunified with their perpetrators as judges and caseworkers cite the federal reunification mandate as justification for their decisions. Families at risk do need assistance to preserve their families as long as this assistance does not place a child in harm's way. We must preserve the child first.

Sincerely,

Rosalie Cauley

Rosalie Cauley
Director/Secretary

Mary Hantman
GRANDPARENTS UNITED FOR CHILDREN'S RIGHTS, INC.
36-19 167th Street, #1D
Flushing, NY 11358
718-353-0878 (same fax#)
e-mail MHant527@aol.com

July 5, 1996

Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Attention: Honorable E. Clay Shaw, Jr.

Re: Hearing on Barriers to Adoption 7/12/96

Dear Hon. Shaw:

The Family Reunification Act mandated by the federal government and interpreted by the states has resulted in children being returned to abusive homes where drugs and alcohol may dominate their parents' lives. Many innocent children have lost their lives as a result. Others live in daily peril. A saner, more logical approach would be to turn them over to qualified, willing family members, such as grandparents and other kin. Removing barriers to adoption is an important means of addressing the crises of the nation's child welfare system.

While many families can and should be preserved, there are some families and caretakers that cannot be rehabilitated and reunification cannot take place when there has never been unification. In many instances, the child has never lived wtih his/her birth parents.

I hope the result of this hearing will lead to successful legislation that will promote the physiological and psychological well being of the child first and foremost.

I enclose for review the following articles:

1) Child Abuse and Neglect Fact Sheet by the National Clearinghouse on Child Abuse and Neglect
2) "What I Need Is A Mom", Conna Craig, President of the Institute for Children, Policy Review - Summer 1995
3) "Adoptable Kids Go Wanting", USA Today 3/14/96
4) "Family Foster Care Placement: The Child's Perspective", Voices, May-June,1996

Mary Hantman
Grandparents United for Children's Rights, Inc.
36-19 167th Street, #1D
Flushing, NY 11358
718-353-0878 (same fax)
e-mail MHant527@aol.com

Phillip D. Moseley, Chief of Staff
July 5, 1996
Page #2

5) "Whose Hand Should Rock The Cradle?", Los Angeles Times Magazine, 10/1/95
6) Newsday, 5/26/96 - Adoption Tax-Credit Debate and Interracial Adoption articles
7) Newsday, 6/22/96, "Places In The Heart"

Very truly yours,

Mary Hantman

Mary Hantman, President
New York Chapter

"WHAT I NEED IS A MOM"

The Welfare State Denies Homes to Thousands of Foster Children

CONNA CRAIG

John, 10, is one of America's children who waits. He waits for a home, and he has been waiting nearly all of his life. When John was a toddler, his drug-addicted mom lost her parental rights, and claimed not to know who the father was. John has been legally free to be adopted since he was three, but instead has lived in state-run foster homes and group homes. While his childhood slips away, John's social workers debate his best interests and the programs they hope will address them. But this skinny kid who loves baseball knows better: "I'm all wrapped up in programs," he says. "What I need is a mom."

Across the country, there are 50,000 foster children like John, who no longer live with their mother or father and have been declared by courts as free to be adopted, but who languish for months or years in state-run, state-funded substitute care. On any given day, nearly 400,000 other children—none of them eligible for adoption—can be found in government foster homes, group homes, and shelters. Many of them are kept there by absentee parents clinging to the legal rights to their children.

Foster care and adoption in America have sunk to a state of near-catastrophe.

According to the American Public Welfare Association, the population of children in substitute care is growing 33 times faster than the U.S. child population in general. During each of the past 10 years, more children have entered the system than exited. Every year, 15,000 children "graduate" from foster care by turning 18 with no permanent family; 40 percent of all foster children leaving the system end up on welfare, according to the American Civil Liberties Union.

What was for most of America's history an entirely private endeavor has become a massive, inefficient government system. State agencies consistently fail to recruit enough families for the children eligible for adoption every year; potential parents often are turned down because of racial considerations, or turned off by protracted and unnecessary waiting periods; cumbersome state regulations extend to private adoption agencies and can even prohibit private attorneys from handling adoptions. The result is that tens of thousands of children are now free to be adopted but have nowhere to go.

This is the dirty little secret of the welfare state: Every child is adoptable, and there are waiting lists of families ready to take in even the most emotionally troubled and physically handicapped children. Government adoption policies are utterly failing in their most basic purpose—to quickly place children who are free to be adopted into permanent homes.

The problem lies not with the children. What keeps kids like John bound to state care are the tentacles of a bureaucratic leviathan: a public funding scheme that rewards and extends poor-quality foster care; an anti-adoption bias that creates numerous legal and regulatory barriers; and a culture of victimization that places the whims of irresponsible parents above the well-being of their children.

I can identify with these kids. I was a foster child in a family that cared for 110 children. That family—my family—adopted me in the early 1970s. Years later, as a student at Harvard, I happened upon a book of statistics on children in state care. I was stunned to learn that decades of research, policymaking, and government funding had only intensified the system's failures. I was one of the lucky ones, but luck will not stem the tide of parentless children. By the year 2000, well over a million children will enter foster care, and tens of thousands of kids will become eligible for adoption. Unless the government apparatus of foster care and adoption is dismantled, these children could spend their childhoods wishing for what most people take for granted: stability, a family that will last longer than a few months, a last name.

SUBSIDIZING FAILURE

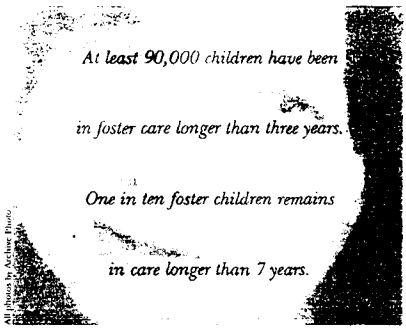
For years the rallying cry of many children's activists has been: "More money!" The National Commission on Family Foster Care, convened by the Child Welfare League of America, says that "family foster care and other child welfare services have never been given the resources necessary" to meet federal standards, and calls for a "fully funded array of child and family welfare services." When it comes to child welfare, rare is the research article that does not call for more money and further research.

America already is spending $10 billion a year on foster

CONNA CRAIG *is president of the Institute for Children, a private, non-profit group based in Cambridge, Massachusetts, dedicated to reshaping foster care and adoption.*

care and adoption services through public agencies. Federal dollars now account for nearly a third of all foster care funding, with most of the rest coming from state coffers. California alone spends at least $635 million a year on substitute care; the District of Columbia spent $53 million last year on a system that was so poorly run it recently was taken over by a federal court.

According to the ACLU, a year in foster care costs



All photos by Archive Photo

about $17,500 per child, including per-child payments to foster families and administrative costs of child welfare agencies. That does not include counseling and treatment programs for biological parents or foster parent recruitment and training. The *San Francisco Chronicle* reports that per-child costs for foster home or group home care have increased more than fourfold in the past decade.

The problem with foster care is not the level of government spending, it is the structure of that spending. The funding system gives child-welfare bureaucracies incentives to keep even free-to-be-adopted kids in state care. State-social-service agencies are neither rewarded for helping children find adoptive homes nor penalized for failing to do so in a reasonable amount of time. There is no financial incentive to recruit adoptive families. And as more children enter the system, so does the tax money to support them in substitute care.

By contrast, private adoption agencies are paid to find suitable families quickly, even if it means going out of state. The public social-service bureaucracy, nearly overwhelmed by other urban problems, has little to gain by devoting extra resources to adoption. Private adoption agencies are free to focus on finding homes for kids and are financially motivated to do so. Private adoption agencies are paid according to the number of successful placements; public agencies, in a sense, are paid for the number of children they prevent from being adopted.

There is a similar reward for foster parents to keep kids in state care. By law, adoption subsidies cannot exceed foster care payments, and in practice they are almost always lower. According to the National Foster Parent Association, foster families in 1993 received anywhere from $200 to $530 a month for each child under age 10, plus additional money from states and counties. The subsidies are tax free, and foster parents receive more money as the children under their care get older. So the longer the system fails to find permanent homes for kids, the more money flows to those fostering.

In some states, payments to foster parents caring for four kids equal the after-tax income of a $35,000-a-year job. The money is tax free. It doesn't take much imagination to see that paying people to parent can lead to mischief. Parents are not held accountable for how they spend their federal and state allocations; for too many foster parents, the children in their homes are reduced to mere income streams. If foster parents don't wish to adopt the children under their care, what incentive do they have to alert other parents hoping to adopt?

Let me be very clear: There are many dedicated and compassionate people in the foster care system, serving as case workers, counselors, and foster parents. My own experience in foster care was a positive one. But I have seen and heard of too many that were heartbreaking failures.

Special-Needs Stigma

I have heard perhaps a thousand times that the children who wait cannot be adopted because they have "special needs." Of course they do—they need parents. They require love and nurturing that endures. But the "special needs" referred to by advocates come with federal dollars attached. In 1980, Congress started offering states matching funds to assist the adoption of children with special needs, which included children of various ages, ethnic backgrounds, and those with severe mental and physical handicaps who may require expensive care. The subsidy was to become available only after a state determined that it could not reasonably expect to place a child without it.

As with so many other federal subsidies, states quickly expanded their slice of the government pie by broadening the criteria for receiving money. Today, nearly two-thirds of all foster children qualify. In some states, special-needs children include kids who have a sibling; are black, biracial, Hispanic, or Native American; are "older," as defined by the state; or have been in foster care longer than 18 months.

Two leading adoption organizations report that there are no national figures available that break down the type of need, or indicate the number of children who have physical or emotional handicaps that would require extra expenses by their new parents. This leaves the door wide open to all sorts of graft and fiscal abuse.

But there are other unintended and unconscionable consequences of this masquerade. One is that the needs of very vulnerable children are downplayed. The plight of a teen-age girl in a wheelchair who requires constant attention is trivialized when she is included in the same group as children whose "needs" are that they are eight years old. Another result—one I see often—is that local social-services departments discourage families from adopting by telling them, "Oh, these kids aren't for you. We only have *special-needs* children." This emphasis on kids with the most challenging emotional and physical handicaps unwittingly contributes to the false notion that foster children are "unadoptable." Ironically, the Adoption Assistance and Child Welfare Act of 1980 that established

special-needs matching funds warned that children must not be "routinely classified as 'hard-to-place.'" Government funding has had just that effect, and it is helping to delay the placement of children ready for adoption.

I am convinced that the entire incentive structure for foster care and public agency adoption helps perpetuate the system's failure. It is a failure rooted in the notion that government funding is the panacea for family disintegration. The National Commission on Family Foster Care claims the foster care crisis is "the logical result of two decades of national neglect in providing funding and services for children, youths, and their families." On the contrary, as long as these children come with tax money attached—with little in the way of accountability—those invested in perpetuating the system will do little to reform it. As one foster child put it: "Everywhere I go, somebody gets money to keep me from having a mom and dad."

Anti-Adoption Bias

Government funding schemes and inefficiencies that prevent adoption exist within a larger framework: a steadily growing bias against adoption. Despite all the sociological evidence of the benefits of adoption, the conviction that a child does best in a permanent, loving, and stable home is all but missing from the ethos of state-run substitute care. How can this be?

In both the popular and elite media, a deep suspicion of adoption is all too evident. Marvin Olasky, a professor at the University of Texas at Austin, has noted that a *New York Times* series on adoption included such headlines as "The Ties that Traumatize" and "Adoption is Getting Some Harder Looks." And what do *Playboy, Mirabella,* and *Good Housekeeping* have in common? As Olasky says, each has joined the offensive with an article that warns readers against the "distasteful ... bartering of lives" that supposedly is adoption.

Television writers would have us believe that adoption has no happy endings. TV portrays adoption as shady, risky, and shameful. Over the last year, a dozen programs featured adoption in their plots, and in every case the adoption agency was depicted as callously profit-driven. The adopting families were white, middle-class couples who kept secrets from the authorities or from each other. Birth mothers were unfairly portrayed as selfish or disturbed. The programs paid little attention to the well-being of the children.

Groups such as Concerned United Birthparents (CUB) help give legal expression to this bias. CUB was behind the "Baby Jessica" case that led to the removal of a two-year-old from her adoptive family. Groups like CUB claim that adoption is a feminist issue, that only the outmoded ideal of a two-parent family makes the notion of adoption palatable. As Olasky notes, Joss Sawyer's book *Death by Adoption* calls adoption "a violent act, a political act of aggression toward a woman."

Perhaps more significant, however, is the battle against transracial adoption that has been waged by the National Association of Black Social Workers (NABSW) for more than two decades. Its 1972 position paper reads: "Black children belong physically, psychologically, and culturally in Black families in order that they receive the total sense of themselves." Otherwise, the group claims, black children "will not have the background and knowledge which is necessary to survive in a racist society." Our institute has received letters from adoptive families in many states who have been barred from adopting transracially. According to the North American Council on Adoptable Children, state adoption laws may allow for race-matching, but "their preferencing policy isn't written down."

When it comes to transracial adoptions, there is no longer much doubt that current policies are bringing the greatest harm to the very community they were intended to help: African Americans. Just consider the numbers: Though black families adopt at very high rates, black children represent nearly half of foster kids waiting to be adopted. Fifteen percent of all children in America are black; but 40 percent of the children in foster care are black. State delays in finding homes for black children, as case workers search for "culturally consistent" placements, can keep kids languishing in state care for years.

"These policies are seriously harmful to black children, requiring that black kids who could get good homes be left in foster care," Harvard law professor Elizabeth Bartholet told the *New York Times*. "There is not an iota of evidence in all the empirical studies that transracial adoption does any harm at all....There is plenty of evidence that delay in adoption does do harm."

Such policies reveal a profound misunderstanding of the nature and effects of adoption. To insist that successful adoption means placing a child in a family of his racial or ethnic heritage is to overlook what every adopted child understands intuitively: Adoption is not easy. No matter how much a child's family looks like him, it does not alter the fact that someone gave him up. Having the same skin color as the people in his household doesn't automatically erase that. Only love does. As someone who grew up in a multi-ethnic family, I find it incomprehensible when people tell me that I cannot love my siblings the way I could if our skin color matched.

The population of children in substitute care is growing 33 times faster than the overall U.S. child population. Every year, 15,000 foster children turn 18 with no permanent family.

The Fallout

Attitudes against adoption, whether racially motivated or not, share at least two flaws. First, they ignore all the best

The Myth of Alienation

A common view is that adopted children do not enjoy a healthy relationship with their adoptive parents. Yet a survey by the Search Institute, in Minneapolis, indicates that these children tend to rate their relationships with their parents more positively than does a national sample of adolescents, as measured by affirmative answers to a number of statements about communication and parental involvement.

	Adopted Adolescents	National Sample
Warmth: *There is a lot of love in my family.*	78 %	70 %
Communication: *I have lots of good conversations with my parents.*	65 %	48 %
Family Harmony: *My family life is happy.*	77 %	68 %
Discipline: *If I break one of my parents' rules, I usually get punished.*	61 %	54 %
Parental Involvement: *My parents attend meetings or events at my school.*	52 %	36 %
Support: *If you had an important concern about drugs, alcohol, sex, or some other serious issue, would you talk to your parents about it?*	52 %	47 %

Source: Search Institute.

evidence indicating that adoption leads to positive outcomes for kids. Last year, the Search Institute of Minneapolis released the largest study ever of adopted adolescents and their families (see table above). The study, in which 881 adopted children and 1,262 adoptive parents were surveyed, found that children who were adopted fared as well as or better than a national sample of non-adopted adolescents in self-esteem, mental health, school achievement—even the amount of time spent each week helping others. Adopted adolescents were more likely to agree or strongly agree with the statement "There is a lot of love in my family" than were non-adopted children.

Sociological studies of transracial adoptions are equally encouraging. Rita Simon of American University has conducted a 20-year longitudinal study of transracial adoption. She found that such adoptions cause none of the problems alleged by the NABSW. Rather, black children adopted into white families typically "grow up with a positive sense of their black identity and a knowledge of their history and culture." Simon notes that transracial adoption may produce adults with "special interpersonal talents and skills at bridging cultures."

Second, the anti-adoption movement fortifies the legal and bureaucratic obstacles that are keeping children from finding permanent homes. There are numerous state laws that needlessly complicate or block the process. In Minnesota, for example, if filing deadlines and other technical requirements of state adoption law are not precisely met, parents can be prevented for months or years from finalizing a child's adoption. Thanks to horror stories of baby-selling, four states have laws that ban independent adoptions (though exceptions are permitted). Despite this, more than 45,000 adoptions in 1992 were conducted through private agencies or independent agents—the vast majority of them successfully.

My office receives numerous letters from people eager to adopt but frustrated by laws and bureaucrats. One woman recently wrote: "My husband and I decided we would like to adopt a little girl, thinking we had a lot of love, nurturing, and stability to give a child who had been abandoned or abused. Almost immediately I hit a brick wall." Her local department of social services—in a state with more than 5,000 foster children free to be adopted—told her it was "not taking new cases" of families willing to adopt foster children. A couple wrote that of their three adopted children, "two [had] lingered in foster care, one of whom we were not able to adopt until he was age 18."

Adoptable You

There is at least one other mistaken notion that feeds the legal and cultural bias against adoption—the idea that many of the children in foster care are simply not adoptable. My own experience suggests otherwise, as I was an older child when my foster parents adopted me. And my experience with parents in and outside the foster care system tells me that every child is adoptable.

For every child who is ready for a permanent home, there are families waiting. It is time to shatter the myth that adoptive parents are interested only in "healthy white babies." There are waiting lists to adopt white children, black children, Hispanic children, infants and teens, children with Down's syndrome and with AIDS. Private agencies for years have found families for all types of children. Adopt a Special Kid, a California-based service, receives more than 1,500 inquiries annually from families interested in adopting children with disabilities. The National Adoption Center maintains a computerized listing of 650 qualified families waiting to embrace disabled "older" children. The center reports that infants, even the most severely disabled, are adopted almost immediately.

Outside of the thousands of families who have successfully completed home studies and have registered with

with their states, there are no hard figures for the number of parents able and willing to adopt. Certainly there are families who would come forward if public agencies recruited more aggressively. Beginning in November, 1993, Massachusetts stepped up its recruitment efforts with public-service announcements, an aggressive media campaign, adoption "open houses," and community-based recruitment. Such efforts helped increase foster child adoptions by 47 percent in one year.

Most people know someone who has gone to heroic lengths to adopt. Americans adopted more than 7,300 children from other countries in 1993, according to the U.S. Immigration and Naturalization Service. The INS estimates that the 1994 figure exceeds 8,000. Others have spent their life savings to offer permanence to a child; domestic adoption through private agencies or independent attorneys can cost more than $30,000. It is not unusual for foster parents to adopt two, five, or even 10 children under their care. Clearly, the barriers to adoption are neither the characteristics of children who wait nor the parents who want to care for them.

The Route to Foster Care

In addition to the 50,000 children who today are legally free to be adopted, there are hundreds of thousands more who drift for days, months, or years within the state-run system—a system that too often guarantees a parentless future for some of society's most vulnerable members.

Children enter foster care for a variety of reasons. Mom abuses or neglects one of her kids, dad is using drugs or is arrested for a felony, or perhaps the parents are just having a hard time coping with the responsibilities of parenthood. The American Public Welfare Association reports that 70 percent of foster children enter the system because of abuse, neglect, or "parental conditions"—including drug addiction, incarceration, illness, or death. More than 600,000 kids will spend all or part of 1995 in substitute care, up from 434,000 in 1982.

A profile of children in state care belies the stigma that foster children are mostly "unadoptable" troubled teens. Researchers at the Chapin Hall Center for Children at the University of Chicago studied five states whose foster care children make up about half of the U.S. foster care population. They found that from 1990 to 1992, nearly 25 percent of all first admissions to foster care were babies less than one year old. Between 1983 and 1992, the proportion of 12- to 15-year-olds entering substitute care in those states declined. The American Public Welfare Association cites similar trends in national data.

Sadly, the youngest children remain in the system the longest. The University of Chicago study revealed that, after controlling for other factors, children who enter foster care as infants remain in the system 22 percent longer than other young children.

The fact remains, however, that foster care is failing children of all ages. The ACLU reports that one in 10 foster children remains in state care longer than 7.4 years. At least 40,600 foster children have been in care for five years or longer; another 51,300 have been in care between three and five years. System kids, on average, live with three different families, though 10 or more placements is not uncommon. "Every new placement is a loss," says Michael B. Pines, a psychologist specializing in attachment disorders. "The result is that these kids begin not to trust anyone."

Paid to Parent

One of the reasons that foster care tends to ensnare children in a legal and emotional limbo is that its bureaucracy and incentive system attract parents who are unable or unwilling to adopt or help find homes for the children in their care.

Whether adopting through private or public adoption agencies, would-be parents must undergo a home study. Private agencies, which must successfully place children in homes to stay in business, are free to set higher standards for parents than public agencies do. Christian or other faith-based adoption agencies typically emphasize tough standards of behavior. But this is not so for state-run substitute care. In many states, adults who fail the adoption home study get a consolation prize: They can become foster parents. Deemed unworthy to serve as legal adoptive parents, these adults are then paid handsomely to raise children in state care.

Foster homes, group homes, and public orphanages share another vice: Their government money comes with regulations attached. This often guarantees confusion and conflict. Private orphanages always have been driven by a mission: keep girls from getting pregnant, keep children in school, expose children to the Christian faith, and so on. They use a combination of rules and rewards, discipline and love to fulfill their mission. Often, this isn't allowed in a state-run group home, where it may be against the law to hug a child, or to lock the door after midnight, or even to advertise for a married couple to serve as housemasters.

A year in foster care costs taxpayers

$17,500 per child.

Last year, California spent $635 million

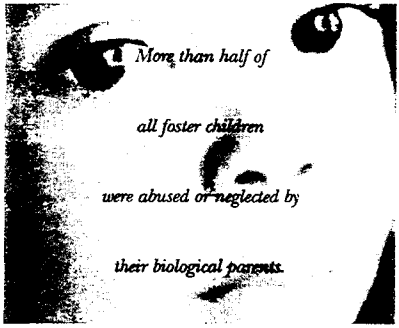
on foster and group home care.

If a permanent, loving family is the surest route to producing happy, well-adjusted children, then what effect does the foster care system, at its worst, have on countless kids? The result of the system's delays, incentive structure, and regulatory grip is that many former foster children ultimately remain dependent on state services. They are wildly over-represented among welfare recipients, the

homeless, and in juvenile and adult prison populations. In Los Angeles County, 39 percent of homeless youth are former foster children. In New York, 23 percent of the homeless were once in foster care; in Minneapolis, the figure is 38 percent. According to the Bureau of Justice Statistics, former foster children make up nearly 14 percent of America's prison population.

Culture of Victimization

The financial disincentives to adoption and the legal and societal biases against it do not exist in a vacuum; they are rooted in the soil of victimization. More than half of the children who enter foster care were abused or neglected in their families of origin. But the current system grants "victim status" to these parents. It often allows them to cling to their parental rights as they move in and out of social service programs. As a result, tens of thousands of



children remain trapped in foster care, never free to be adopted into stable, loving homes.

Take the case of Halie (not her real name), a two-year-old girl who one day wouldn't eat her dinner. Her mother and mother's boyfriend tied her to an electric heater. Hours passed, until Halie's face, chest, and arm were disfigured. Her mother then threw her into a cold shower, dressed her, and took her to a hospital—claiming the child had spilled hot water on herself. After weeks of hospitalization, Halie entered foster care. For the next 10 years, her biological mother—coached by the local department of social services—maintained her legal rights to the child. Case workers helped Halie's mom to toe the official line to prove she somehow was still capable as a parent: She married her boyfriend and had a child with him.

When Halie was 12, her case workers and a judge approved overnight and extended visits between Halie and her biological mother. Halie's mother rejected a judge's offer to regain custody. She didn't want to raise Halie, but didn't want to let her go, and the state gave her all the legal and financial help she needed. Halie spent her teen years in group homes and foster homes. She turned 18 in foster care.

Most states give biological parents every possible chance to prove they are fit—while their babies grow up in state care. A family recently wrote me about their two-year-old foster daughter: "She is precious beyond belief, and her parents are being given chance upon chance to clean up their lives—at her expense, as we see it. She is so adoptable by the right family, but the system will keep her under lock and key for years if necessary for her parents' benefit."

In our social-work schools, counseling centers, and government-funded research, the culture of victimization insists that the most despicable behavior by abusive parents has its causes in economics, racism, broken homes—anything but the consciences and moral choices of men and women. We have devised a foster care system that puts a vogue pop psychology ahead of the well-being of children. This helps explain why roughly a third of all the foster children who are reunited with their families of origin soon return to state care. Indeed, it is the only explanation for some of the bizarre attempts I have seen to reunite a foster child with a parent who is clearly unwilling or unfit.

Under federal law, states cannot obtain federal funds for foster care unless "reasonable efforts" are made to keep members of the family of origin together ("family preservation") or to reunite the family ("family reunification"). But the federal government nowhere defines "reasonable efforts," and only a few states have specific statutes. It's a classic Catch-22: Children are not free to be adopted until every reasonable effort is made to return them to their biological parents. But almost no one seems to know what constitutes a reasonable effort, that is, what services must be offered to parents who need outside help.

When, for example, a public agency reports to a judge that a mother has failed her drug-treatment program, the judge is likely to insist that the mom enter *every* drug treatment program available. So biological parents are given multiple chances to fail at parenting, while children may bounce between state care and their family of origin. The Department of Health and Human Services (HHS) admits that the inability to meet "reasonable efforts" standards is the primary barrier to foster child adoption.

From my own experience in foster care, the most difficult part was watching my brothers and sisters return to biological parents who had burned or beaten them, or put out cigarettes on their children's bottoms. I felt like an accomplice. It must have been hard for my parents, who could do nothing to stop it.

Most foster parents, at one point or another, must relinquish a child to a home situation that is precarious. One foster mother of five years wrote: "I have been seriously reconsidering my position as a foster parent because when we started this it was to try to help these children, and I am finding out that I am not able to do that. The pain and heartbreak of not being able to protect these children is a heavy burden to bear." Until the system is reshaped, it is a burden that every one of us carries.

Assignment: Adoption

It is one thing to tolerate inefficiencies and bureaucratic delays in other areas of public life—public toll

roads, for example. Such inefficiencies don't cost children 18 years of their lives. We do not need another study, or blue-ribbon commission, or congressional subcommittee hearing. When I was four years old, it didn't matter to me that someone was getting a research grant to study the effects of foster care on childhood development. What I wanted was a last name.

I am convinced that there are more parents willing to adopt than there are children ready to be adopted. But the market for adoption is frustrated by the regulatory system now in place. To create a more efficient system, one with incentives to help rather than abandon innocent children, we must get Big Government out of the business of parenting. I do not mean we should create a market in babies. I am not talking about baby-selling. I am talking about serving babies and children by removing the barriers to their enjoyment of stable, loving homes.

Where parts of foster care and adoption are privately run, competition and incentives have led to better outcomes for children. In Michigan, where two-thirds of foster care management is privatized, private providers spend less per child, yet have achieved better social worker-to-child ratios than those of state-run agencies. Adoption is, in fact, the ultimate form of privatization: wresting authority over children's lives from the state and allowing children to be free, to be raised not by government but by parents.

We must reform, state by state, our system of transferring parental rights—from the government, which can never be a parent, to parents who are eager and able to bring these children into their hearts and lives. Congress recently has taken interest in adoption reform by proposing a $5,000 tax credit for adoptive parents. But will that tax credit get children out of foster care more quickly? No. Does it stimulate a market in private adoptions? No. Does it allow independent adoptions in states where they are now outlawed? No.

Tax credits might make adoption a little easier for some parents, but they will not make adoption work. To do that, we need reform at the federal and state levels—bureaucratic reform that will shatter the incentive structure that traps kids in foster care, and legal reform that will free children who already have spent years in substitute care. In Massachusetts, we call it "Assignment: Adoption," a comprehensive plan that our institute is bringing before federal lawmakers and state governors:

Hold states accountable for reporting their progress in finding homes for children in foster care. Here is one federal mandate that states ought to be obliged to take on. Washington should require that states make publicly available, within 30 days of the close of each fiscal year, the following information: (1) the number of foster children in state care; (2) the number of foster children free to be adopted and still in state care, but not in pre-adoptive placements; (3) the number of state-recruited families with completed home studies.

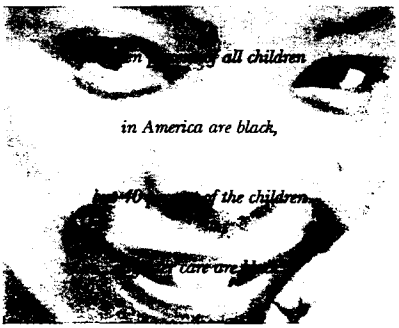
Most conservatives right now wouldn't touch a federal mandate with a 10-foot pole. I would prefer to see an entirely private system that includes a strong charitable element. Until that happens, a few basic requirements on the states are in order. We're talking about giving children a mother and a father. And until we know the depth of the problem in each state, until the number of kids waiting for homes becomes part of our thinking and vocabulary, state agencies are unlikely to change. There are people in our state departments of social services who know these numbers, but we're not hearing them.

Prohibit race-based delays in adoption. Congressional attempts to outlaw race-matching in adoption have yet to free tens of thousands of children of color from foster care. This summer, the U.S. Senate will consider a welfare-reform bill that prohibits race-based delays in adoption. Even if Congress approves the bill, its impact could be minimal.

Recall that the Multiethnic Placement Act of 1994, sponsored by former U.S. Senator Howard Metzenbaum, had a similar goal, but it was watered down. Under guidelines released by HHS in April, the new law allows adoption agencies to consider the child's "cultural, ethnic, and racial background." As reported by the *Washington Post*, the guidelines "stopped far short of requiring that adoption must be colorblind."

It is at this point that the discrepancies between legal precedent, public policy, and social-work practices become painfully clear. The HHS guidelines have not overturned any state laws requiring that race be considered in adoption. And with vaguely written state statutes, case workers will continue to have a lot of power over whether a child will be adopted or languish in long-term "temporary" care.

Suppose every state had adoption policies that were truly colorblind. We at the Institute for Children are challenging governors to remove any and all restrictions to adoption based on race. What would happen if thousands



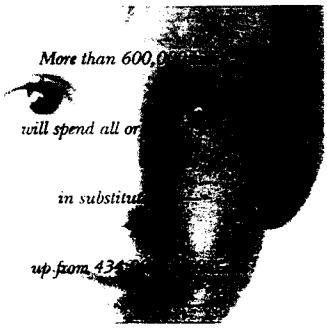
of children of color grew up in white or mixed-race families? It would produce an amazing generation of young people who, instead of growing up without a last name or a permanent home, were raised by loving parents in a diverse, multicultural environment. Why are some black leaders so afraid of that? If their real agenda is the well-being of children, then the evidence is in. Children are infinitely better off in a loving, interracial home than as virtual orphans in foster care.

End government funding that creates incentives to keep children in substitute care for longer than 12 months. Part of the problem is that government money extends indefinitely, with no sanctions enforced against bureaucratic delays. The Adoption Assistance and Child Welfare Act of 1980 required a "permanency plan" for every child within 18 months of entering foster care. This means that case workers decide whether to reunite a child with his family, place him in long-term fostering, an independent living arrangement, a group home, or make him free for adoption. Adoption is the permanency plan for 100,000 foster children, but no one knows how often these plans result in permanent homes for children.

Deadlines for permanency plans come and go, court dates are postponed, files are lost as children are shuffled among foster families. A federal study reveals that children spend, on average, 30 to 42 months in foster care before adoption is even decided on as a permanency plan. Once that happens, the state files a petition to terminate parental rights; the filing can take another six months or more. A report by HHS admits that in some states "children had an official plan of adoption for more than three years, but no petitions had been filed."

The result is that in probably every state there are children who have been in foster care longer than 10 years. Meanwhile, the money to support children in state-run care keeps coming, with no consequences to the state bureaucracies that fail to place children.

Require that states find adoptive homes for children within 30 days after the termination of parental rights. The foster child who is freed for adoption typically has been in the system for at least two years and has had a permanency plan of adoption for at least one year. Yet, as children become legally free to be adopted, states claim to need more time to find families for them! Our institute recommends a 30-day window: If the state does not have a qualified family waiting, one who has met the child and is



ready to proceed with the adoption, then state officials must contract out the adoption process to a private agency. Qualified families exist in large numbers, and private adoption agencies are pretty good at finding them. Three years ago, Michigan launched a carrot-and-stick program with public and private adoption agencies to get kids into permanent homes more quickly. Since then, total adoptions are up, and the number of black children adopted has increased by 121 percent—about 700 kids in the past year alone.

Critics call this baby-selling and claim that government should not act like a business. As someone who has seen the machinery of the state from the inside, I argue that government could promote children's well-being much more effectively if it acted more like a business. I am not alone in noting the failure of foster care management. The director of the ACLU's Children's Rights Project recently wrote, "If the foster care system were considered a business, with its profit-and-loss statements judged in terms of unnecessary human suffering inflicted by mismanaged systems, in terms of misspent dollars, or even in terms of how far these systems depart from their own goals, it would have been forced into bankruptcy long ago."

Getting Kids Out of Limbo

All of the above reforms are aimed at getting the children now eligible for adoption into permanent homes as quickly as possible. But there are more than 600,000 children in foster care at some point during the year. Most of those kids are happily reunited with their parents. Many of them, however, become trapped in the state-run system—children who are never free to be adopted, but who will not or should not return to their biological parents. There are at least three steps every governor could take to rescue these children from the worst effects of foster care and help them find a home:

Make entrance requirements for foster families as stringent as those for adoptive families. In the wake of a wave of child deaths in foster care, people are beginning to speak out about the need to raise the standards for being licensed as a foster parent. As one advocate put it, to be a foster parent "all you need is a clean criminal record and an extra bed." People who have failed an adoption home study can sign up with the state as foster parents. Foster children deserve better than that.

Critics argue that if we raise the requirements for foster families, there won't be enough qualified people to take care of the kids. I have more confidence in the generosity of the American people. I think if you raise the requirements, you'll see more foster parents and better care. Look, for example, at private schools with higher requirements and lower teacher salaries than public schools; they continue to attract excellent teachers and deliver a quality education. By maintaining a separate set of standards for foster parents than those for adoptive parents, we are saying to a half-million kids that it is not important where they spend the most formative years of their lives.

But this is not the only disgrace in foster-parent licensing and training procedures. In state-sponsored training courses, foster parents are admonished, "Do not get too close to your foster children. Do not form a bond." Foster parents are instructed that their main task is to facilitate a child's return to his or her biological parents. From day one, good foster parents are discouraged from adopting.

Certainly there is a stigma attached to being a foster

parent—the system has created it. It is that stigma that discourages many capable and loving people from fostering. If the entrance requirements for fostering were as high as those for adopting, foster children would be better cared for. The anti-adoption establishment wouldn't like it, because it would ruin the standard argument that foster parents are not adequate to adopt.

Allow no more than 12 months for biological parents to prove their fitness to resume custody of their children. This may be the most difficult law to pass at the state level, but it also may be the most desperately needed. State laws can be so vaguely written and so easily assailable that termination of parental rights is always a last resort and can take years of court hearings. There are many in the field who believe it is almost always better to send children back to their natural parents. The Child Welfare League promotes the notion that "no one can truly substitute for the family of origin."

I agree that nature provides every child with two protectors—a man and a woman—and that we're meant to be with our biological parents. But nature didn't design women's bodies to endure crack cocaine; it didn't design children to be shaken until they suffer cerebral hemorrhages. Family preservation doesn't work in these cases because there is nothing left to preserve.

State governors should take the lead in setting tough sanctions against parents who neglect or abuse their kids. By setting a deadline for parents to get their lives together—to get off drugs, get out of jail, find a place to live, and even get a job or go to school—we remind them that they really are responsible for their actions. But the deadline must be final and incontestable; otherwise, irresponsible parents will continue to imprison their children in a labyrinth of legal battles and parentless foster care. The 12-month limit has yet to be adopted by any state and is indeed a radical departure from the years it can now take to legally separate a child from unfit parents.

Allow no more than 30 days from the birth of the child for biological fathers to formalize paternity. The "Baby Jessica" and "Baby Richard" cases have demonstrated the law's allowance for biological fathers who come out of the woodwork to claim their children after they've been adopted. In the now pending "Baby Emily" case, a little girl born in 1992 was soon placed for adoption after the father's rights were terminated for abandonment (he was doing jail time for a rape conviction). But now the father is out of prison and has sued for custody of his daughter. The adoptive family's finances have been completely exhausted as the case awaits adjudication in Florida's supreme court.

Governor William Weld of Massachusetts has sent to the legislature a proposal that, if passed, will prevent such tragic cases in Massachusetts. The proposal requires every unwed biological father to formalize paternity within 30 days of the child's birth, and to maintain contact with the child and provide financial support to the best of his ability—or forfeit his right to contest the child's adoption. Ideally, that would mean no appeals, no hearings, no state officials pulling children out of their adoptive homes. The legislation, if not severely amended, could serve as a model for state reform.

A Life That Matters

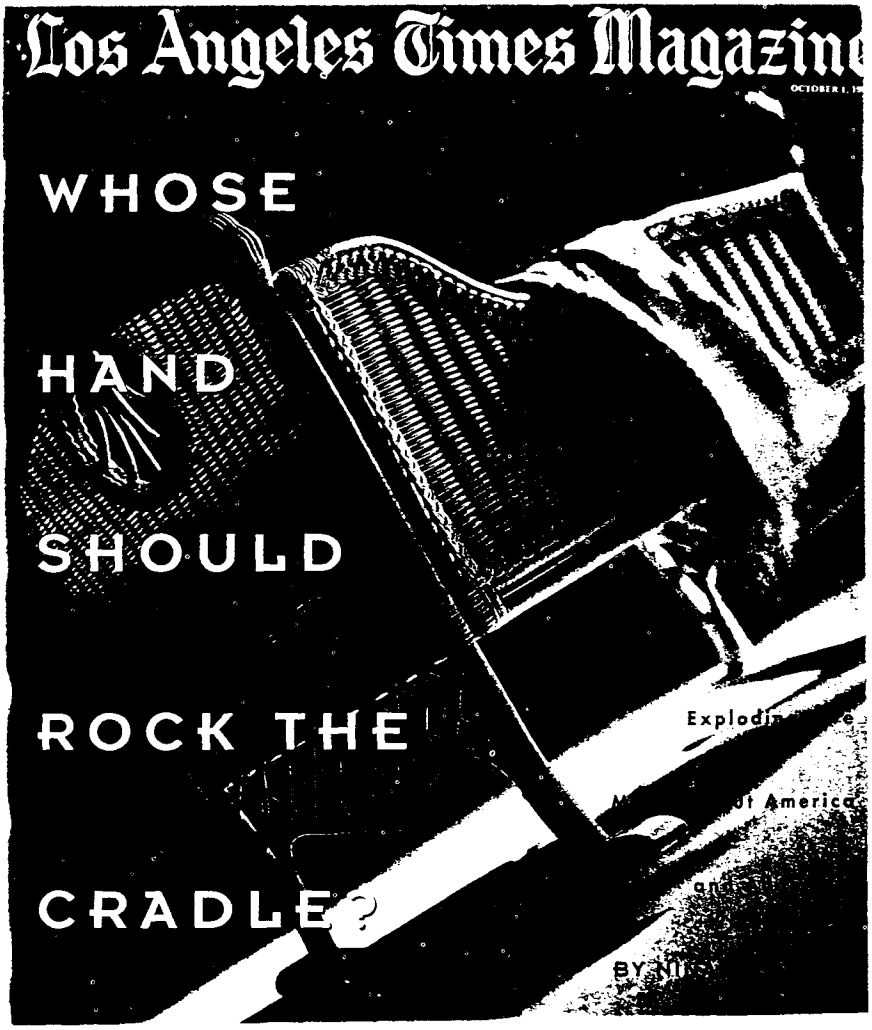
A teenage girl—we'll call her Sarah—who worked for our institute last summer was a system kid; she had turned 18 in foster care. This was her first job and she was surprised when she noticed that taxes had been taken out of her paycheck. She asked me what the government would do with her money. In my usual non-partisan spirit, I explained how the federal government would spend the $300 withheld from her summer earnings. She actually started to cry. She looked at me and asked, "Will it go to pay for foster care?" She said it hurt her that she had worked so hard only to help the government keep some other child from being adopted.

After Massachusetts launched an aggressive pro-adoption campaign, foster child adoptions increased by 47 percent.

That's what the system is doing to our children. Though my own experience in foster care was a good one, it opened my eyes to the real hardships of countless children. My foster brothers and sisters who might have gone back safely to their families of origin too often and for too long were delayed from doing so. Others lived the saddest stories of rejection—they had been burned, beaten, sodomized or battered, left in a doorway or in a fruit field, but later sent "home" to their abusers. Like foster children everywhere, many who could have been adopted were denied the chance to be loved and cherished by a family who would always be there.

Let's be honest: Adoption is no fairy tale. It is a risk. Kids don't always go home and live happily ever after. But every parentless child knows the alternative: the feeling that there is no one to whom her "case"—that is, her life—really matters.

When parents adopt, they can accomplish something government cannot: They can convince a child she matters. That's what makes adoption such a great gift, an expression of unconditional love and compassion. Don't we, as a society, owe that gift to our children?


Los Angeles Times Magazine
WHOSE
HAND
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ADOPTION, THE UNDERCLASS AND AMERICA

Five Myths That Keep Us From Placing Abandoned, Unwanted and Abused Children With Families Who Want Them, and How We Can Turn the System Around Before It's Too Late—for the Kids and for the Country.

BY NINA J. EASTON

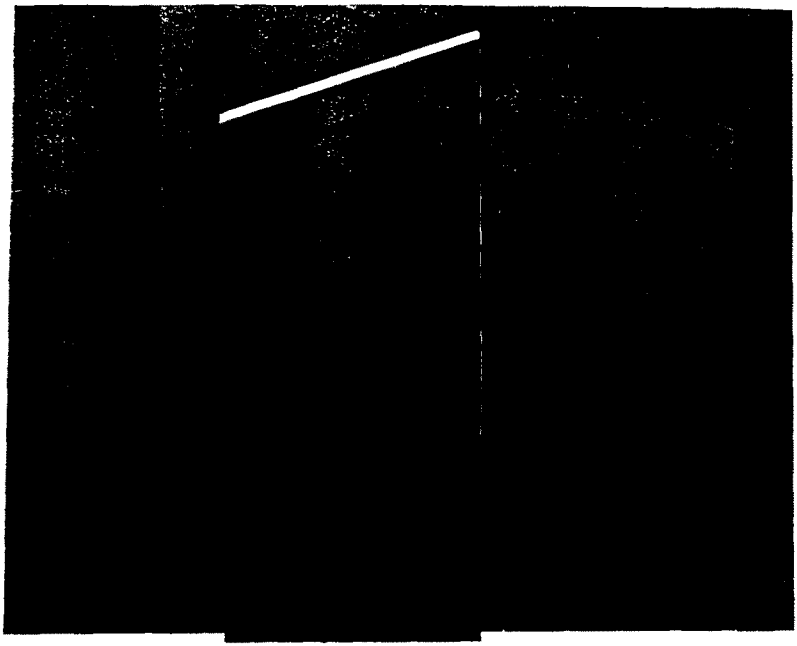
Delicate rhythms of breath wheeze through 4-month-old Shana Newman's* lips as her lungs labor against a summer cold and the circumstances of her birth. Her navy blue dress is all frills and fuss, the sort of stuffy infant-wear that overly doting parents might insist on for their first baby girl. In fact, the tiny body staring up at a mobile of musical teddy bears is an "abandoned infant," the government classification for the thousands of babies left behind each year in maternity wards, with neighbors, on street corners—just a step above the family pet dumped by its owners when it starts scratching the living room furniture.

In 1991, the most recent year data is available, mothers abandoned 12,000 babies in hospitals alone. That same year, another 10,000 newborns, so-called boarder babies, were being warehoused in hospitals because they lacked a functioning parent at home. Authorities found Shana on a Washington street after her mother wandered off on a drug binge. Once her head cleared, the 36-year-old woman noticed that her daughter was missing and called the social services agency.

She must have had the government number handy. Her neglect of her three oldest children had already prompted social workers to move them into foster care. Still, the mother's phone call was fortunate for the nurses and caretakers at St. Anne's Infant and Maternity Home. Now, at least, they know the name and age of the brown-eyed baby they diaper, feed and rock to sleep each night.

Few of the 57 young children housed at St. Anne's, a government-licensed emergency shelter, receive any visitors. A crowd of 10 for Wednesday evening visits is considered a good turnout. Elisabeth Boyle, St. Anne's social services director, holds Shana's thin file on her lap. The children who drift through temporary shelters like this and

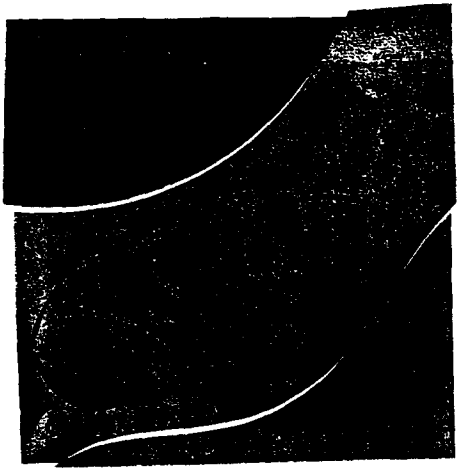
* Because of confidentiality laws, the names of most of the children in this story have been changed.



MYTH #1 Two-thirds of the children in foster care will return home.

into the nation's complex, litigious no-man's-land of child welfare bureaucracies can't claim much in the way of parents or belongings, but they do have files, which bulge and yellow as their days as "system kids" stretch into years. Boyle's face brightens as she peers into the white legal-sized envelope stapled to the inside of Shana's folder and spots a slip of paper. These envelopes, set aside for visitation records, are usually pockets of air. "Oh yes," Boyle says, "she's had one visitor." Then her face falls. "The social worker."

Shana's file begins with a record of her life at this complex of nurseries, children's bunks and blacktop playgrounds in Hyattsville, Md., just over the border from the nation's capital. Officially, children sent to this Catholic-run shelter are supposed to stay no longer than 30 days. No one knows better than Sister Josephine, the passionate and blunt nun who runs the place, that infants need the care of parents to thrive. But like every policy connected with the child welfare bureaucracy, one month typically stretches into many. Shana came



trouble has become the anchor of childhood memories for tens thousands of kids. Some 40,000 children spend more than five ye in the system.

Of the 40,000 babies abandoned in American hospitals in 19 only 6% were adopted. Shana Newman's story is typical: She ha better chance of becoming homeless, getting pregnant as a tee dropping out of school, even winding up in prison, than she does getting adopted. A survey of older foster-care youth who left the s tem found that only 54% had finished high school, only 49% we employed and 40% were costing the government money by colle ing welfare checks or prison meals. Sixty percent of the girls had g en birth, and most of them were on welfare.

One national survey found that former foster children are thr times more likely than others to become homeless, and major metr politan areas report that as much as 30% to 40% of their shelter po ulations are system kids. Therapists Gregory C. Keck and Regina V Kupecky, who co-authored the 1995 book "Adopting the Hu Child," liken the abandoned or neglected child to a wild animal: "H learns to survive in ways that do not work within society."

The nation's hulking child welfare system defies an underlying pr cept of modern pediatric thought. Infants and small children requi nurturing and love, consistency and permanency, and a reliable o portunity to bond with a parent or caretaker. Stressful disruptions family life during these early years are like earthquakes that contin to send out aftershocks many years later. Children denied a chance build deep human bonds early in life are likely to have trouble lear ing how to trust others and earning that trust back. They have troub developing empathy for others and setting goals for themselve They have trouble developing a conscience.

But prolonged transience is the defining feature of today's chi welfare system. After four months at St. Anne's, caseworkers tran ferred Shana into a foster home that has no intention of adoptin her. With luck, she'll stay with that family, which is already raising h siblings, until adulthood. More likely, she'll face additional transfe

MYTH #2 There are no babies available for adoption

in May and stayed the summer, cared for during four of the most critical months of her life by three daily shifts of workers and volunteers.

This year, as Shana begins to wind her way through the child welfare system, more than 8,000 American couples and singles will travel overseas, willing to succumb to frustrating and time-consuming whims of foreign adoption agencies, sometimes willing to step into civil wars, often willing to take home a child of a different race or with a troubled health history or both. They've been told there are no babies available here, one of the many myths nourished by the nation's child welfare bureaucracy.

There are few vantage points better than emergency shelters like St. Anne's from which to watch how the nation's underclass is perpetuated and expanded. The nation spends an estimated $10 billion a year on child welfare, on a maze of agencies charged with protecting and rescuing children. What that money buys is a system that promotes homelessness, unemployment, welfare dependency and crime.

Adoption would save the lives of tens of thousands of children now consigned to state custody. That, however, would mean turning the political agendas of most state child welfare bureaucracies on their heads. Fewer than 8% of system kids can look forward to adoptive homes. Liberals who forged today's child welfare policies stubbornly cling to an outdated belief that even the most neglectful and abusive biological parents can be rehabilitated. From the Right, critics in Congress mindlessly slash child welfare funding without assessing how to direct resources to adoptive families that need help raising kids with emotional and medical troubles.

The size of today's lost generation is haunting. Since 1986, the number of system kids living in foster care, group homes or institutions has increased by nearly 60%. If brought together, the 445,000 children in state custody at the end of 1993 would fill up the stands for nearly seven NFL games at the L.A. Memorial Coliseum. What's more, the growth of foster care is fueled largely by the fact that fewer children, particularly African American, are leaving the system. In other words, a temporary stopover for families in either to a relative or to other foster families. The average child in foste care skips through three or four homes; infants remain in the syste longer, so they're likely to move around more than the average child. Ar because Shana is black, her stay in the foster-care system will be twice long as that of a white child.

Fifteen years ago, a Congress unnerved by the growing number of youn sters consigned to foster care settled on a magnanimous solution: fami preservation. Spend government money to "fix" the child's biological far ily—offer housing, counseling, parenting classes, whatever was neede Then send the child back home. A compassionate idea and a cheap one that. Even today, the state and federal dollars spent on family preservatio programs are a fraction of the $17,500 yearly cost of taking a child in state custody.

But in the mid-1980s two hitches arose: Crack and skyrocketing rates out-of-wedlock births. Drugs, particularly the combination of crack cocai and alcohol, are as lethal to the maternal instinct as they are to the fetus. judges give parents first, second and third tries at getting off drugs ar putting their lives back together, children waste their childhoods bei shuttled from one foster home to another.

Most of the children coming into foster care today have drug-addicte parents; often these are single mothers whose relationship with the chil biological father was fleeting. Academics are fond of saying that drug abu "seriously compromises" a family's chance of reunification. Sister Josephi puts it more bluntly: "For many of these kids, there is no family. There i mother always living with a different man. The kids take care of mom wh she stays stoned."

The factors driving some 200,000 children into the system each year a so complex—sucking into a vortex the worst of America's social pathol gies—that even reformers are prone to throw up their hands, insisting th the solution has to start with welfare reform or more jobs or better dru treatment programs. Adoption warrants little more than a nod.

Perceived as a cause of the anti-abortion movement, adoption isn't an iss that generates much enthusiasm within the child welfare establishment. Ar the views of prospective parents about American adoption are shaped larg ly by TV's fixation with horror stories of biological parents showing up at t

Nina J. Easton, who is based in Washington, is the magazine's staff writer. Her last article was on the Cato Institute, the libertarian think tank. Times researcher Maloy Moore contributed to this story.

doorstep to fetch their children, heart-wrenching as they are, the high-profile Baby Richard and Baby Jessica kinds of cases are rare.

An aggressive national push to find adoptive homes for system kids with little hope of returning home would mean challenging the nation's most tormenting inner conflicts about race and the rights of biological parents. As a rule, public-agency adoptions do not begin as a voluntary process. The biological parents are mothers (usually) whose children were forcibly removed, who must sit in court while lawyers and social workers attempt to prove that they are bad parents, who may be forced to sign legal papers stating that they will never see their children again. There is an overriding compulsion in our society to view these parents, rather than their kids, as victims.

Compounding that discomfiting moral equation is the equally sensitive issue of race. In 1990, for the first time in history, blacks represented the largest portion of children (40%) coming into the system. While firm estimates for more recent years are not yet available, Toshio Tatara, research director at the American Public Welfare Assn., believes that the figure today may be closer to 50%. Any national policy promoting adoption would necessarily result in thousands of black children being placed in white homes—a vision that offends the influential National Association of Black Social Workers, which once likened transracial adoption to cultural "genocide."

The thinking of these social workers—who today bless transracial adoption only as a last resort—may reflect a legitimate concern over the class bias of a system with finances that are based on removing poor children from their homes, notes Eloise Anderson, California's director of the Department of Social Services. The federal government offers states matching foster dollars only for low-income youngsters. "One of the reasons that black organizations are so scared of interracial adoption is that they believe in their hearts that the state aims to get their children to give them to white people," says Anderson, who is nevertheless a critic of race-matching.

MYTH #3 No families want to adopt foster-care children.

But the African American children now trapped in the system are being denied the same principle of equal opportunity that underscores every other aspect of American society. "In no other area of policy do state and state-licensed decision makers use race so systematically as the basis for action," notes Elizabeth Bartholet, a Harvard-based civil rights attorney who has spent years investigating American adoption practices. Bartholet found that not only are children routinely separated into black and white pools but that the black pools are then broken down by the child's skin tone—light, medium, dark—so that a like match can be made with parents.

Even though academic studies conclude that interracial adoptees fare just as well as their counterparts, race-matching proponents claim they are acting in the best interests of black children. As with the family preservation ideologues, their rhetoric has been rendered obsolete by changing times. Black families already adopt at three times the rate of whites; they would need to adopt at 12 times the rate to keep pace with the growing demand for homes. "American white folks go all over the world getting babies," Anderson says. "Why don't we take care of our own at home?"

ADOPTION IS A BACK-BURNER GOAL OF CHILD WELFARE AGENCIES LARGELY BECAUSE of five myths perpetuated by defenders of the status quo:

• *Myth No. 1: Two-thirds of the children in foster care will return home.*

What defenders of the system fail to add is that as many as half of those children end up back in the system. They were physically or sexually abused again, a drug-addict parent left them alone for days at a time, or a parent couldn't cope and essentially checked their kids into foster care. The federal government's own studies have concluded that 30% to 50% of the children in the foster-care system need permanent homes. As of 1990, 69,000 children had "permanency plans"—meaning that even their caseworkers, who are trained to assume that children will return to their parents, had given up all hope of sending them back to their biological families.

While it's important to be vigilant against overzealous social workers, the numbers suggest that only serious abuse and neglect cases land a child in foster care. Only 14% of the children involved in the 1 million substantiated child-abuse reports last year ended up in foster care, "contradict[ing] the prevailing notion . . . that child welfare workers commonly remove children from their parents," according to a recent child-abuse survey.

• *Myth No. 2: There are no babies available for adoption.*

Defenders of the system repeatedly note that of the 50,000 children now legally available for adoption, only 4% are infants—the children most likely to be snapped up quickly by adoptive parents. In fact, a central reason for the infant shortage is that babies such as Shana typically languish in the system for two to three years before caseworkers take the time and trouble to ask a court to terminate parental rights, paving the legal way for adoption. A federal Department of Health and Human Services study found that even children slated for adoption stay in foster care for 3½ to 3½ years. Janis Heffner, director of the Dave Thomas Foundation for Adoption, stresses that these time periods, so often viewed from an adult perspective, should be understood as "kid days"—eating up precious time from finite childhoods.

Last year, researchers at the University of Chicago's Chapin Hall Center for Children concluded an exhaustive study of the foster-care systems of five major states, including California. The most striking change in the foster-care populations of those states between 1983 and 1992, the researchers found, has been the number of infants admitted to placement. "Children under the age of 1 are now three times more likely to enter foster care than children in the next year of life." In California, 25% of first admissions to foster care were under age 1; that's nearly 7,300 babies. In New York it was 29%.

The report also found that the median-length stay in foster care was usually much longer for infants—as long as 3½ years in New York. The longer a child stays, the researchers found, the less likely he is to ever leave. In a separate study, Richard P. Barth, director of the Child Welfare Research Center at U.C. Berkeley, examined the records of infants who entered California's system in 1988. After four years, nearly a third of the children were still in state custody.

Among the 85,000 in California's system, the average age of a child at placement has dropped from 10 in 1984 to 6½ in 1993. As in other parts of the country, the main reason that these young children enter the system is no longer physical and sexual abuse but rather neglect by a drug-addicted parent.

• *Myth No. 3: No families want to adopt foster-care children.*

The child welfare system is built on the proposition that most of its young-

tional problems.

That's the bad news. The good news is that when UC Berke Barth conducted a four-year study of California parents adopted drug-exposed children, he found this surprising outc These parents were just as pleased with their experience as o adoptive parents and actually reported feeling closer to their than their counterparts. In Keck and Kupecky's book of advice adopting the "hurt child," they write that while early abuse and glect and multiple foster homes "interfere with healthy att ments . . . [These] children can learn to love and trust adults family setting . . . it is rarely too late for a child to change."

• *Myth No. 3. Strict deadlines govern a child's stay in foster care.*

The older the child, the more likelihood of damage—for bro commitments and lost hopes and abuse in every form. The pri ry concern of the clients who go overseas through services like Washington-based Adoption Services Information Agency, says rector Mary Durr, is less race than age. They want babies.

If that's the case, the claim of state child welfare bureaucra that most of their children are unadoptable has become a self-filling prophecy. The schedule for releasing a child for adoptio a leisurely one. Under federal law, a permanency plan must be place for a child within 18 months of entering the system; so states have an even tighter rule. Typically, though, such rules me ly provide a starting point for action. If a child is to be placed adoption, a prolonged process of terminating parents' rights of begins then. The court process drags on with no-shows by attorn or social workers, schedule changes by judges, lost files and a t gle of other legal details.

To make a child legally available for adoption, agency work must track down both the birth mother and birth father and m every "reasonable effort" to reunify the family by getting the p ents off drugs, into counseling and adequate housing—whate they need. In a recent government survey, 75% of child welf workers cited their inability to meet this "reasonable effort" test

MYTH #3 Adoptive parents can't handle kids who emerge from the syste

sters are "unadoptable"—a euphemism for unwanted—children. The diamond-and-arrow diagram on Page 5 of an otherwise bloodless federal report, issued by the Health and Human Services Department's inspector general's office in 1991, manages to spell out a typical child's fate in spine-chilling detail: At three separate points along the way of the interminable, years-long legal process of freeing a child for placement, the caseworker addresses the question: "Is the child adoptable?"

Most state agencies are so convinced that families aren't available for school age or nonwhite children, or groups of siblings, that they lump these youngsters into a category called "special needs"—along with those children who have serious medical conditions. A state-federal subsidy, averaging $350 a month per child, is then offered as an enticement to prospective families.

It's unclear how many prospective parents for system kids are out there because state agencies have demonstrated little imagination in reaching out to them. But when they do—as Massachusetts did when it initiated a recruitment campaign at the urging of the Cambridge, Mass.-based Institute for Children—adoption rates increase dramatically. Twenty-five years ago, about 89,000 American children were adopted each year; now that figure is closer to 50,000, even though an estimated 1 million infertile couples want children.

The National Committee for Adoption estimates that there are 20 prospective adoptive couples per adoptable child in this country. Obviously, most of these parents want healthy babies. But Conna Craig, director of the Institute for Children, has tracked down a number of waiting lists around the country for children with disabilities, to prove her point that adoptive families are available. "I've never seen an unwanted human being," she says. "It just doesn't register with me."

• *Myth No. 4. Adoptive parents can't handle the children who come out of the system.*

It's true that more than 60% of foster-care preschoolers were exposed to drugs before birth, according to a congressional General Accounting Office study. Those with the most lethal combination—crack and alcohol—in their systems move through a rocky infancy of severe crying bouts and tremors; in elementary school they suffer from short attention spans, impulsiveness and often have trouble following directions. Children who have been physically or sexually abused—26% of foster-care children—can have a range of emo-

fore a court as the chief obstacle to freeing children. If, after several mon or even years, the parents still look like poor prospects, the social worker r ically searches for extended family.

Timetables aren't the only problem. California's Anderson echoes ot reformers when says she is "appalled" at the quality of field work she's se in both her state and, earlier, in Wisconsin. "No other industry would bri an employee in and not train them to do business their way," she says. A r tional survey found that more than 50% of caseworkers had no previous perience working with children and families or in human-service agenci

Like many veterans in child welfare, Anderson totters between empa for the drug-addicted mothers and concern for their children's future. L many, [illegible] "We're not s ing a lot of parents get their [illegible]," she says. "Meanwhile, childr are losing their opportunity for permanent homes. Black boys, in particu If you wait beyond infancy, he's lost his chance for permanency. I'm not w ing to risk that while mom gets her act together."

SEVEN FOSTER MOTHERS SQUEEZE AROUND A TOO-SMALL TABLE AT A BAKE Square restaurant north of Chicago as a waitress ferries in iced tea, pecan and chef's salad. This group of women has gathered tonight to share th stories because they broke the cardinal rule of fostering: They fell in l with their children. One by one, they began to adopt the children they h intended to say goodby to—the preschooler who bangs his head so hard a purposely that he needs a special crib top; the 11-year-old who still can't member to look both ways before he crosses the street; the 6-year-old as matic girl on regular medication for her mood swings.

Most of their children have learning and speech delays; some are en tionally disturbed, but others are doing fine. Among the scores of stor about the kids these women have fostered and adopted, there is only o mother who rejected one child: a 9-year-old who set fire to the baseme Judy Berman's voice vibrates with pain as she tries to convince herself t she did the right thing in sending him to a therapeutic home. "I didn't w to take the chance that this child was going to hurt the others," she says. "I not sure I made the right decision."

The women, solidly middle-class and ranging in age from their 30s

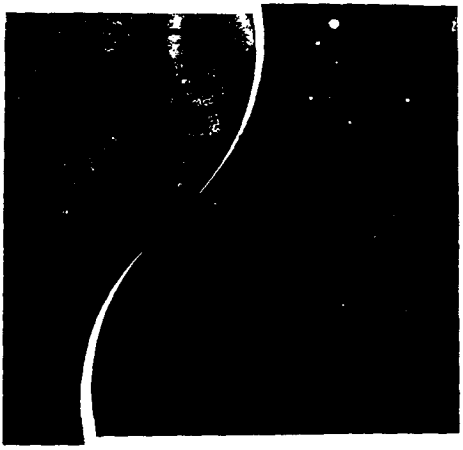
their 60s introduce themselves with tag-lines that capture the polymerous families they have assembled: "Three biologicals, three adopted, one foster," says Shirley Polk. "Six biologicals, five foster, four foster-adopted," says Berman, whose oldest children are grown. About a third of foster parents are also adoptive parents; if anyone understands the obstacles to adoption, these women on the front lines do.

Child welfare systems are under attack almost everywhere; in more than 20 states, agencies are under court order to reform their way of doing business. But Chicago, like no other community, has made child welfare a *cause celebre*. When 3-year-old Joseph Wallace was hung by his mentally ill mother after being returned to her care, the whole nation heard about it. When police walked into the Keystone housing project and found 19 unkempt children alone and uncared-for, network cameras were close behind.

The city's media fixation with the plight of children has prompted some improvement, the women say. New judges who aren't family-preservation ideologues preside over child welfare cases, and they have allocated more court time to clear up backlogs. But those steps amount to holding an umbrella against a hurricane. The quest to adopt children has turned these women's lives into a hazy blur of court dates delayed, phone calls to caseworkers that go unanswered, lengthy legal battles against hastily made decisions to send children back to abusive parents or into shelters because their skin color doesn't match that of their foster parents.

"You have a lawyer bill going all the time when you're in this system," says Berman, a guileless grandmother who pokes fun at her own naivete. "I never thought I'd be going to court and worrying about ACR's [administrative case reviews]. I thought I was just going to be changing diapers and taking care of babies."

Among the women gathered, Terri Voss' adoption of Ricky,



MYTH #5 Strict deadlines govern a child's stay in foster care.

who came to her as an infant, was faster than most: It took "only" 3½ years, largely because Voss had the support of Ricky's birth mother. Social workers sent Ricky into Voss' foster home days after his birth because his mother's live-in boyfriend had already confessed to beating his 8-month-old sister to death when she wouldn't stop crying.

Voss' only snag in adopting Ricky, who is African American, was a caseworker who wanted to remove him from the home and send him to a shelter until a black foster family could be located. That plan was squelched with the support of another caseworker and Ricky's mother. Karen Schroeder took in a Latino baby girl as an infant who had tested positive for a list of 15 drugs. When she was 6 months old, the family was notified that she would be removed, because neither foster parent was Latino. The Schroeders appealed, and the decision was dropped.

Transracial adoptions are governed by a curious patchwork of state laws ranging from guidelines for collecting information on a child's race to mandatory waiting periods to search for same-race families. But the system is less driven by the law than by the political agendas of individual social workers or county agencies—with absurd results. A white California couple adopted their black foster child but were told by a different social worker that adopting his sister was out of the question. Determined that their son should grow up with black siblings, they went to Ethiopia this summer and brought back three youngsters.

A new federal law prohibits such practices as waiting periods to seek a same-race family and requiring caseworkers to justify transracial adoptions. But it does allow caseworkers to use race as a consideration in some cases, prompting critics to charge that the law still gives caseworkers too much leeway to exercise their own biases.

Racial agendas aren't the only obstacle. Biological families, regardless of their abuse or neglect records or tentative connections to their children, still hold the upper hand. Berman raised one little boy for five years with no contact from the birth family and was trying to adopt him. Six months ago, a grandfather showed up to claim custody. Heartbroken, Berman is determined to fight the elderly man, who also wants to take in several other grandchildren, some of whom suffer from behavioral disorders. "It just doesn't seem right that they would move a child who is really happy and adjusted and doing well, whose only hang-up is that every time we go to court he wants to know if today is the day he's going to be adopted," Berman says."

Joe came to Lisa Hannum's home when he was 6 months old; he had untreated burns on his hand, and his thigh bone had been fractured. Someone—the parents claim it was a baby-sitter—had shaken him so hard that doctors had to open his skull to relieve swelling on his brain. "The way the blood was coagulated on the brain, it was clear this was more than one shaking," says Hannum.

But the court ordered Joe back home just before his second birthday. Shortly after that return, the father abandoned the toddler in the back seat of a car late at night as he was fleeing police. Within months, the little boy was back at Hannum's house—a changed child. "Nine months later, I didn't even know him," Hannum says. "He'd sleep outside my door, he'd crawl in bed with me, he was up eight times a night. He's very insecure. Even tonight—he comes to the door and says to me, 'When are you coming home? Is this a short meeting? Is this a long meeting? Are you coming home?' Like I'm going to leave him."

Running through these women's stories is bafflement and amazement toward the chaotic lives and drug-induced disinterest of the mothers who lose their children to the system.

"When I first started, I thought children were taken [from their families] too readily. Now I feel exactly the opposite," says Karen Guidarelli, a foster parent for five years. "You don't see caring parents as much as you'd like to."

"You'd like to see a parent, even in court," interjects Hannum.

"You'd like to see anybody who cares about the kids like crazy," adds Guidarelli.

"You'd like to hear someone say: 'What do I have to do to get this kid back? I'll do anything,'" Polk says. "And then go do it."

DO WE BLAME THE PARENTS? OR THE FORCES OF POVERTY THAT SHAPE THEIR bleak, drug-ridden lives? Those two questions paralyze today's reformers, breaking policy-makers into opposing camps.

If you're Patrick Murphy, Cook County's raw-talking public guardian, a man who attacks family-preservation programs with the same vigor he once em-

Continued on Page 32

Adoption

Continued from Page 19

braced them, you point fingers at the homes that produce these children. Murphy grabs attention for his cause by reaching for the stories that he knows will set his listener's hair on end: the child returned to abusive parents only to be thrown up against a wall and killed; the 15-year-old "father" who locked himself in a closet with his two infant children so he could perform oral sex on them.

"Just because two people [have sex] and nine months later a baby is born, that doesn't make it a family," Murphy says. "And it doesn't make those kids a mom and dad either. . . . In some cases you should cut that parent's tie the minute the kids walk in the door, and we don't. If some case comes in here where the father or paramour has screwed the kid and the mom has looked the other way, why are we playing around? What are we doing talking about rehabilitation?"

If you're Thomas Wells, a lead reformer of the District of Columbia's system, you point fingers at inept government programs that leave troubled parents in the lurch. "It's easy to hate these families," says Wells, executive director of the district's Consortium for Child Welfare. "But as soon as you do, all the laws will be based on taking their kids away from them."

Both sides of this political debate miss the point. Most of the children pouring into the system suffer from severe neglect, not abuse. And you don't have to "hate" these parents to recognize that, in many cases, there is no chance of rehabilitation: recent history suggests that no amount of government spending is going to solve that. Even in cases where the parents can't be saved, their children can.

Here's where to start:

• *Sexual abusers and physical tormentors don't deserve a second chance. Less abusive and neglectful parents do, but that second should be finite.*

If pressed, the courts could immediately terminate parental rights in thousands of cases of severe abuse and neglect without coming near the ones that aren't so clear-cut, where some hope remains that a parent will change. In these gray cases, more of the legal burden should shift from social workers who are trying to meet the "reasonable efforts" standard, to parents, who should demonstrate that they can rear their children without harming them.

Within hours after a child is removed from a home, family support services need to be offered. As veterans in the field note, this mind-clearing loss provides a short window of opportunity for rehabilitation that may not come around again. The chances of reunification fade the longer a parent and child are separated.

• *Put babies on a fast track.*

The first priority of the system should be to move out the infants and toddlers pouring in, thousands of whom have been abandoned. If the system's defenders insist that their children are too old and too broken to be adopted, they should start by looking for homes for the little ones—for whom there is strong demand—without regard to race. The child welfare lobby worries that this would be unfair to older children in the system. But fairness is a steep price to pay for the lives of tens of thousands of kids who could otherwise be saved.

• *The same sense of urgency that brings a child into the system should guide plans for his departure.*

Policy-makers need to recognize that months lost in an infant's life are critical; so is the year or two lost by a preschooler. A strict "one-year-and-out" policy should guide the nation's child welfare system. Every effort should be made to find a permanent home for a child—with his biological parents or in an adoptive family—within 12 months of entering the system or risk losing federal funding.

• *A less adversarial, less litigious process should underscore reform.*

The process of freeing a child for adoption now rests on a courtroom drama staged to prove a parent is "unfit."

But Murphy estimates that 20% to 30% of the parents who lose their children to state custody would embrace adoption if it was presented, outside court, as a noble option in the best interests of the children. Adds Carol Williams, associate commissioner of the children's bureau at HHS, "We are missing an opportunity by assuming it has to be an involuntary proceeding. For some of these moms, if you really sat down and had a conversation about what they can and cannot do, they would voluntarily surrender their kids."

These mothers are not young; they are drug addicts on their third or fourth child who have lost all idealism about child-rearing and realize that they can't cope. The mean age of women at risk of abandoning their infants, for example, is 27.

• *The opportunity for [illegible] fathers and other relatives to seek custody should be restricted to that same one-year period.*

Too often, when children are settling into foster homes and about to be adopted, relatives appear out of nowhere—often tracked down by social workers bent on pursuing family preservation. Children are not footballs to be handed off at adults' whims.

Paternal registries, which a number of states are experimenting with, would shift the legal burden to the father so that he doesn't have to be tracked down later on—or pose the threat of turning up after an adoption. Wells' proposal that social workers be required to convene a meeting of a child's relatives within 10 days is a good one. If a grandparent, aunt or uncle wants to assume responsibility for raising a child—a growing segment of the foster system called "kinship care"—then the time to make that offer is upfront, not several foster homes down the line. Even children in kinship care move through an average of three placements.

• *Government aid to adoptive parents should be tailored to a child's medical needs, not to his or her age or skin color.*

Great strides have been made in treating drug-exposed children and those who have suffered abuse and neglect. But the Medicaid card that accompanies "special needs" children to their adoptive homes puts only a small dent in the physical therapy, speech therapy, special education and the like that they may require.

As House Republicans attempt to save money by block-granting and cutting adoption subsidy dollars, and as their leader, House Speaker Newt Gingrich, spews the attention-grabbing talk of orphanages, an important opportunity is being missed: The youngest children pouring into the system need homes, not institutions, and prospective parents of these troubled kids need financial help tailored to their medical and special educational needs. They require a far more elaborate system of counseling and therapy to help them through the potentially rough years—particularly adolescence.

UNTIL POLICY-MAKERS START demonstrating the courage to embrace radical change, kid-days for those trapped in the system will continue to stretch into years. The children at St. Anne's are clean and well-fed. There are plenty of toys to play with. The volunteers are sweet and warm. Physical therapists make weekly visits. But as one baby among dozens, a child's cries might have to wait a turn. Some of the toddlers at St. Anne's are so hungry for affection that even when a stranger picks them up, they cling tightly and resist being put down.

With Elisabeth Boyle at my side, I walk down the hall that separates the babies' cribs from the bunks for the children. A 4-year-old girl comes skipping up between us, grabbing one hand from each so that we'll swing her into the air. "Guess what?" she says. "Tomorrow my mom's gonna visit. And my dad and my sister and my brother."

"No they're not," interjects an older boy who skitters past. "Don't listen to her," he says of his friend. "She's lyin'."

USA TODAY

MARCH 14, 1996

Adoptable kids go wanting

Programs in the private sector try to fill void left by public bureaucracy

Recently in Philadelphia, the state-run Department of Human Services went to court to stop a private agency from finding a family for an abandoned infant, "Baby Mitch."

Even though the private agency offered to handle the adoption free of charge, the department claimed that a "motive of profit" prevents private agencies from acting in the best interests of children. Instead of finding a loving family, the department proposed to put "Baby Mitch" in foster care, along with a half-million other American children. A Family Court judge ruled that the baby can be adopted through the private agency.

Commentary
By Connie Craig

You might think that the Department of Human Services would welcome the private sector's help in finding adoptive homes for children. But more often than not, state agencies act as a barrier between good families eager to adopt and the children who desperately need them.

Today, 50,000 foster children — based on a study by The Institute for Children of 48 states so far — are waiting for what most people take for granted: a loving family and a permanent home. They are legally free to be adopted; their biological parents have lost or relinquished parental rights. In 1992, the most recent figures available, less than 20,000 of these children were adopted. They will wait, on average, between three and five years for a family. The American Public Welfare Association states that between 1983 and 1990, on average, 15,000 foster children "aged out" of the system each year; thousands of 18-year-olds are left to navigate early adulthood with no permanent family. The American Civil Liberties Union states that 40% of all former foster children end up on welfare.

Meanwhile, qualified families wait to adopt children of all racial backgrounds and ages, children with disabilities, even children with AIDS. But states — which receive a federal subsidy for every day a child is in foster care — can't seem to find adoptive homes for these children. State bureaucrats say that finding good families is next to impossible. They say they need more money.

That's nonsense. Two adoptive dads in a garage in Virginia prove that where there's a will, there's a way. With a mission of increasing the rate of adoption, Chris Moore and Phil Schulte teamed up to create AdoptioNetwork, a massive database which they built and have maintained on the World Wide Web since 1994 for less than $1,000. AdoptioNetwork is a privately funded, volunteer-operated service that provides immediate access to adoption resources — including listings of more than 2,500 adoption agencies — to the 15 million people who use the Internet. Moore and Schulte gathered information that was previously "locked up in institutions" and have made it available free of charge. Says Schulte, "Our mission is to serve the adoption community. We've created a structure that is user-based rather than institution-based." Adds Moore, "It's a lot more cost effective and easier for someone to go to a library and use a computer than to make a dozen calls to government agencies."

Every month, 5,000 people visit the AdoptioNetwork site at http://www.adoption.org/adopt.

State agencies claim that some children are "unadoptable." Bureaucrats contend that only a small percentage of the 50,000 are healthy, white babies — supposedly the only children sought for adoption. Instead of adoptive homes, states offer teen-agers a program called Independent Living. Katie, a 16-year-old foster-care veteran, sums up her experience this way: "All I ever wanted was to be adopted. Instead, the people at the group home taught me how to apply for welfare. To me, that doesn't mean living independently."

In contrast to state agencies that bemoan a shortage of adoptive homes, Pat O'Brien, founder of You Gotta Believe!, a private agency that places teens for adoption, insists that the families are out there. O'Brien's agency doesn't have the money to advertise, so he "works the streets" of Coney Island, spreading the word about You Gotta Believe!'s eight-week "A-OK" (Adopting Older Kids) Parent Preparation course. O'Brien and his all-volunteer staff take the "field of dreams" approach. "We build the training for adoptive families, and people come. Seventy-five percent of the effort is you just gotta believe the families are there."

You Gotta Believe!'s mission is homelessness prevention. While New York and other states offer 14-year-olds in foster care the option of signing away their wish to be adopted in favor of "independent living," O'Brien warns that many of these children will be abandoned by the system at age 18 or 19. "Independent Living means no one tries to find families for these kids," he says. "To a foster kid, Independent Living means 'I'm homeless at 19.'" This year, New York City will discharge 4,000 foster teens for whom the system has found no permanent homes. New York's Coalition for the Homeless reports that 60% of the homeless in the city's municipal shelters are former foster children.

Private agencies are finding families that states say don't exist. Jim Jenkins co-founded the Children with AIDS Project of America, a private, volunteer organization that has recruited more than 1,000 families to adopt children who are HIV-positive or AIDS orphans. The project, which started eight years ago on Jenkins' kitchen table, recruits families and locates children via hospitals and adoption agencies. Jenkins says there is no shortage of interest in adopting the children some states would call "unadoptable." Annually, more than 2,000 people who want to adopt children affected by AIDS contact the project. Jenkins, himself an adoptive father of two children who were born HIV-positive, has been called on by organizations in eight countries for help in creating similar projects.

Private groups are stepping forward to save the children. In its upcoming report, "Private Approaches to Foster Care and Adoption," published by the Reason Foundation, the Institute for Children profiles private-sector methods of making adoption work.

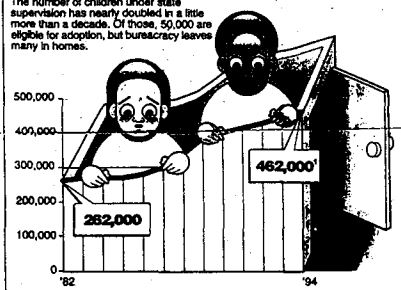
I know, firsthand, the anguish of waiting years for a state bureaucracy to finalize an adoption. I was a foster child in a family that raised 110 children. I was one of the lucky few — I got out of the system after eight years. My foster family adopted me and gave me what I had always wanted: a last name.

If state-run agencies cannot find families for 50,000 children, they should step aside and make room for the people who can. Private groups like AdoptioNetwork and You Gotta Believe! and people like Jim Jenkins are showing that America is ready and willing to adopt every child who waits. In the "Baby Mitch" case, Philadelphia's Family Court Judge Esther Sylvester characterized her decision as a "wake-up call" to the Department of Human Services. For the sake of the 50,000 waiting children, this wake-up call cannot come any too soon.

Connie Craig is president of the Institute for Children, a private, nonprofit group based in Cambridge, Mass.

Children of the state

The number of children under state supervision has nearly doubled in a little more than a decade. Of those, 50,000 are eligible for adoption, but bureaucracy leaves many in homes.



*= Estimate, includes children in foster homes, group homes and shelters.

Source: American Public Welfare Association

By Marcia Stalmer, USA TODAY

Page 6 / VOICES / May-June, 1996

Family Foster Care Placement: The Child's Perspective

By Penny Ruff Johnson
Carol Yoken and
Ron Voss

This study of the impact of family foster care placement as seen by a number of children ages 11 to 14 found that, although placement caused severe disruption for the children because of the necessity of blending into new neighborhoods, schools, and of making new friends, the children described their lives and circumstances positively for the most part. They had much to say, however, about improving the experience they underwent, about contact with their own families, and about improving family foster care for children and families generally.

Child welfare policymakers and practitioners continue to debate the relative merits of family foster care placement and in-home services as appropriate responses for state and local authorities trying to protect children who are victims of abuse and neglect. This study gives voice to the opinions of those most affected by the outcome of the debate — the children themselves. It examines the impact of the removal of a child from the home of the biological parent and the consequences of this decision from the perspective of the child. The study focuses on the children's understanding of the circumstances surrounding placements; the reasons for changes in placements; the impact of changes in school, friends, and neighborhood; the importance of the caseworker to the child; the children's thoughts about the future; the children's views of the state as an entity; and the use of family foster care as an intervention.

Background

The enactment of P.L. 96-272, the federal Adoption Assistance and Child Welfare Act of 1980, contributed to the debate of the merits between in-home care and family foster care by underscoring the importance of the biological family to children. It requires child welfare workers to make reasonable efforts to prevent the placement of children and to facilitate the return home of children needing placement. Efforts to prevent placement have been implemented by means of intensive family preservation service interventions. Keeping children in the biological home avoids both the monetary and the emotional costs of removing a child from home, but increases the possibility of continued harm to the child. Understanding how to weigh the costs of each strategy — in-home services or placement — is critical because of the considerable risks of serious injury to children in deciding not to remove them from their homes.

Current research in out-of-home care assesses children's development and well-being in care by comparing indicators of growth and development, such as the child's academic performance, and by examining the functioning of children formerly in care. Studies of children in out-of-home care have found that their academic performance is below grade level and that they suffer from low self-esteem [Barth 1988; Fanshel & Shinn 1978; Gil & Bogart 1982; Hicks & Nixon 1989; Rest & Watson 1984; Wald et al, 1988; Weinstein 1960]. It is not known, however, whether these problems are associated with placement in care or with the circumstances present at the time of placement, such as poverty, family conflict, or child abuse and neglect. Findings from postplacement studies suggest that, on the whole, children formerly in care function adequately as adults and are satisfied with primary relationships in their lives [Festinger 1983; Lauder 1986; Maluccio 1985; Meier 1965; Rest & Watson 1984].

Research studies involving the assessment of care by the children themselves are few, and most tend to be retrospective. A number of postplacement studies have included interviews with children formerly in care about their out-of-home care experiences [Barth 1988; Festinger 1983; Meier 1965; Poulin 1985; Rest & Watson 1984; Triseliotis 1984; Van Der Waals 1960]. Though such postplacement interviews portray out-of-home care as largely benign, studies of this kind offer data filtered by time and memory. The present study captures the feelings and attitudes of children in family foster care [illegible] perspectives and offers an opportunity for examining the immediate costs and benefits of placement to the child. Such research will provide policymakers, practitioners, and planners with valuable information about family foster care from the child's perspective and can lead to substantial improvements in family foster care practice. The children themselves have much to teach us about those aspects of our family foster care system that are working well for them and their families and those that need modification.

Study Design and Methodology

Research Plan

This study is based on interviews with children who had come to the attention of a large public child protective services organization in Illinois and who were subsequently placed in family foster homes mainly because of serious abuse and neglect. The children had been placed in homes supervised either directly by the state or by private agencies under contract with the state. Children in both types of homes were included in the sample.

A semistructured interview consisting of precoded and open-ended questions was used. The interviews, which lasted 90 minutes, were conducted by four social work students from the University of Chicago School of Social Service Administration, all of whom had some experience interviewing and working with children. Interviewers were selected for their ability to establish quick rapport with children and were trained for this project. Interviews were taped, with the consent of the children. Within several days, interviewers completed the instrument by listening to the tape and recording verbatim the children's responses to open-ended questions.

The children, foster families, biological parents, and caseworkers were notified of the project by letter. Consent for participation in the study was obtained from biological parents, the children, and their caseworkers. A phone call was made to the foster home by the interviewer to review the purpose of the project and to request the cooperation of the child and foster parents. Four children refused to be interviewed and one foster parent would not allow the child to be interviewed. This foster parent was concerned about the effects of the interview on the child, who was having a difficult time adjusting to the placement.

Most children were interviewed in private, usually in their foster homes. Because of a lack of privacy in the foster home, one interview was conducted on the front porch of the foster home and another was held in the interviewer's car. At the request of the foster parents, four interviews were held outside the foster home — three in social service agencies and one in a restaurant. Most children became involved in the interviews quickly and seemed to enjoy being asked their opinions about their lives.

Sample Description

[illegible] geneous sample of youths in family foster care was sought. The children selected were between the ages of 11 and 14 years and had been living in family foster care in Cook County for between six months and two years. It was thought that this age group contained the youngest children having the cognitive and communicative skills to reflect on and describe their experiences.

A sample of 95 children was drawn. Fifty-one of these children were randomly selected from state foster homes; the remaining 44 came from six large private agencies. Of the 95 children selected, 59 were interviewed — 25 from private agencies and 34 from state family foster homes. Thirty-six children were dropped from the sample — 16 because they had moved out of family foster care by the time of the interview, mainly to return home, and the other 20 because the biological parent (3), the child (4), or the foster parent (1) refused to consent to the interview; because the child's handicaps prohibited an interview (3); because the child had been in family foster care for more than two years (4); or for clinical reasons (4). One child was excluded because she spoke only Spanish, and we did not have a Spanish-speaking interviewer.

The median age of the children interviewed was 12 years. Thirty were male and 29 female. There were 43 African American children (73%), nine Caucasian children (15%), and seven Hispanic children (12%). These racial proportions closely match the total population of children who fit the sample description. Of the total population, 73% were African American, 18% were Caucasian, 8% were Hispanic, and 1% were of other races. Seven children came directly into their present family foster homes and had had no other placements; nine children had had only one previous placement. At the other extreme, 11 children had three to four previous placements, and eight children had more than four. The median was 2.5 placements prior to living in the current home.

Research Findings

The findings present facts and opinions as they were given by the children interviewed. Throughout the report, children's quotations are reported to represent the feelings and perceptions of children in the sample. Because this research is concerned with the impact of family foster care placement as children experience it, no effort has been made to verify the accuracy of the children's responses.

Circumstances Surrounding Placement

Most children were able to identify a precipitant of their placements in family foster care, although for at least 40%, the circumstances were confusing. Nineteen children said that their placements were the result of abuse or neglect. Twelve children ascribed the problems to the mental illness or substance abuse of their parents. Ten children identified more than one problem [illegible] know why they entered family foster care (10 children) or their responses suggested some confusion over the events that led to placement. One child said, "We got evicted from where we were living or something happened to my sisters." Another child thought the placement was his fault because he wasn't attending school.

For almost two-thirds of the children these problems were not new. About half reported that other attempts at helping with family problems had been made by relatives (16), caseworkers (6), and friends (2). Most children reported that these efforts were thwarted because their parents either ignored them or were unable to accept help.

Reasons For Changes In Placements

Very few children indicated that they were active participants in the decision to move. Over half (58%) of the children who had been previously placed said that they had little or no involvement (three and 31 children, respectively) in the decision to move. Only 16 children reported that they were at least somewhat involved in these decisions. Children attributed responsibility for the decisions to caseworkers (15 children), foster parents (eight children), or relatives (five children). Ten children didn't know how the decision had been made.

Though many children felt that they had been given little consideration in the selection of the foster homes in which they lived, most seemed to be trying very hard to make these placements work. Over three-fourths of the children said that they tried hard to get along in the foster home. Similarly, all but seven children felt that their foster parents were trying hard to help them fit into the foster homes. Forty-

three children (73%) reported getting along well with their foster parents.

Problems In Current Placement

Not many children reported having serious problems in the foster home. The ten children who complained of problems mainly described aspects of the foster home to which they were having difficulty adjusting. One child noted that the foster family had a dog, which made him uncomfortable. Other problems resulted from foster parents' disapproval of some aspect of the child's behavior. One child complained that the foster parent did not like his staying out late, and another child accused his foster father of not wanting him to grow up. "Bob can only take so much; then he gets hot. He wants me to stay young." Most of these were fairly common adolescent complaints, but a couple of the children reported more serious threats to the placement. One child mentioned the foster parents' rejection of her when she became pregnant.

Changes In Child's Life

The placement of a child in foster care brings about enormous changes in a child's life. Although placements that permit some continuity with the child's previous life are desirable, seldom were the children able to continue in the same schools or maintain contacts with neighbors and friends.

Friends and neighborhood. Given the importance of peers at this stage in a child's development, the disruption of friendships can be particularly troublesome. Eighty-five percent of the children (50) had different friends in their new homes. Sixty-six percent of the children (39) reported that they had occasional contacts with old friends. Over one-third of the children identified friends as the persons they miss most from their previous lives. In spite of the disruption in friendships, half said that the children in the new neighborhoods were friendlier and easier to get to know than were the children from their old neighborhoods.

All but three children were living in different neighborhoods. Fifty-six percent of the children (33) said that their foster home neighborhoods were better, mainly because of improved physical surroundings or because the people were friendlier and there were fewer fights. Seven children said that their foster home neighborhoods were worse.

School. Only four children had remained in the school they had attended before placement. Almost half (48%) of the children said that their new schools were better than the previous schools, but one-quarter of the children thought the new schools were worse. Those who thought the schools were better said that the teachers were better, nicer, and more helpful; that students were nicer; that there were fewer drugs and fights; or that the school offered better instruction and more activities. The other 15 children (25%) said that the new school was much the same as the old.

Slightly over half of the children reported that changing schools was difficult; most found it hard to make new friends and get acquainted with new teachers. Despite the difficulties of the transition, many children seem to have become highly involved in their schools. Almost half participated in recreational activities or clubs at school, including sports, student government, safety, and academic special-interest groups.

Other changes. About half of the children identified other ways in which their lives had changed since they came into foster care. Almost all of the changes were described as positive. Several children mentioned that they were treated better. "My foster mother tells me what's wrong. She doesn't blow up [like my parents do]." Others commented on improvements in the quality of their lives since coming into foster care. "The food is good here. I get more money, more babysitting jobs." "My whole life-style is changed. Everything is better."

Coping With Separation From Own Family

All but three children described missing their families; 56% reported that they miss their parents most of the time. Almost all children had advice to give their biological parents about family foster care and wanted to describe to them what it's like for them to be in a family foster home. The most common piece of advice was that parents should treat their children well, take care of them, love them, and not abuse them. "A child needs someone to raise them, someone to take care of them."

Children were also interested in telling their parents to "stay in contact" and visit them, because "children need to know them and parents need to know what the child's life is like in the foster home." Others thought parents should do what the state tells them to do in order to get their children back. One child cautioned his parent, "Don't get in trouble or get hurt. Don't talk to strangers. Don't take drugs."

Thoughts About Returning Home

Slightly over one-third of the children were worried about returning home. Most of these children worried that the problems of the past would recur. About one-third of the children, who wanted to live with their parents, were worried that they might not be able to leave the foster home. A few children worried about what the next foster home would be like.

All but 15 children said that their families needed something before they could return home. About half of these children said their families needed jobs, housing, furniture, money, and other physical possessions; another quarter identified counseling as most needed. The other children felt that their families needed several things, frequently a combination of material possessions and some improvement in character or temperament. "My mother needs a house with more room and she needs to get her act together and learn to control her temper." Or, more generally, "My mother could straighten up, could live with my father; they could get along and then we can be a family again."

The children's ideas about who was responsible for their return suggested that many are aware that their return home depends upon factors over which they have little control. For 56% (33 children) their return was contingent upon some change in their parents' behavior or circumstances. Two said their parents were mentally ill. Another eight children blamed the court or the state for preventing their immediate return, and four children said that they themselves were the cause of their failure to return. Two of these children claimed they didn't want to return home. The other 12 children either didn't know or refused to say what was keeping them from returning home now. Two children were returning home soon.

The Importance Of The Caseworker To The Child

Almost all of the children (50) said that their caseworkers were important to them, mainly because they helped arrange visits with the children's own families and because caseworkers helped children and their families. Some children said that caseworkers were important because they spent time with children in family foster care and cared about them. All but six children thought their caseworkers had been helpful to them, particularly with problems concerning friends or school (22%). For some, the help was significant. "She can save my life. She saved my life by taking me out of my real home. I would have gotten killed there."

Children offered a range of advice about what a caseworker should know to help children in family foster care. They suggested it would help if the caseworker knew about the child's biological family and why the child was in family foster care (38%), and about the foster home and the child's treatment there (36%). Other suggestions were more fundamental: caseworkers should know how to talk to children about problems and how to listen, should be on time for visits, and should schedule visits with parents. Several children—said—simply—that—the caseworker should know how to take care of kids. One child summarized, "She should know the rules, know how to take care of foster kids, give them vouchers, do what her boss tells her; and kids should do everything she tells them."

Children's Views On State Intervention

Thirty-four children (56%) thought it was a good idea to remove children from their homes, mainly because they believed that the intervention of the state might prevent more abuse and help the family. Several children expressed mixed emotions: the children missed their own families, even though their foster families treated them like family members. "We have birthday parties, presents at Christmas, food, a nice house, snacks, own bedrooms, own clothes, but you miss your sister and brother."

Seventeen children thought children should not be removed from their homes because "kids like to be with their own parents." These children stressed that problems are family business and not the business of the state. "Sometimes it's not their business. It's probable they can solve the problem themselves. They may not need all that help." A number of children claimed that the problems were really not that bad or that the presence of the state could make the situation worse.

Children offered a variety of alternative suggestions for dealing with problems. Eight children thought they could have stayed with relatives and six believed they should have stayed at home. Five children thought the abuser should have been removed instead of them, and three said that the family could have made changes before the child was removed. "When they took us away, they shouldn't have stepped in. They should step in when people are having problems."

Other suggestions dealt with the circumstances of removal from home. The events surrounding removal were frequently dramatic, and the children had strong reactions to them. At least one-quarter of the children were taken from school and placed immediately, often with the police present. Several children expressed embarrassment and anger at being taken from school. One child said, "The police should have waited until I got out of school." Another reported that three caseworkers and the police came to his home and took the children to a foster home.

Several other children felt that they had not been given an explanation for being removed from their homes or that they had been misled by the information that was provided. "They shouldn't have told us [only] ten days. Or [they should] let us go home and get our stuff. Or at least not take us away without our parents knowing. It seemed like we were going to jail."

In spite of suggestions for possible alternatives to placement, nearly half of the children admitted that the problems would have gotten worse or stayed the same had their removal not taken place. One child threatened, "Somebody would've gotten hurt — my mother or Harry. I would have hurt one of them." Only seven children thought things would have gotten better without the intervention of the state. Two of these children said they would have helped to improve the situation at home. One child said in reference to his mother's drinking, "Maybe she would have stopped that stuff. I would have stopped her. I would have poured that stuff out."

From the perspective of the children, there was little difference between the services provided by private agencies and the services provided by the public agency. While children in private agency care were slightly more involved in placement decision-making and had more frequent contact with their workers, children in public agency care had more stability in their placements and in their relationships with their workers.

Children's Views About The Use Of Foster Care As An Intervention

Although there was little consensus about the benefits of family foster care, 35 children (60%) felt it was sometimes good for a child to be in family foster care. The reasons given often concerned the improvements in caregiving and the safety found in the family foster home. "There is no abuse or hitting in the foster home." "Foster parents are home and provide food and care." "The foster home is in a nicer neighborhood, with a better school."

The children had many thoughts about what kinds of people make good and bad foster parents. Almost two-thirds of the children described a good foster parent as "a person who likes kids, cares, listens, and understands." Many children added that "a good foster parent can teach right from wrong, should treat kids fairly, not play favorites or have a bad attitude and jump on you before listening." One child described a "good" foster parent

.....(Continued On Next Page).....

as "a nice person with a good clean house, where you can have company, rest, do what you want — like you can go to the refrigerator when you want to — and where you can feel comfortable." "Bad" foster parents were described as persons who are "mean and do not care" or "someone who yells and hits." A few thought that people who were strict, stingy, and give few privileges would make bad foster parents.*

The children offered some advice to foster parents about foster children. They thought it important for foster parents to know something about the child's history and why he or she came into foster care. Others wanted foster parents to know about the child's personality, what the child likes and does not like, what hurts the child's feelings, and how to help the child. Some children simply said that foster parents should know how to take care of children and know the "rules" of being a foster parent.

Conclusion

The children's descriptions of life in family foster care are only part of the answer to the question of which alternative carries the least cost to the child. For a few of the children, placement seemed to be the only answer since the consequences of remaining at home were enormous. They were worried about being seriously hurt or "killed" had they not been removed from their homes. For other children, the alternative of choice was not as clear-cut. Thirty-four children thought it was a good idea to remove children from their biological homes because state intervention might prevent further abuse and help the family, yet all but 13 children suggested ways in which the problem could have been handled differently.

Over half of the children with alternative suggestions for change commented not on whether placement was necessary, but on the circumstances of placement. Suggestions involved reducing the upheaval and trauma associated with the events surrounding removal from their homes. They had little understanding of the rationale for removal, or information about what to expect in the immediate or long-term future. The children's suggestions for changes in foster care were mainly directed at improving the quality of information made available to children about the circumstances of the placement. Actions taken in the interest of protection were often confusing, frightening, and dehumanizing.

In all, the children's suggestions for changes in foster care had to do with keeping foster children informed about major events affecting their lives, reducing the upheaval and trauma associated with the events surrounding removal from their homes, and increasing information and contact among children, biological parents, foster parents, and workers. They thought that children, foster parents, own parents, and caseworkers ought to be better informed about the circumstances of the child's past, present, and future life; caseworkers and foster parents should have a better understanding of the circumstances that led to the child's placement, and of the child's worries and problems; own parents should know that their children miss them greatly, and also what is going on with their children in the family foster home; and children in care should know more about what is being planned for them by the adults.

Although the question of whether the benefits of maintaining children in their own homes outweigh the risks of serious harm remains open to debate, the results of this study suggest that many children view placement in family foster care positively. We know from these children that family foster care in many instances represents an improvement in their lives. The children miss their families and would prefer not to need care away from home, yet they indicated that placement in family foster care had helped them by interrupting the cycle of abuse or neglect and by providing the child protection and some respite while parents worked on their problems. Their suggestions for reducing the cost of placement in family foster care were aimed at improving the circumstances of placement rather than on alternatives to placement.

Penny Ruff Johnson, A.M., is Research Fellow; Carol Yoken, Ph.D., is Research Consultant; and Ron Voss, B.A., is Research Assistant, Chapin Hall Center for Children, University of Chicago, Chicago, IL.

*Two children mentioned foster parent abuse of children as a problem of living in a family foster home. Exploration of these references to abuse revealed that the children were talking about abuse that had occurred in former family foster homes, not in their present homes.

A Challenge For Mississippi's Adults — Special Children Need Families

Have you ever considered expanding your family circle to include a child who cannot live with his own family? Do you have room in your heart for a child who is broken and wounded? Have you weathered your own battles in life, and do you feel as if you have certain gifts now to offer others who are suffering?

If you answered "yes" to any of the questions above, then please consider this next question.

Could you welcome a child with special emotional needs into your home and family?

This all-important question is one that we at the United Methodist Ministry With Children and Families ask people on a regular basis. Our mission in this ministry is to find committed, stable, loving families for special foster children who are in demonstrable need of appropriate alternative family environments.

It is a constant challenge, for there are so many children who need our help. In 1994, the Mississippi Department of Human Services received 17,322 reports of suspected child abuse and neglect. 1,629 cases of abuse were substantiated and 2,024 cases of neglect were substantiated. Mississippi ranked second nationally in increase of child abuse and neglect reporting over the past decade according to Child Welfare League of America findings. This is a 298% increase.

For these young people, and others like them who will be taken into state custody in the next year, appropriate placements must be found because many of them are victims of abuse and neglect in their own birth homes.

What is meant by the term "appropriate placements"?

Foster children have special needs. Therefore, a continuum of care must be available. Some children and youth are so disturbed that they require acute psychiatric care in a hospital setting. Others can be helped in a treatment group home environment, like the ones opened to youth in Natchez and Columbus by the United Methodist Ministry With Children and Families. Many can live successfully in a campus setting, much like the ones provided by the Baptist Children's Village, Sunnybrook Children's Home and the Natchez Children's Home.

However, there are large numbers of children and youth who benefit from treatment in a less restrictive, more individualized setting, such as a foster family home. Children and youth who successfully complete other programs of care sometimes still cannot return home to be reunited with birth families for various reasons. However, they can live successfully in a less restrictive foster family home. Such homes are needed throughout the state of Mississippi. Many referrals received for abused and neglected children needing foster home care, are from areas covering the entire state of Mississippi.

Can a foster family deliver treatment/therapeutic care? Yes, they most definitely can!!

A child who has been neglected and/or abused, whether emotionally, physically or sexually, needs a strong family support system more than anything else. This type of child needs a family that will not let him down. He needs to learn about appropriate love and discipline from good role models in a family environment. A foster family is the basis for treatment of many abused and neglected children.

Many people ask, "How would I know how to treat a foster child in my home?"

At the United Methodist Ministry With Children and Families, we take great care to prepare our foster parents, as well as their birth children, for life as a foster family before we place a child in their home. During the application and licensure process, foster parents receive special training that give them the tools and methods needed to effectively handle specific behaviors and situations.

Once a child is placed in the foster home, the foster parent becomes part of a treatment team, along with our staff and others who are significantly involved in the child's life. A treatment team could typically consist of the child's birth parents, a teacher, a therapist and a medical doctor, in addition to our agency staff and the foster parents. The team works together to develop a treatment plan for each child.

This team work is what ultimately helps the foster parents to be successful in helping the child, along with the continued support and assistance they receive from our staff. The foster parents are never alone in this challenge. They receive continuing education, supervision and consultation throughout their term of service. Our staff members are in their homes frequently to provide this assistance and support and are available to foster parents 24 hours a day.

Due to violence, crime and societal problems in general, many people are hesitant to take a child into their home for fear the child will be violent, assaultive and uncontrollable. Children and youth with severe problems that would cause injury to themselves or others, or those who have serious destructive or uncontrollable behaviors are not appropriate candidates for foster home care. These are the children who require a more restrictive, acute-care environment.

Therefore, the United Methodist Ministry With Children and Families wishes to dispel any fear that people may have regarding the types of children and youth they would be asked to serve. The children and youth we serve through our foster home program do have emotional problems and some inappropriate behaviors due to the traumas they have experienced, but they are children and youth who are controllable and teachable and who can be helped effectively. Foster parents are not expected to take a child whom they feel will not be able to adjust to their family environment and routine.

Foster parents have lots of input into which child comes into their home. Their preference of age and sex is always respected. A network of foster families throughout Mississippi would provide a continuum of care for special needs children which is imperative in helping a child progress to the point of becoming successful in his environment, whether it be in his birth home, a foster home, at school, at church or in his community in general. What a wonderful way for people to give back to their communities.

The decision to become a foster parent should not be made hastily and only after much family discussion, prayer and consideration of all issues involved.

If you feel led to take this meaningful step in your life, please contact me and allow me to help you explore the possibilities for you and your family. **Remember, foster parents and a foster home can mean the difference between hope and despair for a child or youth. There is a Mississippi child who needs you!!!**

Carole Thornton
Family Specialist
United Methodist Ministry With Children and Families
(601) 853-5000

Best Horse In Years | Arts Preview | Romantic Resorts | Poet's New Home | Comes Calling

PLUGGED IN: *COMPUTERS AND MORE*, Page A61

SPORTS

Newsday

SUNDAY, MAY 26, 1996
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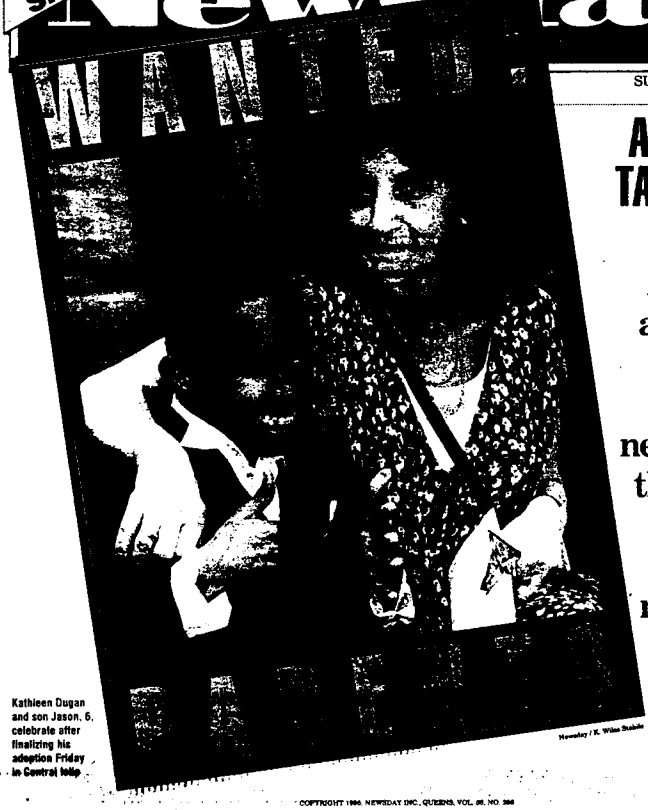

Kathleen Dugan and son Jason, 6, celebrate after finalizing his adoption Friday in Central Islip

Newsday / K. Wiles Stabile

ADOPTION TAX-CREDIT DEBATE

As more and more black children need homes, the search is on for new ways to find them families

PAGE A5

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'This Is Home'

Newsday / Julia Gaines

Bristol and Loretta Francis, center, with four of their five boys, from left, Jason Francis, 12, William Manning, 14, David Francis, 19, and Leonard Rockett, 11, in front of their Medford home. "I tell my boys, 'You're not going to go any further,' " Bristol Francis says. "This is it. This is home."

As thousands of kids wait, minorities are urged to adopt

By Deborah Barfield
STAFF WRITER

Bristol Francis leans against the post of his Medford home and watches four boys carefully clean the grill for the evening's dinner of barbecued chicken. He laughs as the youngsters, who have bounced from foster home to foster home, scramble to move the grill out of the pouring rain.

"I tell my boys, 'You're not going to go any further,' " says Francis, 69, who along with his wife, Loretta, already has adopted three of their five foster sons. "This is it. This is home."

Six years ago, Francis, a retired African-American barber, had no intention of adopting children. But his wife persuaded him to go to a meeting, where a recruiter changed his mind.

The Francises are among the growing number of minorities being targeted by public and private agencies to adopt some of the estimated 500,000 children in foster care, nearly half of them African-American and many available for adoption.

Spurred by predictions that those numbers will continue to climb, agencies eager to expand the pool of minority parents have turned to churches, recruiters and other adoptive parents to spread the word.

But that effort has garnered little support from a recent federal measure that offers a $5,000 tax credit for adoptive parents and eases the process of transracial adoptions by penalizing states that put up barriers.

Critics complain that the money could be channeled more effectively into recruiting more minority parents. "I don't see the infusion of big bucks and the support for it," said Sheryl Chapman, executive director for the Baptist Home for Children & Families in Maryland. "Why are we distracted, as the kids say, from the real deal? And we spend a lot of money being distracted."

Recruitment efforts have shown, Chapman said, that when black families are targeted, more black children get adopted.

And despite the recent federal efforts to open the door to more interracial adoptions, many public and private adoption agencies say they still prefer to place children with parents of the same race to preserve their cultural and racial identity. But faced with the prospect of minority children languishing in foster care, local and national officials say race can no longer be an obstacle.

"There are some adoptions that are delayed and denied, and they shouldn't be," said James Maxzarella, spokesman for Rep. Susan Molinari, (R-N.Y.), a lead sponsor of the bill, which recently passed the House and has the support

Please see ADOPTION on Page A30

Debate Over Tax Credit

By Stephanie Saul
STAFF WRITER

They will borrow from relatives, sink into debt, and take second jobs. Most couples who want a family but are unable to have children biologically are undaunted by the cost of private adoptions, sometimes upwards of $20,000. They come up with the cash, somehow.

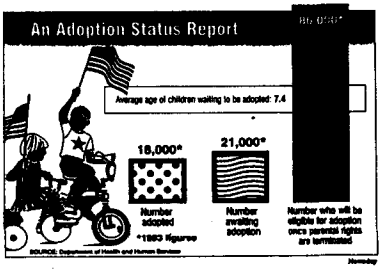
Many adoption advocates view a proposed $5,000 tax credit as welcome relief for adoptive parents. The credit would help make adoption's high cost tolerable. The bill, approved overwhelmingly by the House of Representatives earlier this month, has strong support in the Senate.

For adoptive parents the bill represents more than money. It symbolizes a national decree that adoption is a good thing, a legitimate way to become a parent.

But several child welfare advocates said they feared the tax credit, which will cost the Treasury an estimated $1.7 billion over seven years, would not alleviate the primary problem it is designed to address — the backlog of kids awaiting adoption on the rolls of social welfare agencies.

Unlike the sought-after healthy infant,

Please see CREDIT on Page A30



Larger 1st Family?

THE ASSOCIATED PRESS

Washington — Hillary Rodham Clinton says that "it would be terrific" if she and the president had another child and that they also have been discussing the possibility of adoption, according to a published report.

Hillary Clinton, 48, has acknowledged difficulties having children and has been a strong activist on behalf of adoption. But in an interview with Time magazine she said she continues to hope for a sibling for 16-year-old Chelsea.

"I would be surprised, but not disappointed. My friends would be appalled, I'm sure. But I think it would be terrific," the first lady said about having another child.

Hillary Clinton said she and President Bill Clinton, 49, also "continue to talk about" adopting a child, but that those talks aren't likely to get serious until after the November election.

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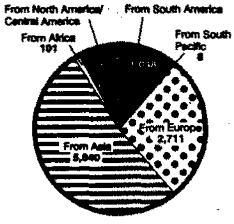
A Foreign Snapshot

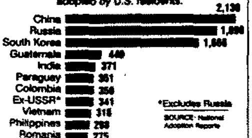
The number of children adopted by U.S. residents in 1995. Figures are preliminary.

Total adopted: 9,679



Top Countries

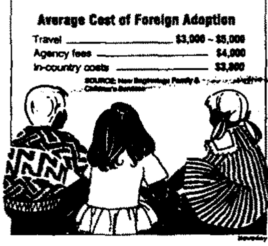
The countries with the largest number of children adopted by U.S. residents.



Average Cost of Foreign Adoption

Travel	$3,000 - $5,000
Agency fees	$4,000
In-country costs	$3,800

SOURCE: New Beginnings Family & Children's Services



Newsday

Recruiting Families

ADOPTION from Page A5

of President Bill Clinton. "We should put the children first. And racial discrimination has no place in finding homes for children."

People who support the bill and interracial adoptions say children are better off in loving homes, whether black or white, than in foster care and institutions. But critics say Congress has no business stepping into this emotionally charged issue. The National Association of Black Social Workers has called the placement of black children in white homes genocide.

"They're playing into the perception that hundreds of thousands of white families are standing in line to adopt these poor black babies," said Katherine McFate, director of social policies at the Joint Center for Political and Economic Studies, a think tank on African-American issues in Washington. "That's not true. Let's be honest. There's still a lot of racism in this country. There are lots of white parents who want white babies or the next-best thing."

McFate said many white families are going to Europe or Asia in search of infants who more closely resemble them. "There are tons of white parents who want children. A lot of them don't want black children."

Newsday / Michael E. Ach

Photos of children up for adoption in NY.

Locally, only a handful of whites have adopted minority children. In the past five years, there have been 15 interracial adoptions through the Nassau County Department of Social Services. In Suffolk there were 15 in 1992 and eight for part of 1993, when officials stopped noting the race of adoptive parents.

In New York City — where the majority of public adoptions are African-American children going to people of the same race — the number of transracial adoptions is "a small percentage," according to an expert in the field, who asked not be named. In recent years there have been more than 2,000 annual adoptions by more than 50 agencies on behalf of the city.

Every day Pat Dudley flips through a blue book searching for children her adoption agency could match with a family. The books, which are stacked high at Downey Side Families for Youth, a private adoption agency with an office in Lake Ronkonkoma, are stuffed with pictures of children across the state who are available for adoption. Nearly all the faces are black or brown.

"We barely get through the last batch [of pictures] and pick out a few when we get the next," said Faye Caperna, area director for Downey Side, which specializes in placing older children.

Like agencies across the country, Downey Side is trying to attract more minority families. Recruiters visit churches and community centers and leave fliers in barbershops and beauty salons.

"We're really trying to beef up that pool," said Joe Malewicz, director of children's services at the Nassau County Department of Social Services.

During the past two decades, the number of minority children in foster care has steadily climbed, some say because of the disproportionate number of blacks in poverty, the increasing rate of single parents and the impact of drugs in minority communities.

In Nassau County, 75 percent to 80 percent of the children in foster care are minorities, most of them African-American. In Suffolk, the percentage hovers around 50 percent. In New York City "it's almost totally African-American and Hispanic," said Maris Blechner, executive director of Family Focus Adoption Services in Little Neck.

While the black community has long relied on a network of kin to care for its children, adoption officials say the numbers are now overwhelming. And as they continue to increase, it's unrealistic to think black families can absorb the impact.

"This isn't a blame game," said Patrick Purtill, director of government relations for the National Council for Adoption, a trade group in Washington. "It's not as if the African-American community hasn't been adopting these children . . . It's a demographic bubble that these children are just caught in."

The council estimates 40 percent to 60 percent of the 500,000 children in foster care are African-Americans, who stay in foster care an average of two to four times longer than white children.

In Nassau County, equipped with pictures and videos of children waiting to be adopted, Alana Smith goes into churches to talk about adoptions. "We're trying to use every avenue," said Smith, who works for county social services. Meanwhile, Selven Powell, who was hired by the Family Service League to recruit foster parents for Suffolk County, makes his pitch everywhere, including a recent black fraternity party.

"It's amazing how many people say, I thought about doing that at one time," said Powell, who also plans to campaign on local radio and television talk shows.

Tax Credit

CREDIT from Page A5

many of the waiting children have medical or behavioral problems. Their average age is 7.4 years. Often they have been moved from one foster home to another. Those children often are adopted at no cost to the parents, but they may require a herculean long-term emotional and financial commitment.

"The legislators are trying to address two different issues that don't really mesh," said Joyce Johnson, spokeswoman for the Child Welfare League of America. The association, an umbrella group for agencies that deal with foster care and adoption issues, supports the adoption tax credit but would like to see additional subsidies for adoptive parents of hard-to-place kids. "They may need a tutor, for instance . . . We say, increase the adoption subsidy. Increase the medical coverage for special-needs children."

Under the bill, approved by the House May 10 by a 393-15 vote, people who adopt can get a tax credit of $5,000, whether or not they spend money directly on the adoption. For those without a tax liability of $5,000 in any one year, the credit can be spread over five years. The credit is reduced for taxpayers who make more than $75,000 a year and disappears for those whose income exceeds $115,000. The bill also establishes a "nondiscrimination" policy in adoption, requiring that states not delay adoptions if a family of the same race isn't available.

"You're talking about increasing the pool of applicants able to afford adoption," said Patrick Purtill, director of government relations for the National Council for Adoption. "We particularly feel it's going to expand the pool of minority couples able to adopt."

Others, while welcoming the legislation, said it probably will not spur adoption. Aaron Britvan, a Woodbury attorney who specializes in adoption, said he views the bill as a "recognition of how vital adoption is in our country."

"A lot of people who look to adopt might be borrowing money for the expenses . . . It will help those people who are marginal — they're not on public assistance, but not making huge sums of money," said Britvan, chairman of the New York State Bar Association's adoption committee.

But Britvan said most people who decide to adopt would do so with or without a tax benefit. Children adopted through the social welfare system often come with a subsidy, an average of $217 a month, and the initial costs of adoption often are borne by the state.

For prospective parents who want to adopt privately, the expenses can reach $20,000 or even higher.

Domestic independent adoptions, in which prospective parents advertise in newspapers for a child, require an investment for advertising that varies widely.

David and Stacy Moll of Massapequa, who adopted their daughter Emily last year by advertising in newspapers, spent about $3,700 on ads during the five months they were seeking a child.

"We were very lucky," said David Moll, a real estate manager who knows adoptive parents who have advertised for as long as two years. Moll estimates the cost of adopting Emily at $11,000, including legal fees.

Sometimes adoptive parents are required to pay medical expenses for the birth mother.

Bonnie Goess, intake coordinator for New Beginnings Family and Children's Services, Inc., a Mineola adoption agency, estimated the cost of foreign adoption at $12,000 to $18,000, which includes travel expenses to the country where the child is adopted.

Felix Fornino of Brooklyn, state president of the Adoptive Parents Committee, said the tax credit likely will encourage adoptive parents to adopt a second child. "I think people will make the all-out effort for the first child. It becomes more difficult for the second child. This will probably stimulate people adopting the second child. Overall, it's positive in that respect," Fornino said.

NEWSDAY, SUNDAY, MAY 26, 1996

"Once I get their ear . . . they can hear the ins and outs of adoption. They may be more prone to say, 'Yes, I'd like to try that.'"

It worked for some like Ron Kennard of St. Albans, Queens, who is awaiting the final adoption of two African-American brothers. "At first I was going to do just one. They [recruiters] said, 'Kennard, trust me, these two are perfect for you,'" recalled the single parent. "I just like kids. I just went on and did it."

Now, Kennard said he encourages others to consider adoptions. "The blue books are filled to capacity with African-Americans, Hispanics and biracial children. It's amazing how thick that book is," he said.

Black churches locally are also stepping up recruitment efforts. "[They're] tapping into a sense of community solidarity, that it takes a whole village to raise a child," McFate said.

Recruiters say the task can be difficult, particularly in dispelling notions that all adoptions are costly (public adoptions are basically free), that families must be wealthy, and that all the children are unstable. And now, more agencies are considering older parents, single parents and same-sex couples.

But for Elizabeth Allen of Copiague it didn't take a recruitment drive for her and her husband, Leon, to adopt three boys. Three more adoptions are pending.

"Recruiting is something you do in the service. But taking care of a child has to come from within . . . ," said Allen, who is black and has two biological sons. "How could I not open my door? Don't get me wrong, this is not Ozzie and Harriet. But they do give me joy."

Mercedes Dyer of Roosevelt, who is Cuban, had two sons and one on the way when she took in 3-month-old Rayshawn as a foster child three years ago. This month, she and her husband, Heriberto, finalized Rayshawn's adoption. "I know there are a lot out there that need homes. And since I had the space, I was willing to help out. I wanted a girl naturally," Dyer joked.

Sometimes that desire for parenthood crosses racial lines. Friday morning, Kathleen Dugan sat on the edge of her seat in the judge's chamber as 6-year-old Jason, sporting a new, blue pinstriped suit, fidgeted and sucked on a red lollipop. Within minutes, Judge William Kent signed the adoption papers that ended her two-year wait.

"It took a year before Jason called me Mommy," Dugan of Central Islip said outside the courtroom. "Now, it's Mommy, Mommy, Mommy, everything. You have to earn that."

Dugan, a 51-year-old single mother, is white. Jason is Puerto Rican. Race didn't matter when Dugan decided to adopt three years ago. "It just meant God put us together," said Dugan, who went home to await another Puerto Rican child she hopes to adopt.

"We always look for same race, same culture, if possible," said Caperna, chairwoman of the Nassau-Suffolk Bi-county Adoption Exchange. "When we can't do that, we don't hold the child in foster care for four years waiting. The damage could be done. Three months is a long time for children."

Sharon Pelletier is sure race is the reason it took four years to finalize the adoption by her and her husband, George, of their biracial daughter, Cara. Pelletier, a white foster parent, raised Cara since she was 4 days old, born to a cocaine-addicted mother. When Cara was available for adoption, the Pelletiers were first to be asked, as required by law. Although they said yes, the Nassau County Social Services agency still searched for a black family, Pelletier said.

"I didn't think it was fair. It's like they forget that the child's mother was white," she said. "It [race] should not make a difference. There are so many children in this country in need of homes. And when you find a home that is willing to take a child and love it and make sure all its needs are met, I don't think color should even come into it."

Pelletier said she feels strongly about Cara knowing her black and white cultures. "I'm not trying to make her think she's all white," said Pelletier, adding that Cara has dolls that are black and white and even "one that looks like it might be half and half."

But not all agree. "There's a richness in culture that I can't give them," said Downey Side's Caperna, who is white and has 10 adopted children, including three from Korea, six African-Americans and one Caucasian. "[But] I can give them all the tools," to survive.

The Francises plan to do the same for the boys they are raising. One recent evening, Loretta and Bristol shouted commands as the boys paraded by to clean their rooms.

"They need a foundation because we're going to have jails filled with nothing but blacks and Hispanics," said Francis, who has five grown children and many grandchildren. "We've got to give them a foundation, give them some roots."

Otto Strong contributed to this story.

Newsday Photo/ K. Wiley-Stabile

'It Just Meant God Put Us Together'

Six-year-old Jason Dugan, above, celebrates with his mother Kathleen Dugan, 51, at McDonald's in Central Islip after finalizing his adoption on Friday. At left, Judge William Kent congratulates Jason and his mom at the hearing in Family Court in Central Islip. They waited two years for the adoption.

'At first I was going to do just one. They [recruiters] said, "Kennard trust me, these two are perfect for you." I just like kids. I just went on and did it.'

— Ron Kennard of St. Albans, who is awaiting the final adoption of two African-American brothers

NEWSDAY, SUNDAY, MAY 26, 1996

SPORTS Newsday

QUEENS • SATURDAY, JUNE 22, 1996 • 50¢

Carmen Soto, 54, Opened Her Home To Toddlers Who Now Call Her Mommy; She's One Reason Why Foster-Care Adoptions Are Up 58 Percent in City

Story on Page [illegible]

Carmen Soto is in the process of adopting brothers David, left, and Samuel. She holds Michael, who she also hopes to adopt.

Places In the Heart

Newsday | Ken Bawchuk

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Home for Good

A5

City seeks placement for foster kids at adoption fair

By Liz Willen
STAFF WRITER

Carmen Soto thought she had moved beyond the days of diaper changes and midnight feedings. Then she met David and Samuel Cruz, the two toddlers who now call her mommy.

"I got crazy about them right away. I just fell in love," said the 54-year-old grandmother, who is in the process of adopting the brothers, 2 and 3. "Believe me, these kids fill some part of my heart."

As the city prepares for its 19th annual adoption fair in Manhattan tomorrow, officials are seeking homes for thousands of children like the Cruz brothers, who are are now part of a noisy and loving household that includes Soto's 26-year-old son, Ruben, and five-month-old Michael — a foster son she also hopes to adopt.

The number of foster-care adoptions in the city increased 58 percent last year — from 2,312 in 1994 to 3,665 in 1995, said Joseph Cardieri, the assistant deputy commissioner for adoption services. Another 2,805 children were adopted between last July and the end of April.

Even the harshest critics of the way the city has handled child-welfare issues in the past have applauded efforts to find permanent homes for foster children.

"What they did was use a stick rather than a carrot to help agencies focus their efforts on finalizing adoptions," said Edith Holzer, director of public information for the Council of Family and Child Caring Agencies, an umbrella group representing the city's private, nonprofit foster-care agencies.

City officials say a series of financial and other incentives have pushed foster agencies to free children for adoption. There are now 8,400 children in foster care whose parents have terminated all ties, and about 5,500 of those children are in the process of being adopted, Cardieri said.

The city has targeted 18,000 other children who will likely be freed for adoption in the near future.

"It's a very, very valuable, wonderful and beautiful thing being done," Mayor Rudolph Giuliani said yesterday, urging New Yorkers to attend tomorrow's fair. "The more children that we can have adopted, the sooner and faster we can move to the next level here in protecting children in New York City."

The chubby, brown-haired Cruz brothers were among the 43,000 city children in foster care before they came to Soto's East Elmhurst home in December.

Soto learned about her future children when she contacted the Edwin Gould Services for Children, a nonprofit agency based in Manhattan. While social workers completed a home study that detailed her ability to raise children, Soto visited the boys at their temporary foster home in the Bronx.

They came home to Queens in December; a month later she took in Joseph Michael.

"The boys help move his carriage back and forth and put his pacifier back in his mouth when he's crying," said Soto, whose husband died a decade ago. She still works full time as a nutritional health aide at St. Luke's-Roosevelt Hospital Center, but gets a lot of help and support from neighbors and four grown children. She also has six grandchildren.

The boys — who are learning both Spanish and English — had trouble speaking at first, Soto recalled. They are now enrolled in early intervention preschools. "They are really thriving under her care, and she finds it very gratifying," said Suzy Sanford, supervising adoption coordinator for the Edwin Gould agency — which will complete 98 foster care adoptions this year.

"I think the boys are very glad to be here. They seem happier every day." said Soto. "And I'm grateful to have them all in my house."

Sanford hopes people like Soto will be a role model for prospective adoptive parents, who do not need to be married, young or have a lot of money to adopt. State subsidies will help Soto raise the boys and pay for the cost of the adoptions; the rates vary depending on the needs of the child.

"Carmen had no pressing family concerns; her children were raised and she was ready to use her energy in a productive way," Sanford said. "She was ready to take on this challenge."

The fair will be held at District Council 37 on 125 Barclay St. Photo displays, workshops and orientation sessions will be available in both English and Spanish, and representatives from more than 50 adoption agencies will be on hand.

Statement of Ethel J. Dunn, Executive Director
Grandparents United For Children's Rights, Inc.
and
The National Coalition of Grandparents, Inc.
To The
Committee on Ways and Means
Subcommittee on Human Resources

Relating to the June 27, 1996 Hearing on *Barriers To Adoption*, The Honorable E. Clay Shaw, Jr. Chairman.

On June 17, 1980 the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272) was passed, "*To establish a program of adoption assistance to strengthen the program of foster care assistance for needy and dependent children, to improve the child welfare, social services, and aid to families with dependent children programs, and for other purposes.*"

Generally, the Act was passed by Congress for two reasons. The first was to help alleviate the national problem of the enormous number of children who yearly were being funneled into out-of- home placement because of child abuse and neglect. The second was designed to address the long periods of time that children were away from their families. Funds were allocated for each state that provided a state plan which would indicate compliance with the federal law. Thus, Title IV was amended by the addition of a new section entitled, "Part E-Federal Payments For Foster Care and Adoption Assistance" (Title IV-E).

The prevailing thought at that time was that there is a unique bond between birth parents and their offspring, so strong that returning even abused and neglected children to their original homes as fast as possible after removal is always preferable to long-term placement with others, either nonrelative or kin.

And, the legal, judicial and child protective agencies have been effective in preserving the goals of P.L. 96-272 as it was intended – perhaps too effective -- to preserve the family first and the child second. Thus, were the components set in motion which made relevant the topic under discussion – "*Barriers To Adoption*" -- that we are now examining.

The following excerpt is a direct quote from Public Law 96-272-June 17, 1980:

Item 15 of the "State Plan For Foster Care And Adoption Assistance, Sec. 471 reads, "*...effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home;...*"

In quoting from "*Definitions,*" *Sec. 475, (5) The term 'case review system' means a procedure for assuring that---*
"*(A) each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child,*
"*(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date for which the child may be returned to the home or placed for adoption or legal guardianship,...*"

We know that passage of PL 96-272 was not designed to harm our nation's children. There is no question in our minds about that. Rather, it was written and passed by a group of concerned individuals whose purpose was to provide a haven for children who, along with their families, were undergoing periods of crisis and extreme stress. Further, it was sincerely intended to remove "at risk" children from environments that may have been fatally harmful to them and to give their

biological or adoptive parents a chance to undergo treatment, thus enabling them to become better and more loving parents.

Unfortunately, passage of the law did not cause the anticipated reversal of the nationwide trend that had been observed. The need for removal of children from their homes, instead of lessening, worsened. Coincident with passage of PL 96-272 there was observed a marked decline in the availability of non-related foster families. The National Foster Parent Association (NFPA) reported that, between 1985 and 1990, the number of foster families declined by 27% while the number of children in out-of-home care increased by 47%. As the number of foster families decreased, child welfare agencies turned increasingly to kin as resources for children in care.

According to figures released by the Child Welfare League of America, North American Kinship Care Policy and Practice Committee, by 1992 over 430,000 children had been separated from their parents and placed in foster care, a 56% increase in the past decade. In some states, while the total number of births decreased, the number of children requiring out-of-home placement increased. Also, in some states the foster care waiting list ran into the high tens of thousands. In New York City, for example, the waiting list for placement was so long that strangled agencies were being forced to return children to abusive or neglectful homes at the end of the allocated time period simply to open the way for other children to be given placement respite.

Thus began the "children as yo-yos syndrome." By this we mean that, while frequently abused and/or neglected children might be quickly and efficiently removed from their painful environments and placed in loving, stable and nurturing homes, they might be just as quickly returned to the insulting environment. There they are frequently abused again, removed again and, sadly, returned again to their abusive parents. Often, they were free just long enough to have had a chance to start the healing process. They might even have had an opportunity to begin to trust and to look forward to a joyful future.

Unfortunately, because judges, lawyers and caseworkers can cite the family reunification policy as justification, the "best interest of the child" standard, in circumstances such as outlined above, becomes second to the "family" in defining public policy. Those same children whom I have previously profiled are too soon returned to "parents" who have failed to comply with agency demands for treatment and who are still not emotionally responsible or compliant individuals. They are, "parents" who prefer the enticement of the pleasure/pain of addiction to the enchantment of a child's love. They are people who would rather experience the high of alcohol or coke to the high of a child's touch, hug or the joy of a small voice saying, "I love you."

It's not unusual in 1996 to hear of the death of a child who was reunified. In 1994, according to the *Child Maltreatment 1994: Reports from the States to the National Center on Child Abuse and Neglect*, 48 states reported that 1,011,628 children were determined to have been victims of abuse and neglect; 80% of the perpetrators of child maltreatment were deemed to be parents and an additional 10% were other relatives of the victim. States reported that 1,111 children were known to have died as a result of abuse and neglect.

Certainly, we are not intimating that each victim died as a result of having been returned prematurely to an uncaring parent. Some, in fact, never left home. Nor can we blame passage of P.L. 96-272 for all the heinous crimes of the country centering around children. Further, we are clearly aware that in some instances the law has worked to the benefit of children and families.

However, the tales that we have heard from loving kin of the *child victims* indicate a long history of trying to work within the system, only to find that its structure and impetus appears to run counter to the benefit their grandchildren, nieces, nephews or other youthful kin. The advocates for these children relate stories of repeated attempts to call attention to the authorities that the children whom they passionately love are being abused, neglected, some tortured and eventually, perhaps, murdered upon return to their irresponsible and unresponsive parents. Most tell us that their voices go unheeded, that the information they attempt to convey goes unheard, that they have nowhere to turn in their sorrow, anger and frustration. Some, upon hearing that a child has been murdered become reflective and thankful that their grandson or granddaughter must no longer suffer.

We need your assistance to stop this needless trend. Neither this agency, nor the individuals who comprise its constituency, are opposed to parental rights. However, we maintain that analogous to those rights **must** go the obligations and responsibilities of healthy parenting. Minor amendments to the Adoption Assistance Act of 1980 would greatly clarify public policy in favor of our children, who rightfully, should be considered first and foremost.

The deaths of at least five children in the United States each day as a result of child abuse and neglect is more than we should be willing to tolerate. This number does not include those children who remain living examples of the horrors of the abuse they suffered, those who will remain forever in a vegetative state, those whose mothers caused them to become substance abusers while still in-utero and who have suffered permanent and tragic brain damage, those who age chronologically but mentally remain children forever, or those who withstood the agony and who will go on to become perpetrators in their own right.

We **do not** request that PL 96-272 be revoked.

We need your assistance, however, in making it a workable mandate that reflects the "best interest of the child" as the primary objective, and the "best interest of the family" as the secondary one. All families at risk certainly need all the help that they can get in order to become healthy. Our judges should be given the mandate to determine when families can be salvaged and when they can't. Interested party standing and judicial objectivity and attention should be paid to kin and nonrelative alike who have a stake in preserving the lives and well-being of the children for whom they advocate.

For example, there was a much publicized case in California recently. Lance Helms, age 2, had lived with his biological aunt almost since birth. However, with his mother incarcerated, an attempt was made to unify him with his biological father. Each time Lance returned from a visit with his father, his aunt and grandmother discovered new signs of horrible abuse. They repeatedly attempted to discourage contact between Lance, his father and his father's live-in girlfriend, but to no avail. They were deemed "too emotionally involved." Each time they went to court the judge overruled their objections in favor of the necessity to preserve the family. Eventually, Lance was sent to live with his father and his father's friend.

Within weeks of Lance's "reunification" he was murdered by a hateful adult in whose care he was entrusted.

How many innocent two year olds, or three or five year olds must be lost before we begin to consider public policy changes? How much longer must so many of our children suffer before we recognize that our system is ill and seriously in need of repair?

We ask that state judges be given increased allowance by the federal mandate to order only "reasonable reunification efforts" when it is truly in the child's best interest.

We ask that agencies (hospitals, Child Protective Agencies, doctor's offices, schools, etc.) be required to exchange information regarding a child who has been reported. It is not unusual for a child to be taken to several hospital Emergency Rooms in order that the parent may avoid being reported as a potential abuser. A data base system might be set up for this purpose, perhaps through the Department of Health and Human Services of each state.

If a child is under agency care, we propose that the "wrap-around" system be employed, wherein each individual involved in the child's life attends meetings together and there is a free exchange of information regarding the child and his/her complete family.

We share advocacy of the following recommendations with our colleague Lynda Carter Cajoleas, RN, MSW of Roswell, Georgia, who submitted them recently to federal lawmakers in Washington, D.C.:

It is not necessary to attempt reunification in the following circumstances:

1. There is a medically verifiable deficiency of the parent's physical or mental health of such duration and nature as to render the parent unable to provide adequately for the physical and mental needs of the child.
2. In cases of abandoned newborns and babies born drug addicted, termination of parental rights is automatic.
3. There is excessive use of or history of chronic unrehabilitated alcohol and/or substance abuse and misuse with the effect of rendering the parent incapable of providing adequately for the physical and mental needs of the child.
4. There is a conviction of the parent of a felony and imprisonment therefor which has a demonstrable negative effect on the quality of the parent-child relationship.
5. There has been egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, mentally or sexually cruel or abusive nature, including neglect or abuse.
6. There has been injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.
7. The court is unable to show through clear and convincing evidence that the child's physical and mental welfare will be protected through reunification.

Again, we ask your assistance.

Respectfully submitted

GRANDPARENTS UNITED FOR CHILDREN'S RIGHTS, INC.
THE NATIONAL COALITION OF GRANDPARENTS, INC.

Ethel J. Dunn
Executive Director
Co-President

SUPPLEMENTAL SHEET

DESIGNATED REPRESENTATIVE

Ethel J. Dunn
Grandparents United For Children's Rights, Inc.
The National Coalition of Grandparents, Inc.
137 Larkin Street
Madison, Wisconsin 53705
Telephone/Fax: 608/238-8751

LIST OF REFERENCES

KINSHIP CARE: A NATURAL BRIDGE, A Report of the Child Welfare League of America, Based on the Recommendations of the CWLA North America Kinship Care Policy and Practice Committee, *Child Welfare League of America*, Washington, D.C. , 1994.

PUBLIC LAW 96-272 - JUNE 17, 1980, 96th CONGRESS, (H.R. 3434) TITLE I-IV E.

U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, Washington, D.C., *Child Maltreatment 1994: Reports from the States to the National Center on Child Abuse and Neglect*, 1996.

SUMMARY AND RECOMMENDATIONS

This statement relates to the Adoption Assistance Act of 1980 (P.L. 96-272) and its impact upon children who fall under its jurisdiction. Suggestions for Amendments to P.L. 96-272 are made which may help to alleviate the numbers of children who are currently "reunified" with parents who are unable or unwilling to assume the responsibilities of parenthood. A list of Recommendations is given which we think will prove beneficial to all parties.

RECOMMENDATIONS

1. There is a medically verifiable deficiency of the parent's physical or mental health of such duration and nature as to render the parent unable to provide adequately for the physical and mental needs of the child.
2. In cases of abandoned newborns and babies born drug addicted, termination of parental rights is automatic.
3. There is excessive use of or history of chronic unrehabilitated alcohol and/or substance abuse and misuse with the effect of rendering the parent incapable of providing adequately for the physical and mental needs of the child.
4. There is a conviction of the parent of a felony and imprisonment therefor which has a demonstrable negative effect on the quality of the parent-child relationship.
5. There has been egregious conduct or evidence of past egregious conduct of the parent toward the child or toward another child of a physically, mentally or sexually cruel or abusive nature, including neglect or abuse.
6. There has been injury or death of a sibling under circumstances which constitute substantial evidence that such injury or death resulted from parental neglect or abuse.
7. The court is unable to show through clear and convincing evidence that the child's physical and mental welfare will be protected through reunification.

HEAR MY VOICE
Protecting Our Nation's Children
PO Box 2064
2200 Fuller Road
Ann Arbor, MI 48106
(313) 747-9668
(800) 95-VOICE

Statements in Response to the Subcommittee on Human Resources of the Committee on Ways and Means, *Hearing on Barriers to Adoption, June 27, 1996*

Thousands of children in our country have been removed from their long-term loving families because of repeated attempts at reunification with biological families who have been unable to care for the children for years on end. Thousands of others still face this threat. Children of all ages are denied the recognition of their need to maintain bonded family relationships with the people who have cared for them, and whom they trust.

Additional thousands suffer serious injury after reunification with biological families who have a history of repeated abuse. In many states there have been documented cases of serious injury to a child following reunification as recommended by case workers who feel they are forced to recommend reunification even when they fear for the safety of the child. Although media attention has brought some of the worst cases (in which children have been murdered) to the spotlight in the recent years, the enormity of this tragic situation is largely unknown to the general public and inadequately addressed by legislators and judges.

In addition to the horrendous physical abuse that is covered in sensational news reports, hundreds of thousands of children sustain deep emotional and psychological scarring when they are denied permanent, loving family bonds for a large portion of their childhoods. Many of the half-million children now in foster care are kept for years on end in government foster homes, group homes, and shelters, because their absentee biological parents cling to the legal rights to their children.

At Hear My Voice, over the past three years, we have received telephone calls and letters from thousands of custodial parents of children who face losing their long-time families. A case in point will demonstrate the gravity of the situation: 3-year-old Sherrie Sewell from Kentucky has spent her entire life in the care and custody of Ron and Joyce Bailey. Her two

biological siblings have also lived with Ron and Joyce for 3 years. The children's biological mother is serving a 5-year prison sentence for 1st degree criminal child abuse. Her rights to the older two children have been terminated due to the severity of the abuse she inflicted upon them. The Baileys have adopted the older two children but are unable to adopt Sherrie because the State of Kentucky is attempting "reunification" of Sherrie with her biological mother. This 3-year-old child has monthly visits in prison with her biological mother, except for the months during which she is in solitary confinement for her repeated episodes of violent behavior. Upon her release in 2 years, the state plans to remove Sherrie (who will be 5 years old at that time) from her lifelong parents and siblings, in a "reasonable effort" to reunify her with her "family." Any person who can think and feel can see clearly that this is a case of state-enforced child abuse. The emotional trauma Sherrie will suffer when she is taken from everything and everyone she knows and loves is unthinkable. The future Sherrie faces with her violent biological mother- a convicted criminal with ongoing violent behavior- is too hideous to ponder.

Can any of us call this reunification plan "reasonable?" Sherrie's case is one of thousands of children facing truly unreasonable reunifications with biological adults who may have blood ties the children, but have no emotional or psychological bonds with them. We must reconsider the effects of the Child Welfare Act now, before thousands more children are hurt physically or emotionally.

HEAR MY VOICE is deeply concerned with the physical abuse inflicted upon children who should have been protected by our Child Welfare system. We are equally concerned with the severe emotional trauma suffered by children who are removed from their long-term, loving, bonded psychological families. This emotional trauma, while largely undocumented, should be taken seriously by all those considering changes in the structure and interpretation of our child welfare policies.

HEAR MY VOICE believes that short-term foster care can serve an extremely important role in the lives of children and their biological parents who cannot care for them for a variety of reasons. Successful preservation of biological families is most often of critical importance. However, to leave children without permanent placement for years on end in order to preserve families that were non-existent in the first place is

to ignore the basic need and right of every child to be part of a permanent family.

Legislation that allocates funding for "family preservation" does not recognize that, for many children, preserving (reuniting) the biological family can mean the tearing apart of what they have known as family for years on end, including psychological parents, siblings, and grandparents.

We respectfully urge all members of the Subcommittee on Human Resources of the Committee on Ways and Means to hold the interests of our children at the center of all considerations in redefining and clarifying the Child Welfare Act. We urge you to look through the eyes of the child as you consider how to protect our nation's children and their families.

STATEMENT OF GAIL A. HELMS
JUNE 27, 1996

On July 7, 1996, I found out about the Hearing on Barriers to Adoption held in Washington, DC on June 27, 1996 by the Subcommittee on Human Resources.

Since I only had a few days to prepare a written statement for consideration by the Committee on Ways and Means for inclusion in the printed record of the hearing, I would like to begin by sharing a speech with you that I gave on April 18, 1996 in Washington, DC, at the invitation of the National Coalition of Grandparents at their rally on the steps of our Capitol.

OUR LAWS ARE KILLING OUR CHILDREN
National Coalition of Grandparents — Washington, DC
by Gail Helms

I'm grateful for this opportunity to speak to you as a mother and as a grandmother who has seen first-hand how much damage well-meaning laws can do to a family.

The hardest thing for a mother to do is to declare that her own child is unfit to be a parent. A mother gains no satisfaction from saying that. Anyone who would ever say that would only do so if it was absolutely true. Yet I have had to look at my own son and say he wasn't fit to be a parent. Still, our courts did everything in their power to allow him to be a parent — and because of that, my 2-1/2 year old grandson rests in a grave in Glendale, California.

Everyone wants families to be united and strong. We all want parents to care for their biological children in close, loving families. Because of that, we have laws in almost every state that favor the reunion of broken families. But these laws, which are meant to strengthen families, so often result in the destruction of poor, innocent children — children who have no other laws for their protection. Family reunification is doing exactly the opposite of what it was meant to do. Well-meaning laws are killing our children.

For those of you who do not know about my grandson Lance Helms, I would like to tell you a little about him and what happened to him in Dependency Court in Los Angeles.

Lance was born in September of 1992 as a drug-addicted baby to an unmarried couple in Los Angeles. The father, my 34-year old son David, was a heroin addict for more than four years and an alcoholic. Lance's 25-year old mother was also a heroin addict and alcoholic.

David asked his sister — my daughter, Ayn (pronounced Ann) — to care for Lance until the birth mother entered a drug and alcohol rehab program where she would live with the child. Ayn expected to care for Lance no more than two months, but the birth mother ran away. We didn't hear from either parent for eight weeks. A few months later, the birth mother was arrested, and went to prison for armed robbery for three years.

Ayn was appointed foster mother by Dependency Court. To Lance, Ayn was "mommy," and she raised him from 5 days of age to 23 months. I helped my daughter raise him, and Lance was loved and adored by our family.

Lance had respiratory problems because of the drugs in his system, and he threw up a great deal, but he never complained. Besides being good-natured and a happy little boy, there was something very special about Lance — ***he really loved people!*** He was quite the talker and very animated. When he was 20 months old, Lance could count to 12 —

he loved to count buttons on your clothes — and by his second birthday, he not only talked a great deal, he carried on a conversation with you. Like many children, he loved Barney, and at 2-1/2 often said, "When I grow up, I want to be a dinosaur!"

The focus in life of Lance's father and birth mother was partying and taking heroin. Her hobby was check forgery and theft. His hobby was dealing out physical violence to anyone who would not let him have his own way.

Just after Lance's first birthday, when it became apparent that my son David wanted full custody of Lance, Ayn and I hired an attorney so she could get de facto status (legal standing) in the Dependency Court case. We did not believe that anyone with a conscience could ever give my son David custody of a child. He was a heroin addict, an alcoholic, he had a criminal record, and an extremely violent history. He had beaten every woman he had ever lived with, from his sisters to his mother to his grandmother to his girlfriends.

David had completed a two-week drug program, but bragged to us that he could flush drugs out of his system in three days. By now he had moved in with an old girlfriend, Eve Wingfield, with whom he had another son who was 1-1/2 years older than Lance.

We could never have imagined that someone with David's track record would have any success getting custody. We were so horribly wrong.

When Lance was 23 months old, David was given a 60-day trial visit. Lance went to live, for the first time in his life, with David and we were given visitation. That's when the abuse started. Nearly every time Ayn or I saw Lance, he had some type of bruise or injury. We began taking photographs of his injuries a month later. Each time we returned Lance to his father after visitation, he would scream uncontrollably, sometimes crying so hard he threw up. His social worker saw how bad the situation was and informed the judge assigned to Lance's case — but neither the judge nor anyone in the court system cared. They were following through on family reunification.

At the end of the trial visit, when our photographs of Lance's injuries were given to the court, the judge delayed giving David full custody and extended the trial visit. But the abuse continued. Black and blue marks on Lance's face, up and down his little back, behind his ears, bruises shaped like large finger marks on his upper arms, and scratches and bites. How could a little boy get black and blue marks on his back, behind his ears and around his upper arms?

Everything Ayn and I said or did to warn the court — even the photos we took of his bruises — was ignored. Everything was dismissed or mocked by the judge, the attorney for David, and Lance's court-appointed attorney. They were following through on family reunification. They were just doing their job, and resented any interference or questioning.

From October through January 1995, Lance told us the things his daddy did to hurt him. It killed us that the court didn't care that this little boy was suffering — they were obligated to follow through on family reunification.

Even though two social workers and a psychiatrist recommended drug testing, the judge didn't bother making David drug test from the time he was given unmonitored visits with Lance until he gained custody — a period of 10 months. David's attorney convinced the judge that he had already completed his drug testing. The judge knew that Ayn and I reported David was using drugs while Lance lived with him. He even came to two court hearings so high on drugs, he passed out in the waiting area. But the judge refused to order drug testing.

In January of last year, David was finally granted custody of Lance. The following day, the social worker removed Lance from David's home when he was discovered to have a horrible black eye. Yet at a hearing a few days later, Lance was returned to David, who had testified that Lance gave himself the black eye because he was uncoordinated and clumsy. This was not true. But the judge and the attorneys didn't care. They were just doing their job.

After the black eye incident, my daughter Ayn, who had been fighting a really heroic battle against lupus, an immune system disease, began to wear down from the stress. Stress caused by seeing the emotional and physical pain Lance was enduring and stress from feeling helpless to protect him. As Lance's abuse continued, her condition weakened.

During our last two visits with Lance, he told my family that David's live-in girlfriend Eve was hurting him by bending his thumb back, hitting him in the back, and giving him cold showers and that he cried.

There are too many more details to report to you. But the only real detail you need to know is this. My grandson Lance was murdered on April 6th of last year (1995). The death certificate states Lance died from being punched in the stomach (four times) by an adult assailant. His liver had been ruptured by the severity of the blows. There were 29 bruises and injuries on his little body that day. One of the blows to the back of his head had caused brain swelling. There were only two suspects in the murder of Lance Helms: David and his live-in girlfriend, Eve.

The last weekend we had Lance, just four days before he died, was a very special time, and he looked better than he had looked in a long time. I had my grandson all day Saturday while Ayn worked. We got his hair cut, made mud pies at the park, and I taught him that he was 2-1/2 years old. When I was driving Lance back to Ayn's house that night, I asked him how old he was, and he answered three and a half. I said, "No, Lance. You're ***2-1/2***" and he replied, in that lilting voice of his, "I'm ***two and a half?***" I said yes, and he smiled.

Ayn and I dressed our baby for his funeral. I watched my daughter pick up his little black and blue foot and tell me how she used to kiss his toes and tell him that she loved his little feet because they smelled like potato chips — and he would throw back his head and laugh.

The judge and the attorneys who allowed this to happen to Lance deny ***any*** responsibility. They claim they were just doing their job — following through on family reunification. But what does "family reunification" mean and what is the definition of "family"?

Is the law meant to help people like my son David and the woman whose egg he happened to fertilize? You cannot fix something that never existed in the first place. There never was a ***family*** to reunite. Yet taxpayers are footing a tremendous financial burden to do just that and they are not getting their money's worth.

In Lance's case, his family was ***Ayn***, not David. He was taken from a loving home and forced to live with constant abuse. All Lance ever wanted in this world was to be with the person who loved him, kept him safe, and made him laugh.

My daughter Ayn grew sicker and sicker after the death of the little boy she raised as her own. She was hospitalized several times during the summer as her kidneys began to fail her. "Mommy Ayn" died in September last year — five months after her beloved Lance. Now they are together. That is the real family reunification.

Because of confidentiality, the current child dependency system operates without accountability. Judges and attorneys are allowed to act in secrecy without any fear of public scrutiny, even when a child dies. If the results of these child dependency cases were acceptable, none of this would really matter — but the results of these cases are a tragedy, and the entire system is to blame.

We need sensible changes in our laws. Changes that will allow for shorter windows of opportunity for negligent parents to come back for their children. Changes that will allow for children to be protected by the courts when their little bodies are in danger. Changes that won't put children in the homes of biological parents who are unable to function as proper care-takers. Changes that prevent tax-payer dollars from being used as an incentive to maintain a destructive system.

Being a grandparent is wonderful! Many of our congressmen are grandparents and many others will be some day. What will they tell their grandchildren about what they accomplished in office. Will they be able to say they changed the laws to save our children? Wouldn't it be wonderful if they could.

I am always angered when anyone refers to Lance as having "slipped through the cracks." He did not slip through a crack in the system — he was pushed into an enormous chasm created in the child dependency system because family reunification laws simply place more value on parental birth rights and little or no regard for the safety, protection, and security of children.

What does "family reunification" really mean? Does it mean the courts are committed to making sure that homes are strong, caring, loving places for children? No. It means that the courts are committed to sending innocent children to violent, abusive and dangerous homes — all because of well-meaning laws that are killing our children.

I would like to continue my statement with the following information:

After hearing about Lance, my State Senator in California, Richard Polanco created a new Subcommittee on Crimes Against Children. Their first order of business was to examine California's child protection laws. They stated that "we have a serious problem in this state — an epidemic that is not going away on its own" and that they needed to address this problem proactively. They wanted to identify the weak links in the system and used one case as an example: The story of two year old Lance Helms who was brutally tortured and beaten to death.

The Subcommittee held a hearing on January 19, 1996 in Sacramento and issued subpoenas. They wanted to find out how this happened so it could be prevented from happening again — but, "the court circled the wagons." They said the Senate Subcommittee did not have the right to know and put a gag order on the witnesses.

Deanne Tilton-Durfey, Director of ICAN (Interagency Council on Abuse and Neglect in Los Angeles), gave an excellent presentation at the January hearing. She listed the five following indicators that a child is at high risk of being abused:

(1) The child is under the age of 3, and
there is a history of — (2) domestic violence
— (3) substance abuse
— (4) anti-social behavior
— (5) previous abuse to the child.

All five of these indicators were present for Lance with his father, David. I am David's mother. I know him better than anyone else in the world. Yet the court completely disregarded my testimony and Ayn's testimony, even when Ayn's attorney pointed out that David's psychiatric evaluation verified everything we had told the court. Among other things, the evaluation classified David as having anti-social, and even criminal, behavior, with an inability to form warm attachments with others or accept responsibility for his actions.

Lance's social worker, who had been subpoenaed to the January Senate Subcommittee hearing, was anxious to testify. She wanted to tell how she had tried to get a rehearing after the court placed Lance back with his father six days after she removed him from the home because of his severe eye injury. But she was not allowed to testify because she received a letter from County Counsel warning her that if she testified, she would be reprimanded, disciplined, most likely lose her job, and be liable for criminal charges (for breaking confidentiality).

This social worker wanted to tell the Subcommittee how the County Counsel (who represents the Department of Children's Services and acts as a prosecutor) said there wasn't any point in having a rehearing because the child had already been placed back with the father and besides, "he (Lance) is hyperactive."

This attorney had never seen Lance before. He based his statement on Eve's testimony that Lance was an uncoordinated little boy, who fell all the time. David and Eve were the only ones who testified after Lance was removed from the home. Ayn, who had de facto status, was not allowed to testify at this hearing, nor was I.

The social worker knew Lance was not a hyperactive child. She wanted to tell the Senate Subcommittee that she never would have believed it possible that the court would return Lance to his father after the black eye incident. The new petition she filed when she removed Lance from David's home was very clear and explicit when it stated there was "substantial risk" to the child and he was being "subjected to cruelty" by either Eve Wingfield or David. The judge and the court-appointed attorneys completely ignored her petition.

The Senate Subcommittee held a second hearing in Sacramento in March. The Subcommittee has introduced four bills to make changes for the benefit of children. A number of other legislators, in both the Senate and the Assembly, have also introduced legislative reform, many of them because of Lance's death. One of these bills, by Assemblyman Jim Morrissey, has now been submitted to our Governor.

However, it is crucial that changes be made at the ***federal level***. The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) must be amended to protect our nation's children from being destroyed emotionally and physically. I do not believe this Act was put in place to be used the way it is currently being used. It was in place before the advent of the drug culture that is so prevalent in our society today. Quite simply, the experiment of family reunification has not been successful.

Caren Sempel, of the National Center for Prosecution of Child Abuse, made an excellent observation when she said, "On one hand you have a federal mandate that says there must be family reunification at all costs and yet the system is supposed to protect the children. How do you reconcile these two objectives?"

No one can tell us how many drug parents, who enroll in rehab programs and take parenting classes, stay off drugs and become caring, responsible parents. Because of confidentiality, we do not know how many of these people seriously abuse, permanently disable, or murder the children they are "reunified" with.

However, we do know that young, defenseless children are being permanently disabled or murdered at an increasingly alarming rate throughout the United States when they are forced to live with abusive people.

It is currently estimated that 18,000 children in the U.S. are being permanently disabled by child abuse each year. Think about that. ***Permanently disabled!*** The majority of these permanent disabilities involve brain damage. Right here. In the United States! What in the world is going on?

Your constituents are going to pay for the care of these disabled children for many, many years.

As soon as Ayn hired an attorney to get standing in the case, she was regarded by the court-appointed attorneys as the enemy. At the permanency placement hearing, when Lance was 20 months old, Ayn's attorney asked the court to allow her to adopt Lance. The father's attorney and Lance's attorney claimed this was a custody battle; that Ayn simply wanted a baby. Lance's social worker recommended Lance be placed for adoption based on the father's psychiatric evaluation, his history of domestic violence, and the strong bonding between Ayn and Lance.

Why couldn't Ayn and our family — the people who raised and loved Lance — be allowed to adopt him? When people say they fear that less restrictive adoption will result in children being removed from poor parents and placed with people of means, that is absurd. Of course, no one wants that. But using this excuse to prevent children from having save, loving homes is ridiculous.

Lance suffered terribly when he was forced to live with violent, drug-addicted people who continually abused him. He did not understand why we would return him to this horrible environment. He did not know what he had to do so we would keep him with us. He thought if he was very, very good, we would not return him, because David and Eve kept telling him he was "a bad boy." It broke my heart when this easy-going, gentle little boy told me his daddy hit him on the head whenever he forgot and called Ayn, "Mommy," instead of "Auntie Ayn" like David had told him to.

My daughter died because she could not live with the agony that she was the one who returned Lance to his father each time after visitation when he would beg her not to.

After the poor results of David's psychiatric profile, the judge always refused to do anything that might possibly put David in a bad light — he wouldn't order additional drug testing, even when Lance lived with David; he wouldn't allow Ayn or I to testify about Lance's injuries and behavior when he was returned to David; he wouldn't appoint an expert witness to investigate the injury photographs; and he refused to remove Lance from David's home during the time of the alleged abuse and neglect.

If the judge had cared about the child, he would be alive today. It would have been so easy to save Lance. Because of confidentiality laws in children's courts, the judge, the court appointed attorneys for David and for Lance, and the county counsel could do anything they wanted; there was no one to monitor their actions, no way to stop them, and no way to hold anyone accountable for the fate that awaited Lance. Because of family reunification, these four men were determined to give the biological father his son, even if it meant ignoring and covering up the abuse Lance endured while living with David.

How did the court get away with this? Because of confidentiality which protected the overall operation of the court and these four men, who were paid by taxpayers to ***protect*** children. Did the confidentiality laws protect Lance?

Lance's court-appointed attorney turned out to be more of an advocate for David than he ever was for his own client — Lance! He continually made excuses in court for Lance's bruises and injuries while in David's care. In a report to the court, he referred to our photographs of Lance's injuries as "camera wars." After the black eye incident, when Ayn took Lance to Children's Hospital to be examined, Lance's attorney ran down to the hospital (at night) and convinced the hospital social worker and the doctor (before Lance was examined) that the child was involved in a custody battle between David and Ayn, and that every time Lance got a little bruise, Ayn "cried wolf." He never talked with Lance's social worker— because he didn't want to hear what she had to say.

My son David worked full-time for eight years for an office furniture liquidating company. He was the manager. His boss testified in court that David had been doing well and had not gotten into a fist fight at work for over a year.

Even though David had a steady job, and made more money than his sister Ayn, he never supported Lance or his son by Eve Wingfield, Calvin. Eve collected welfare from the time Calvin was born (January 1991) up through the first six months after she moved in with David (through August 1994).

Taxpaying voters will find it hard to believe that millions of federal dollars are given to this state (California) each year in the name of family reunification. It would be one thing if the money went for the care and protection of children, but the award of this money appears to be contingent on the "reunification" of children with their biological parents, even if they have never lived with the parent before in their life.

Lance never lived with his father before the age of 23 months. There was nothing there to "reunify." Taxpayer dollars paid for David's attorney, his parenting classes, his drug and alcohol rehab program, the weekly counseling the judge ordered so he could deal with his violence issue, his bus pass, and even MeliCal for Lance while he lived with his father. I know this is not how taxpayers want their money spent!

It is outrageous that our taxes are paying for the perks and rehabilitation of a person like David. He is a sociopath, who not only can't be rehabilitated, he is proud of his lifestyle. He has never felt remorse for the harm he has caused people throughout his life.

Because David went to his parenting classes, passed 7 out of the 10 drug tests he was given in 1993, attended counseling, and claimed to "love his son", do we give him a defenseless small child to see how well he does.

This was not an experiment. We were dealing with a human life here. And it was ***Lance's life!*** Lance was an incredibly intelligent, articulate, and contented little boy. He could have been anything he wanted to be. But the court decided his life did not belong to him. It belonged to his father.

If you had a plane load of babies crash, there would be a tremendous amount of publicity. The public would demand blood, and a great deal of federal resources would be spent to prevent it from happening again. Just compare this hypothetical example to the reality of what statistics prove is actually happening to our children.

Lance's story was not just the latest sensational case. It is characteristic of a system that does not work. The emphasis is currently on protecting the biological parents and their rights at the expense of the dependent child. It is unconscionable to treat children as chattel.

I have survived what most people cannot possibly comprehend. The two people my mother, my aunt and uncle, and I loved the most in this world did not survive. The entire system, which is supposed to be set up for the benefit of the child, failed Lance miserably.

I firmly believe most people in this country would rather see a drug-addictive and/or violent adult, who is incapable of providing for a child, lose their rights than to see the child lose his life.

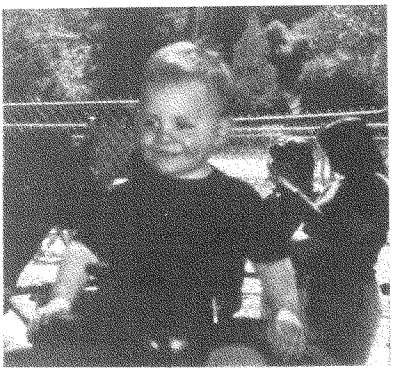
I would have been 3 years old on September 11, 1995. On April 6th, I was beaten to death because a judge decided not to remove me from my biological father's unsafe home and refused to have an expert find out if I was "clumsy" like my daddy and his girlfriend said I was. An expert could have looked at all the photographs of my injuries that took place when I lived with my father and his girlfriend during a 5-1/2 month trial visit before the judge gave daddy custody. On January 10, 1996, my daddy's girlfriend received a ten year sentence for murdering me; she will be out of prison in less than five years.

I died because of family reunification and the confidentiality laws in children's courts. I had a safe, loving home with "Mommy Ayn" (my paternal aunt) and my grandma, and an extended family during the first 23 months of my short life, and I was so happy!

Will you do anything to keep this from happening to other children? I miss Mommy Ayn and my grandma.

LANCE HELMS

LANCE HELMS - riding a pony 4/13/94



AYN and LANCE - Nov. 1995

David Helms & Baby Lance - 9/16/92

3 photographs of Lance's injuries while living
with his father, David Helms

WRITTEN STATEMENT ON BEHALF OF JUSTICE FOR CHILDREN
TO THE
SUBCOMMITTEE ON HUMAN RESOURCES
ON WAYS AND MEANS
RELATED TO
THE ADOPTION ASSISTANCE AND CHILD WELFARE ACT OF 1980 (P.L. 96-272)

Comments by Randy Burton
President, Justice For Children
412 Main St., Suite 400
Houston, Texas 77002
713-225-4357

June 27, 1996

INTRODUCTION

Mr. Chairman and members, my name is Randy Burton. I am an attorney, a former prosecutor in Houston, Harris County, Texas, and the founder of the national child advocacy organization known as Justice For Children.

In a 1991 New York Time's Editorial entitled "Cradle to Grave", Anna Quindlen chronicled the short, tortured existence of Adam Mann, beaten to death in March of 1990 by his parents for eating a piece of cake. In her article, Quindlen lamented Adam's preventable death:

> "From the moment he was born and held in protective custody in the hospital nursery, Adam . . . would be part of the city's vast child welfare system . . . an agency that has historically served its citizens as poorly as any in the City of New York . . ."
>
> "Who failed Adam Mann? A system that obviously needs a massive overhaul and independent oversight. A system that explains its failures to no one when its client's die."

"Who killed Adam Mann? And did anyone learn anything from his death within the system that so grievously failed him."

The answer, tragically, is that the system learned nothing from Adam's death. It is equally true that we as a community failed Adam because we did nothing to fundamentally change a child welfare system which systematically returns known victims of abuse to unsafe homes rather than terminating parental rights.

And because of the failure our child welfare system, children such as 6 year old Elisa Izquierdo of New York continue to be murdered. If the facts and the problems identified by Anna Quindlen in the Adam Mann case sound hauntingly familiar, it is because they are. Although Lt. Luis Gonzalez stated that Elisa's death was the worst case of child abuse he had seen in 22 years of service, Elisa's abuse was almost indistinguishable from the trauma inflicted on Adam in 1990.

Like Adam, Elisa was removed form her mother at birth and placed in "protective custody" only to be reunited with her abusive mother two years later. According to published accounts, over the following four years, no less than four reports of abuse or neglect were made to child welfare by relatives and school officials with no apparent results. Like Adam, at the time of her death, little Elisa's body revealed a history of brutal physical abuse. Elisa may also have been sexually abused.

Unfortunately, the problems with so-called "children's protective services" (CPS) in New York City are no different than those found in other parts of our country. Indeed, the entire national child welfare system is seriously flawed and incapable of fixing itself. In order to better protect victims of child abuse and neglect, we need to understand the underlying reasons why our governmental agencies have historically failed these children. Only then can we stop this nonsensical cycle of death and move towards real, meaningful child protection.

Having reviewed numerous child fatalities, Justice For Children believes that these preventable child deaths are not merely the result of incompetent caseworkers or excessive caseloads, but rather the direct and predictable consequence of a social service delivery system that places a higher priority on preservation of the family unit and rehabilitation of the offender than on protection of the child.

To understand why CPS continues to embrace a rigid policy of family preservation -- despite compelling evidence of the failure of counseling to turn child abusers into loving parents -- one must understand the issue of funding. A significant portion of each state's CPS' budget comes from our federal government in the form of matching funds with the requirement that child welfare agencies demonstrate they have made "reasonable efforts" to prevent the removal

of children from their homes! Even if Congress succeeds in cutting these federal strings by block-granting child welfare funds to the states, this would not remove the family-preservation policies now well entrenched in state agencies and codified in state laws.

Also important to understanding our national failure to protect abused children is the fact that we treat crimes against children differently from all other crimes. Only in instances of crimes against children does our law enforcement establishment allow CPS, a social service agency lacking law enforcement status and prerogatives, to receive the initial report of abuse, perform the initial investigation of the crime, and dictate the progress of the criminal case despite caseworkers' lack of law enforcement training and experience. And, because CPS is the inlet point for virtually all child abuse complaints, its efforts affect all the other downstream legal entities with a legitimate interest in the child's case; namely, the police, the District Attorney's office, and the criminal and civil courts. Thus, the misplaced priorities of CPS become the de facto priorities of the entire system.

The social cost of this failed policy can be measured in the lives of countless children in CPS's care. On both a local and a national level, 42% of all children who die from abuse or neglect were victims previously known to CPS. Almost half of all children who are identified as abused or neglected do not receive any follow-up assistance from CPS. Further, studies indicate that the child who survives an abusive environment is the future runaway, drug addict, or child abuser often filling space in our state prisons.

Justice For Children believes that advocacy for children's rights must not be left to an agency that maintains a repressive and scientifically unproven view that it is more harmful to the to child to remove the child from the family than to leave the child in the abusive home. This policy is a throwback to the notion that family violence is a "family problem" to be solved by the family and not the police.

In order to repair this failed system, me must, therefore, collectively reorient our thinking about child abuse. Child abuse, in any form, is a crime and should be treated as such. This can only be accomplished by giving law enforcement, not CPS, exclusive authority for the receipt and investigation of child abuse complaints. When used effectively, law enforcement invariably results in segregating the abuser from the child.

It should also be obvious that the victim of child abuse, not the abuser, must be our top priority. Elisa Izquierdo was victimized first by a family member and was revictimized by the system designed to protect her. Elisa, like so many abuse and neglected children who have been placed in and out of foster care, deserved the right to live with a safe and loving family rather than being the ultimate victim of a failed social experiment.

This Subcommittee has a wonderful opportunity to ensure that our government be responsive to the victims of child abuse, not the abusers, through increased child protection and termination of the parental rights of child abusers. If we do not take advantage of this opportunity, the images of murdered children will periodically remind us, like clockwork, of the urgency for reform.

A list of Justice For Children's proposed federal legislation is attached for your consideration.

Thank you.

JUSTICE FOR CHILDREN

440 Louisiana, Suite 350
Houston, Texas 77002
(713) 225-HELP

July 8, 1996

POSITION STATEMENT REGARDING LEGISLATIVE PROPOSALS

The following is a preliminary list of the various legislative proposals for Justice For Children. This list is intended only for discussion and does not represent an exclusive list of legislative goals. Please note that this list is not prioritized.

FEDERAL LEGISLATION

1. All reports of child abuse must be made directly to an appropriated local law enforcement agency.

   Comment: As it is now, if someone calls their local police department to report a suspected case of child abuse, the local police department will refer that call to Children's Protective Services ("CPS"), an agency without law enforcement training.

2. Establish a clear legal duty on behalf of Children's Protective Services ("CPS") and CPS case worker to protect the child as the goal of their civil investigation.

   Comment: Currently, the primary goal of CPS is preservation of the "family unit", no matter how unhealthy. This is reinforced by a federal financial incentive (P/L 96-272) which provides matching funds to CPS if they can demonstrate reasonable efforts to prevent the removal of children from their homes.

3. Provide for periodic independent management reviews of CPS including the authority to audit files, determine accountability for financial and operational performances and forward findings to a reporting point independent of the other entities involved in the child abuse network. Performance should be measured against goal of protection of children, not preservation of the family unit.

   Comment: Necessary requirements for accountability. Currently, no entity with oversight authority for CPS knows where the money goes, nor whether funds are being spent to the best use for children.

4. Modify the existing funding authority of CPS so that there is an independent mechanism for funding contracts for family treatment, medical services, etc, other than through local CPS.

   Comment: Would eliminate obvious conflicts of interest problem and allow better, independent delivery of services to children.

5. Establish an "outcry statute" under the Federal Rules of Evidence for use in civil dependency cases involving child abuse.

Comment: This would allow an adult to testify to the initial outcry of abuse by a child in a civil setting.

6. Eliminate the competency requirement for child witnesses or establish a presumption of competency of witnesses regardless of age under Federal Rules of Evidence.

   Comment: Currently, children under the age of 4 are virtually presumed incompetent to testify making it "open season" on small children. Their testimony should be heard, but it should be up to a jury to determine proper weight.

7. Support modifications to the existing video tape law so that it will pass constitutional requirements in both the civil and criminal courts.

   Comment: Videotape statements by children are an important tool to minimize contact between an abused child and the accused abuser in a courtroom to minimize the number of interviews of an abused child.

8. Modify the Federal Rules of Evidence to allow videotaped interviews of children under a certain age for use in the Family Court.

   Comment: Videotape statements by children are an important tool to minimize contact between an abused child and the accused abuser in a courtroom.

9. Establish a clear time limit (twelve months) as to how long a child can be in "limbo" in the foster care system (tied to federal funding) before parental rights are terminated or permanently modified.

   Comment: As in the Gregory K. case, a child should not be kept in the foster care system indefinitely. If the family cannot be rehabilitated, parental rights should be terminated and the child should be eligible for adoption.

10. CPS case workers must be provided with specialized training to distinguish between those cases which justify attempts to reunite the family and those whose particulars mandate termination.

    Comment: Caseworkers receive inadequate training, period. Although they perform the de facto criminal investigation, they lack the investigative tools to collect the necessary evidence for both the criminal and civil cases.

11. Guidelines should be developed using expert models for investigative decision-making in cases of suspected abuse.

    Comment: Although there are a few expert models in existence, their use is very limited, do not into account any of the evidentiary requirements for criminal cases, and are not interactive, providing instant feedback to the investigator making a decision on behalf of the child.

12. Guidelines and training should be developed for investigation of child abuse for use by CPS, police, and prosecutors.

    Comment: Lacking specialized training and guidelines, investigators often use improper techniques when investigating child abuse. For example, if a child is improperly interviewed, this can effect admissibility of any outcry of abuse by the child and taint the civil and criminal cases.

13. Make child abuse a "bias" crime entitling child victims to use their abusers for civil rights violations under federal civil rights laws similar to Title 42 §1983 cause of action created for women under the Violence Against Women Act.

    Comment: Currently child abuse victims and their advocates have difficulty relying upon the criminal court system to punish perpetrators.

14. Require all state and federal agencies to keep detailed records on child abuse fatalities, child abuse investigations and convictions and to provide this data to a central national source for compilation.

    Comment: Because state's currently lack a uniform method for keeping statistics on child abuse, it is difficult to evaluate trends and to hold agencies accountable for their actions.

Eileen Olson
13742 Chauny Road
Jacksonville, Fl. 32224
(904) 641-7635

July 9, 1996

Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Attention: Honorable E. Clay Shaw, Jr.

Ref: Hearing on Barries to Adoption 06/27/96

Dear Honorable Shaw:

This will be a very condensed version of a story that could full a thick, small printed, novel with shameful details of the torment, and violation of basic human rights that the children of unfit parents have suffered because of our current laws. Similiar stories can be documented by millions of grandparents and caregivers in this Country. It is happening in every community, culture and economic group; no family is immune and the problem is growing.

From 1990 to 1992 my husband and I made every attempt to protect, first one grandson, and then two from the neglect and abuse they were suffering at the hands of their drug addicted parents. When the situation would become extreme and we felt that the neglect and abuse must be documented, we would call the Florida Abuse Registary and make a report. We reported the parents three times. First, for dropping the children off at our home and not picking them up for three weeks. Then we were advised that the parents were taking drugs in front of their children. Two witnesses reported this to the Registary. The third time the Mother left the two boys ages, 9 months and 2 years, in the care of a 17 year old brain damaged boy and he beat the 9 month old with a belt. The baby was hospitized for 4 days and the local HRS was notified. We called the Registary also. The first two reports were decared unfounded by the Jacksonville HRS, and the other case was unfounded by the Orlando HRS. We had to wait until a third boy was born cocaine depended before the Florida HRS in Fort Landerdale took action, and removed the boys from parental care.

By this time the oldest boy (J.P.) age three, had spend the first year of his life with his biological parents living in a camper shell in a junk yard. When we received custody of the children, the court's papers indicated that numerous

reports to the Florida Abuse Registry began while the child lived in the camper shell. The next 2 years of his life were spend, living with his Mother and her boy friend (our son) in a car, tent, a crack house, and sometimes a motel room, or briefly in an apartment. He and his baby brother were taken to stand with the Mother and her boyfriend, near intersections holding signs begging for donations for food, so they would get their drug money.

I wish that your committee could hear some of the stories that our oldest grandson remembers about his life before he came to live with us, or could have seen the physical condition of the two older boys when they came, even after being in Foster care for 12 days. We are thankful that they managed to survive. We certainly can not thank the HRS in this State for protecting them from years of abuse and neglect. Likewise, we can not thank the lawmakers of this State and Country who mandate laws that do not protect our children. However, we do thank God when their little arms hug us because if it had not been for Him, we would be visiting their grave sites instead of watching them grow and develope. There are thousands of grandparents and caregivers that can not be hugged because the child is too handicapped from abuse and hundreds that do visit the child's grave.

On June 10, 1992 we received three little boys, 3, 13 months and a new born. No one can imagine the anquish we went through watching our infant grandson jerking and crying for as much as nineteen straight hours from drug withdrawal. Today that same infant is 4 years old. His case with County Health has been closed. He can print his name, has started to read, and plays games on a computor. His older brother who would wake up 6-8 times a night screaming, has not had a nightmare in over 6 months, and J.P. who could not talk ,does not stop talking. In spite of what they have gone through they are happy, wonderfully adjusted little boys.

For the next eighteen months after we were award custody, we hoped that the parents would get their life together and be able to regain custody and provide a decend home for the children. We did everything we could to help them but after 18 months and many difficult and dangerous incidents with the couple we realized that they were as bad, if not worse, as they were when the boys were removed. After two years we requested that the case be transferred to Jacksonville, Duval County, from Fort Landerdale, Boward County, and we then hired an Attorney and also requested a Guardian at Litum. At the end of two and a half years we decided on a second

Welfare Case Plan and gave the couple an additional year to straighten up before we would proceed for adoption. Our Attorney then advised us to become licensed foster parents.

Following the 1 year Welfare Plan, the couple still had not cleaned up their act. We requested that the boys go into the foster care program under our care, so the adoption process could begin. HRS refused to proceed along those lines and wanted to close our case, which meant that 1, 5, or 10 years from now the the parents could come back and take custody. We certainly had not planned on raising children in our golden years, but we want permanence for the boys, and we want to get on with our lives. HRS said Foster was out because they were our grandchildren. I requested that the oldest boy (J.P.) be placed in foster care. They could not deny that request because he is not a biological grandson. They reversed their decision and said they would place all 3 boys in foster care for immediate adoption by us. What a shame that we have to play these little games after such a length of time. Of course HRS did say, when we were refused the first time, that we could pay the legal fees for Termitation of Rights and adoption, if that is what we wanted. Our Attorney advised us that the cost could go as high as $35,000 if we encounted problems with the parents. We receive $1896.00 a year from the State to raise three boys, my husband and I will have to work well past retirement age, to support these children, and then the State expects us to pay added legal fees. Something is terribly wrong with the picture.

The HRS agreed to place the boys in foster care in March. It is now July and HRS notified the parents and relatives of our desire to adopt. Certified receipts of these notifications have been received from all parties, for a month, and no one has responsed. Now HRS has decided that the Daytona, HRS, where Mother is living, must seek out and assist her. As of July 18,1996 it will be 1 year since she has seen or talked to her sons. We have now had the youngest boy all of his life, and the other two well over half of their lives.

I believe in Parental Rights and I believe we should protect those rights. However, there needs to be a line between the rights of a fit parent, and where the rights of an unfit parent ends. Why is our government spending billions of dollars to reunify families that never were families in the first instance and allowing the children to suffer in the process? The children that are placed under Protective Services and foster care are made to wait an unreasonable

length of time to be placed for adoption. These children deserve to have permanance in a stable, loving home. It seems like their only birth right is to be abused, first by their parents and then by our laws.

At this point in our case if I had to explain to the boys the true facts of what they can expect I would have to say. "When your daddy and mommy think they might want to play parent, they will be taking you away. You will have to leave. I know your mommy is a stranger to you, but she gave you life and you are her property. I know you are too young to understand what "bondage" means, but the laws of this country

have placed you in "bondage." You are the property of your parents and when they want their property back they will go to court and the court will give you back to them. If you were a house or a piece of land and they did not pay the taxes, the house or land would be taken away from them. You are human beings and are not that lucky. Mommy and daddy can take you to a different state. A state that will not let papa and mom visit with you. Especially you J.P., because you are not biological. Then we may never see you again. If that does happen, remember we will always be here waiting for you to find us on your own. If you do find us, please don't tell us about the emotional pain you had to deal with. Our hearts have been broken too many times and it would be too painful to bear. We were helpless to prevent mommy or daddy from taking you. When you become adults and have children of your own, you may be dysfunctional and unable to parent your own children. Don't feel guilty - the Social Service System of this Country will have done its job. We live in a country where there is "Liberty and Justice For All." "All" means adults that vote and voice their opinion. It does not mean "children." Children are owned by their biological, unfit parents."

In closing, please, take note, and help our grandsons, and the millions of other children like them. They must have the opportunity to become decend adults, citizens with values amd morles who will help uphold our laws and be proud to pledge alligance to the United State.

Sincerely,

Eileen Olson

Eileen Olson

○

UNEMPLOYMENT INSURANCE ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JULY 11, 1996

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CONTENTS

	Page
Advisory of June 28, 1996, announcing the hearing	2

WITNESSES

U.S. Department of Labor, Raymond J. Uhalde, Deputy Assistant Secretary of Labor, Employment and Training Administration; accompanied by Mary Anne Wyrsch, Director, Unemployment Insurance Service	6
American Federation of Television and Radio Artists, Charlton Heston	83
English, Hon. Philip S., a Representative in Congress from the State of Pennsylvania	72
Farr, Hon. Sam, a Representative in Congress from the State of California	81
Georgia, State of, Hon. David B. Poythress, Commissioner of Labor	39
Illinois, State of, Hon. Loleta A. Didrickson, Comptroller	12
Interstate Conference of Employment Security Agencies, Andrew N. Richardson	18
National Coalition for Unemployment Compensation Tax Reform, Warren G. Blue	52
Phoenix Closures, Inc., Albert R. Miller	23
R.E. Harrington, Inc., Warren G. Blue	52
Screen Actors Guild, Charlton Heston	83
Shenandoah Electronic Intelligence, Inc., Walter Curt	61
Upton, Hon. Fred, a Representative in Congress from the State of Michigan	78
West Virginia, State of, Bureau of Employment Programs, Andrew N. Richardson, Commissioner	18
Writers Guild of America, West, Charlton Heston	83

SUBMISSIONS FOR THE RECORD

American Federation of Labor and Congress of Industrial Organizations, statement	108
Allen, Hon. George, Governor, Commonwealth of Virginia, statement	143
California, State of, Hon. Pete Wilson, Governor, statement	117
Clark, Larry C., Gibbens Co., Inc., Reno, NV, statement and attachment	128
Dodds, John, Philadelphia Unemployment Project, and Mon Valley Unemployed Committee, Philadelphia, PA, joint statement	131
Employers' Unemployment Compensation Council, Southfield, MI, statement	120
Employment Task Force, New York, NY, and National Employment Law Project, New York, NY, joint statement	123
Gibbens Co., Inc., Reno, NV, Larry C. Clark, statement and attachment	128
Mon Valley Unemployed Committee, and Philadelphia Unemployment Project, Philadelphia, PA, John Dodds, Paul Lodico, and Barney Oursler, joint statement	131
National Employment Law Project, New York, NY, and Employment Task Force, New York, NY, joint statement	123
Oursler, Barney, Philadelphia Unemployment Project, and Mon Valley Unemployed Committee, Philadelphia, PA, joint statement	131
Pennington, Luella (and the class of unemployment insurance claimants), Chicago, IL, joint statement	134
Philadelphia Unemployment Project, and Mon Valley Unemployed Committee, Philadelphia, PA, John Dodds, Paul Lodico, and Barney Oursler, joint statement	131
Thomas, Hon. Bill, a Representative in Congress from the State of California, statement	142
Virginia, Commonwealth of, Hon. George Allen, Governor, statement	143
Wilson, Hon. Pete, Governor, State of California, statement	117
Wilson, Mark, Heritage Foundation, statement	145

UNEMPLOYMENT INSURANCE ISSUES

THURSDAY, JULY 11, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:07 a.m., in room B–318, Rayburn House Office Building, Hon. E. Clay Shaw, Jr. (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE
June 28, 1996
No. HR-13

CONTACT: (202) 225-1025

Shaw Announces Hearing On Unemployment Insurance Issues

Congressman E. Clay Shaw, Jr. (R-FL), Chairman of the Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on selected unemployment insurance issues. **The hearing will take place on Thursday, July 11, 1996, in room B-318 of the Rayburn House Office Building, beginning at 10:00 a.m.**

Oral testimony at this hearing will be heard from invited witnesses only. Witnesses will include State governors, State unemployment insurance directors, employers, and other experts on unemployment insurance issues. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

The Federal-State unemployment compensation system is designed to provide temporary benefits to individuals with a recent work history who become involuntarily unemployed. In determining whether a worker's employment record is sufficient to qualify for benefits, 47 States consider only wages earned over 4 of the last 5 completed calendar quarters (called the worker's "base period"). A few States also consider the worker's eligibility under an "alternative base period," increasing the likelihood that these workers will qualify for benefits. A recent Illinois Federal court decision (*Pennington v. Doherty*) has now called into question what formerly was assumed by States -- that the Social Security Act provides States with the authority to select their own base period, which need not include the use of an alternative base period. If every State were required to use an alternative base period, as the *Pennington* decision foreshadows, the consequences could be significant in terms of higher benefit payments and higher payroll taxes.

The Subcommittee is also interested in various proposals, referred to generally under the term "devolution," that have been developed by several States to increase State flexibility in the operation of their unemployment compensation system. Proponents argue that allowing States greater authority would lead to lower payroll taxes, reduced business paperwork, and improved efficiency in labor markets across the country. While no bill has been introduced in the current Congress, the Subcommittee is interested in considering suggestions for change that promise increased employment and business growth while preserving the principles of the current unemployment insurance system.

In announcing the hearing, Chairman Shaw stated: "Keeping the unemployment insurance system operating smoothly and efficiently is important to employees, employers, and the U.S. economy. This hearing is part of our ongoing efforts to ensure that the current system is working well and to explore ways of making it even better in the future."

(MORE)

WAYS AND MEANS SUBCOMMITTEE ON HUMAN RESOURCES
PAGE TWO

FOCUS OF THE HEARING:

The hearing will focus on two main issues. First, witnesses will discuss the implications of the *Pennington* case, a Federal court decision that has drawn into question whether States have full authority to set base periods used in determining eligibility for unemployment insurance benefits. Second, the Subcommittee will consider testimony on devolution proposals that would allow greater State control in setting and collecting unemployment taxes and in administering State unemployment insurance programs. In addition, other witnesses will discuss the way the unemployment insurance system affects actors and poll workers, among other issues.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by the close of business, Thursday, July 25, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Human Resources office, room B-317 Rayburn House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are now available on the World Wide Web at 'HTTP://WWW.HOUSE.GOV/WAYS_MEANS/' or over the Internet at 'GOPHER.HOUSE.GOV' under 'HOUSE COMMITTEE INFORMATION'.

*****

Chairman SHAW. We will go ahead and start the hearing.

Last night, there were a number of votes on the floor that I understand have been rolled over to today. When they call for votes, we will have to go down to the floor. We will have to recess for the appropriate time, so that people don't have to wait for us to come back.

Keeping the unemployment insurance system operating smoothly and efficiently is important to more than 100 million employees, the millions of employers, and to the strength and vitality of the U.S. economy.

In keeping with this Subcommittee's oversight of unemployment insurance, this hearing has two goals; first, to examine steps that Congress must take in the coming weeks to keep the system running efficiently, and second, to consider long-term changes to improve the system in years to come.

Our first panel involves an issue that demands immediate attention. Since its inception in the thirties, there has been universal agreement that the States have the right to set base periods used to determine eligibility for unemployment benefits until now. A Federal court decision in Illinois, the *Pennington* case, means that 47 States now face the possibility of being forced to adopt a new more liberal standard for determining the eligibility of unemployment benefits.

Unless Congress acts quickly, almost every State will be forced to pay higher unemployment insurance benefits resulting in more redtape, higher taxes on employers, and less job creation. Overall, added cost could reach as high as $1 billion each year.

After this hearing, I plan to move legislation to the House floor to fix this problem. Given the huge number of States affected, and the administration's support for the Illinois position in a 1994 amicus brief, I hope this can be a bipartisan effort.

Our second major panel will examine proposals designed to increase State flexibility in operating their unemployment systems. Bipartisan proponents argue that reforms can lead to lower payroll taxes, less paperwork, and improved efficiency in labor markets across the country.

Several States already have detailed proposals, and I understand that the National Governors' Association meeting this weekend will include discussion of such reforms.

So, even though we probably will not act on legislation until next year, this Subcommittee needs to start examining the comprehensive calls for change coming from Republican and Democrat Governors all across this Nation.

On our final panel, one of our Subcommittee colleagues, Phil English, will discuss this bill to expand benefits for the long-term unemployed and to make it more likely that States will have sufficient reserves to weather future recessions.

Congressman Upton and Congressman Farr will discuss their bill on pollworkers, and Charlton Heston, speaking on behalf of the Screen Actors Guild, will describe legislation of interest to entertainers.

Let me warn my colleagues that any bad puns connecting unemployment insurance with Mr. Heston's movie roles may result in

Members being forced to wander about the desert for the upcoming 40 years.

The opening statement of Mr. Ford, without objection, will be made a part of the record at this time.

[The opening statement of Mr. Ford follows:]

OPENING STATEMENT OF HON. HAROLD E. FORD

Mr. Chairman, I want to thank you for convening this unemployment compensation hearing today. I hope it is the beginning of a bipartisan review of how well our Nation's unemployment program is working and what steps, if any, we need to take to improve it.

I come to this session with an open mind. I have no preconceived notion of the reforms that are needed in the system and am anxious to hear what all the players—DOL, the States, employers, and workers—have to say.

I do want to urge caution, however, with regard to the so-called *Pennington* case. As I understand it, both the State of Illinois and the Department of Labor disagreed with the conclusion reached by the appeals court in *Pennington.* The State has the right to appeal that decision and has done so. I am inclined to let the legal process play itself out before we consider a legislative remedy to just this narrow problem.

After all, the Advisory Council on Unemployment Compensation—which we established to suggest reforms for this program—has made a mumber of recommendations, including several that pertain to the calculation of the base period.

I suggest that we take the time now to carefully review all legislative proposals that have been made and develop a consensus package of reforms, rather than cherry pick just one issue.

I look forward to the testimony.

Chairman SHAW. I would like to yield at this point to Congressman Phil Crane who has joined us for the purpose of making an introduction.

Mr. CRANE. Thank you very much, Mr. Chairman.

As you know, Illinois has been engaged in litigation regarding the base period used to determine the eligibility for unemployment compensation, and while the outcome of this suit will unquestionably have a significant impact on Illinois, it may also lead to changes across the country. The final ruling could lead to greatly increased costs, both for individual States and the Federal Government, but perhaps even more troubling is the circumvention and misinterpretation of congressional intent through judicial action.

Later today, I will introduce legislation which would clarify current law to protect the rights of States to determine their own base periods. I don't believe that this is a radical change, but merely reinforcement of what had been the common understanding of the law.

To help explain the need for this action, it is my pleasure to have the opportunity to introduce to you the comptroller of my home State of Illinois, Loleta Didrickson. Loleta is uncommonly qualified to speak on this issue having served not only as the director of the Illinois Department of Employment Security, but also as a member of the Illinois House of Representatives for four terms.

She was elected to her current position in 1994, becoming the highest ranking Republican woman ever elected in Illinois.

I know you will find her expertise and testimony useful in understanding this complex issue, and I hope that the Members of this Subcommittee will support my legislation.

Thank you, Mr. Chairman.

Chairman SHAW. Thank you, Mr. Crane.

I would like at this time to invite the first panel to the witness table. It will be Raymond Uhalde, the Deputy Assistant Secretary of the Employment and Training Administration of the U.S. Department of Labor. He is accompanied by Mary Ann Wyrsch, Director of the Unemployment Service.

In addition to the comptroller from the State of Illinois, we have Andrew Richardson who is commissioner of the West Virginia Bureau of Employment Programs, on behalf of the Interstate Conference of Employment Security Agencies, and Albert Miller who is president of Phoenix Closures, Inc., Naperville, Illinois.

Welcome. Mr. Uhalde, if you would like to lead off.

All of the witnesses' full statements will be made a part of the record.

You may proceed as you wish. We encourage you to summarize if you feel comfortable in doing so.

STATEMENT OF RAYMOND J. UHALDE, DEPUTY ASSISTANT SECRETARY OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, U.S. DEPARTMENT OF LABOR; ACCOMPANIED BY MARY ANN WYRSCH, DIRECTOR, UNEMPLOYMENT INSURANCE SERVICE

Mr. UHALDE. Thank you, Mr. Chairman and Members of the Subcommittee. I want to introduce Mary Ann Wyrsch who is the Director of the Unemployment Insurance Service in the Employment and Training Administration, U.S. Department of Labor.

Before discussing the *Pennington* decision, I believe we ought to give a little bit of background on the issue of the base period and the establishment of base periods under the UI, Unemployment Insurance, Program.

State UI laws identify a base period for measuring the wages earned by an individual from employment that is covered under the unemployment insurance system. Earnings during the base period are then used as the basis for determining whether the individual qualifies for unemployment benefits, and are also used to determine the weekly benefit amount and the duration of benefits.

The primary base period that has been defined for most States has been a base period that is the first four of the last five completed calendar quarters, immediately preceding the first day of an individual's benefit year.

Two States use as the base period the 52 weeks preceding the benefit year. Two States use the last four quarters, and one State uses four quarters ending 4 to 7 calendar months before the benefit year, and one State uses a uniform calendar year.

In addition to the primary base period, seven States presently provide for an alternative base period if the claimant does not meet the qualifying requirements using the primary base period.

The interval between the end of the base period and the beginning of the benefit year or the lag period or lag quarter is intended to allow time for the recording of the base period wages necessary to establish a benefit year prior to beginning of such year.

In States that use the first four quarters, the lag is 3 to 6 months. In States that use the last four quarters, the lag is less than 3 months.

While initially a long period of time was necessary to collect and post the wage information, technology has reduced this amount of time needed. All wages and covered employment earned during the base period, regardless of the number of different employers, are used in the determination of the qualification of benefits.

It is important to recognize that there are several advantages to the claimant in using the most recent wages possible. First, the most recent wages tend to be higher, and therefore, the benefit entitlement, both the amount of benefits and the duration of benefits, could be higher for a claimant.

Second, some claimants may have recent employment, but may not have wages reaching back five quarters and, therefore, would not have sufficient wages to qualify.

While there is nothing to prevent the claimant from waiting until the subsequent quarter to file a claim, during the interim the claimant may not have income support. The delay can be up to 6 months and may create financial hardships, particularly for low-wage and part-time workers.

Now, in the *Pennington* case, a claimant who was denied unemployment benefits because she did not have sufficient wages during the base period filed suit in Federal court in July 1985 claiming that Illinois base period was inconsistent with Federal law.

The claimant argued that the base period violated section 303(a)(1) of title III of the Social Security Act.

The State of Illinois argued the base period is not a method of administration, but an eligibility criterion which is a matter of State discretion. The Department of Labor filed an amicus brief in the case supporting Illinois interpretation of the law.

The U.S. Court of Appeals reversed the decision of the district court. The U.S. Court of Appeals found the base period is an administrative consideration within the meaning of title III of the Social Security Act.

The district court, upon remand, subsequently held that given the delay in eligibility determination caused by Illinois base period, the State's base period did not ensure the greatest promptness that is administratively feasible in paying UI.

The court of appeals' decision applies only to the States of Illinois, Indiana, and Wisconsin. The district court's decision applies in Illinois. However, these cases could serve as a precedent in other cases.

Subsequent to these decisions, the Advisory Council on Unemployment Compensation completed its comprehensive examination of the UI system. The Council explored issues in the UI system that it believes should be addressed as we move into the next century, including issues relating to low-wage workers, part-time workers, and workers and their work arrangements connected to the labor force.

With respect to alternative base periods, the Advisory Council recommended that the States use an alternative base period when necessary to qualify claimants for benefits.

As a followup to the Council's work, we in the Department of Labor have initiated research regarding a number of issues raised by the Council. Included in this research effort is research on alternative base periods.

We commissioned in 1994 a study to examine the effects of alternative base period arrangements that exist in six States currently.

The study, while it has been limited in scope, does suggest some findings for alternative base periods: First, that increases in the number of monetarily eligible claimants, especially among low-wage and part-time workers, would accrue under alternative base periods; that under alternative base periods, you would raise the number of monetarily eligible claimants by 6 to 8 percent. This would have a notable effect on UI benefit outlays and increase in costs of about 4 to 6 percent and, in the short run, reduce Unemployment Trust Fund balances. Alternative base periods also entail additional administrative costs.

In June 1995, we again commissioned additional research on the impacts of alternative base periods. This research is scheduled to be completed in May of next year, and this will add to previous work.

Among other things, we are analyzing and developing a means to assess the impact of alternative base periods on trust funds over time, determining the implementation and ongoing administrative cost for States, and estimating the administrative cost to employers.

We are aware of the impact of various base periods on access to the unemployment insurance system. We want to gain some further knowledge through our research efforts. We are also aware of the ramifications for States of the *Pennington* court decision. However, we believe that the legislation to amend title III to address the *Pennington* issues would be premature at this time.

Illinois has appeal rights at its disposal, as well as the ability to establish an alternative base period on its own as other States have done by changing its UI law. It is a choice for Illinois at this point or any State's choice on how to balance the various pros and cons of immediate access for claimants versus a demonstrated attachment to the labor force.

The real issue for the unemployment insurance system is not the definition of a base period, per se, but the broad question of access to the UI system. We would encourage States to consider seriously changes that States could make to open their systems to those individuals who are truly attached to the work force, but are being denied access due to unexamined, outdated policies, but the Department will continue to work with States. We would also like to continue the research underway on alternative base periods.

This concludes my formal remarks, Mr. Chairman. We look forward to working with you, Subcommittee Members, and the States on making the UI system responsive to the needs of experienced workers whose access to benefits might be hindered by outdated policies.

Thank you.

[The prepared statement follows:]

STATEMENT OF RAYMOND J. UHALDE
DEPUTY ASSISTANT SECRETARY OF LABOR
EMPLOYMENT AND TRAINING ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

July 11, 1996

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify on the Pennington decision and its impact on the unemployment insurance program. I also want to introduce Mary Ann Wyrsch, Director of the Unemployment Insurance Service in the Department of Labor's Employment and Training Administration.

BACKGROUND

Before discussing the Pennington decision, I want to provide you with some background information on the matter at issue in that case, the establishment of base periods under the unemployment insurance program.

State unemployment insurance (UI) laws identify a base period for measuring the wages earned by an individual from employment that is covered under the unemployment insurance system. Earnings during the base period are then used as the basis for determining whether the individual qualifies for unemployment benefits, the weekly benefit amount, and the duration of such benefits.

The date establishing the beginning and ending of the base period depends on when the claimant first applies for benefits or first begins drawing benefits. In all States the base period is comprised of four quarters or a 52-week period. Most States (47) define the base period as the first four of the last five completed calendar quarters immediately preceding the first day of an individual's "benefit year." (The "benefit year" is the period in which rights to unemployment benefits based on the claimant's base-period employment may be exercised.) Two States use as the base period the 52 weeks preceding the benefit year, two States use the last four quarters, one State uses the four quarters ending four to seven calendar months before the benefit year, and one uses a uniform calendar year.

In addition to the primary base period, seven States presently provide for alternative base periods (ABPs) if the claimant does not meet qualifying requirements using the primary base period. Generally, this ABP is the last four quarters preceding the filing of the claim.

The interval between the end of the base period and the beginning of the benefit year -- the lag period or quarter -- is intended to allow time for the recording of the base-period wages necessary to establish a benefit year, prior to the beginning of such year. In States using the first four quarters, the lag is three to six months; in States using the last four quarters, the lag is less than three months. While initially a long period of time was necessary to collect and post wage information, technology has reduced the amount of time needed to do so. All wages in covered (insured) employment earned during the base period -- regardless of the number of different employers -- are used in determining qualification for benefits.

There are several advantages to claimants in using the most recent wages possible. First, recent wages tend to be higher and therefore, the benefit entitlement (both the amount and the duration) could be higher. Second, some claimants may have recent employment, but may not have wages reaching back five

quarters and therefore, would not have sufficient wages to qualify. While there is nothing to prevent the claimant from waiting until the subsequent quarter to file a claim, during the interim, the claimant may not have income support. The delay can be up to six months and may create financial hardships, particularly for low-wage and part-time workers.

PENNINGTON CASE

In Pennington, a claimant who was denied unemployment benefits because she did not have sufficient wages during the base period, filed suit in Federal court in July 1985 claiming that Illinois' base period was inconsistent with Federal law. The plaintiff argued that the base period violated section 303(a)(1) of Title III of the Social Security Act (SSA) which requires:

> "such methods of administration...as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." (Emphasis added.)

The State of Illinois argued that the base period is not a method of administration, but an eligibility criterion which is a matter of State discretion. The Department of Labor filed an amicus brief in the case, supporting Illinois' interpretation of the law.

While the District Court ruled in favor of Illinois in October 1992, the U.S. Court of Appeals (7th Circuit) reversed the decision. The Court of Appeals found that the base period is an administrative consideration within the meaning of Title III of the Social Security Act and remanded the case to the District Court for determination of whether the Illinois base period satisfies the "when due" requirement of Federal law.

The District Court subsequently held that, given the delay in eligibility determinations caused by Illinois' base period, the State's base period did not insure the greatest promptness that is administratively feasible in paying UI. The Court's decision permanently prohibits Illinois from applying its base period -- the first four of the last five completed calendar quarters -- to the Pennington class claimants -- those ineligible due to insufficient earnings during the base period.

The Court of Appeals decision applies only to States in its circuit: Illinois, Indiana, and Wisconsin. The District Court's decision applies only to Illinois. However, these cases may serve as precedent in the event other cases arise.

ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION

The Advisory Council on Unemployment Compensation earlier this year completed its comprehensive examination of the UI system. The Council explored issues in the UI system that it believed should be addressed as we move into the next century — including issues related to low-wage and part-time workers.

With respect to alternative base periods (ABPs), the Council recommended that States use an ABP when necessary to qualify claimants for benefits. As follow-up to the Council's work, we have initiated research regarding a number of issues raised by the Council. Included in this effort is research on ABPs.

RESEARCH ON ALTERNATIVE BASE PERIODS

The Employment and Training Administration (ETA) commissioned in 1994 a study to examine the effects of ABP arrangements that exist in six States. The study, while limited in scope, suggests that an alternative base period:

- Increases the number of monetarily eligible claimants -- especially among low-wage and part-time workers;
- Raises the number of monetarily eligible claimants by six to eight percent;
- Has noticeable effects on UI benefit outlays -- an increase in costs of four to six percent -- and short-run effects reducing unemployment trust fund balances;
- Entails additional administrative costs.

In June 1995, ETA commissioned additional research on the impacts of alternative base periods. This research -- scheduled for completion in May 1997 -- will build on previous work. Among other things the contractor will analyze and develop a means to assess the impact of ABPs on trust funds over time, determine implementation and ongoing administrative costs for States, and estimate administrative costs to employers.

DEPARTMENT OF LABOR POSITION

We are aware of the impact of various base periods on access to the UI system, and we want to gain further knowledge through our research efforts. We also are aware of the ramifications for States of the Pennington court decision. However, we believe that legislation to amend Title III to address the Pennington issue would be premature at this time. Illinois has appeal rights at its disposal as well as the ability to establish an ABP on its own -- as other States have done -- by changing its UI law. It is Illinois' choice, or any State's choice, of how to balance the various pros and cons of immediate access versus demonstrated attachment to the labor force.

The real issue for the UI system is not the definition of a base period per se, but the much broader question of access to the UI system. We would encourage States to seriously consider changes to open their systems to those individuals who are truly attached to the workforce, but are being denied access due to unexamined and outdated policies.

The Department will continue to work with States, and we also will continue the research underway on the alternative base period concern.

This concludes my formal remarks. We look forward to working with you and subcommittee members -- and States -- on making UI systems responsive to the needs of experienced workers whose access to benefits is hindered by out-dated policies.

Chairman SHAW. Thank you for your testimony.

Ms. Wyrsch, did you have testimony or are you accompanying Mr. Uhalde?

Ms. WYRSCH. No, I do not.

Chairman SHAW. Our next witness was introduced by Congressman Crane, the comptroller of the State of Illinois, Ms. Didrickson. Am I pronouncing that right?

Ms. DIDRICKSON. Didrickson. That is correct.

Chairman SHAW. Yes, OK. Fine.

STATEMENT OF HON. LOLETA A. DIDRICKSON, COMPTROLLER, STATE OF ILLINOIS

Ms. DIDRICKSON. Well, good morning, Mr. Chairman.

Chairman SHAW. I would like to ask all the witnesses, if you could, the lights that are on the table are set for 5 minutes. If you could kind of keep an eye on them. I am not going to be too strict with the gavel, but if you could keep an eye on it. When the red light comes on, it means that the time has expired.

Proceed as you wish, please.

Ms. DIDRICKSON. Thank you, Mr. Chairman and Members of the Subcommittee.

On behalf of Governor Jim Edgar and myself, as the comptroller of the State of Illinois, I thank you for the opportunity to testify.

I am asking for your help in passing the legislation that Congressman Phil Crane will be introducing later this afternoon in order to overturn the Federal appellate court decision in *Pennington* v. *Jackson*, *Pennington* v. *Didrickson*, and now *Pennington* v. *Doherty*.

When I served as director of the Department of Employment Security, it was obvious to us at the department that this case was not only pivotal to the definition of unemployment insurance law, but it had serious financial implications to our State and Federal Government, as well as to the employer community.

The interpretation of the appellate court decision will result in an overall shift in the intent of unemployment insurance representing a 180-degree departure from how the Federal Government and States have really defined the Social Security Act since its inception, more than 60 years ago.

The blueprint for today's unemployment insurance system was intended for unemployment insurance benefits to be limited to individuals who are ordinarily steadily employed, not to provide relief simply for anyone who is out of work. In other words, it wasn't designed to be a welfare program financially supported by employers. It is an insurance program.

Pennington is a class-action lawsuit which is challenging Illinois base period, as you just heard. The period of time reviewed to determine whether an individual has earned enough to qualify for unemployment insurance. The base period also determines the amount of the individual's weekly unemployment check.

Virtually all States define the base period in the same way as Illinois, I believe about 49 States, using the first four of the last five completed calendar quarters preceding the individual's filing an initial claim.

Now, the plaintiffs in *Pennington* maintain that Illinois base period violates the Social Security Act's "when due clause." They argue that anyone who is not monetarily eligible using Illinois base period should be able to establish eligibility through an alternative base period using the last four quarters.

I don't believe that Congress intended to preempt States rights with this. Contrary to arguments by both the U.S. Department of Labor and the State of Illinois, the Seventh Circuit Appellate Court ruled that Illinois base period could be challenged under the "when due clause" and returned the case to district court to determine whether the Illinois base period violated the Federal provision.

The appellate court instructed the district judge to weigh the benefits of individuals filing unemployment insurance claims using the alternate base period against the State's interest in holding down those administrative costs and minimizing fraud.

On remand, the district judge determined the claimant's interest outweighed our State's interest, and Illinois was to adopt the alternate base period.

The appellate court's decision on *Pennington* v. *Didrickson* contradicts legislative history and Supreme Court precedent. It also defies the U.S. Department of Labor's longstanding reading of the Social Security Act in giving States flexibility to establish their own eligibility criteria. It calls on appointed Federal judges to make a policy judgment, the types of decisions that State and local officials elected by the people are better suited to make.

The appellate court's ruling separates the authority to make policy decisions from accountability for those decisions, and the financial implications are far reaching. In fact, not only does this case have an impact on administrative cost and increased Federal funding from your perspective, it impacts those who make up the backbone of our economy in Illinois, our employers. Clearly, *Pennington* would hike State government's cost of doing business.

When the case was remanded back to the district judge, he noted the administrative cost to Illinois probably using the alternate base period. It is going to cost us somewhere from $12 to $15 million one time plus $2.5 million every year thereafter.

The judge also acknowledged that the Federal Government—the Federal dollars to cover those costs were not likely to be provided.

Pennington could substantially raise outlays from Illinois Unemployment Trust Fund account and impose hefty increases on our employers in terms of their taxes.

The Illinois Department of Employment Security estimates the alternate base period would increase Illinois trust fund outlays by 1.5 percent.

A U.S. Department of Labor study indicates alternate base periods raise State trust fund outlays by 4 to 6 percent.

Let us just talk about a 1.5-percent increase in outlays from Illinois trust fund account. It would amount to more than $180 million over the next 8 years, or on an annual basis, that is $22 million in the State of Illinois.

If I use the Federal Department of Labor's 6-percent increase, the total is $750 million. Now we are talking $93 million annually.

Since State trust fund accounts are part of the unified Federal budget, as you are aware, the difference between the increased out-

lays and the higher taxes would translate into an increase in the Federal deficit, a more than $100-million increase if outlays rose by 1.5 percent, or using that 6 percent, a $400-million increase.

To maintain an adequate trust fund balance with the additional outlays resulting from this decision, employers would be forced to pay higher unemployment insurance taxes. It probably would result in nearly a $70-million tax increase over the 8-year period using that 1.5 percent.

If I use the 6 percent, now you are looking at employer taxes increasing $350 million over that 8-year period.

Let me just kind of go through that because I see the red light is on. Really, my specific request to you is for an amendment to the "when due clause," as I understand Congressman Crane is going to be introducing.

We are a very rich, vibrant Nation, but how we can truly be ready to meet the economic challenges of the next century is to make certain that our business community is not unfairly saddled with hundreds of millions of dollars of new taxes.

In closing, I would just like to thank you for your time and consideration and also refer to the previous testimony from the Department of Labor that said that Illinois has the choice. The fact of the matter is that we do not have a choice in terms of being able to get out from underneath this *Pennington* decision, the U.S. Appellate Court decision that has been filed against us in the State of Illinois.

It is a tremendous cost for us. We once before tried to go before the U.S. Supreme Court with 23 other States and were denied. We don't really see the fact that the court system is going to be able to allow us to be able to have our own States rights here in terms of eligibility, and so that is why we are looking to the U.S. Congress.

Thank you very much.

[The prepared statement follows:]

TESTIMONY
BEFORE THE HUMAN RESOURCES SUBCOMMITTEE,
HOUSE WAYS AND MEANS COMMITTEE,
BY
THE HONORABLE LOLETA A. DIDRICKSON,
COMPTROLLER OF THE STATE OF ILLINOIS,
ON BEHALF OF
THE HONORABLE JIM EDGAR,
GOVERNOR OF THE STATE OF ILLINOIS

July 11, 1996

Thank you, Mr. Chairman and members of the Subcommittee, for the opportunity to testify before you today. I am here to ask for your help in passing legislation to overturn the federal appellate court decision in *Pennington v. Didrickson.* That decision represents a 180-degree departure from the manner in which both the federal government and states have construed the Social Security Act, since that statute's enactment more than 60 years ago. It also vests unelected federal judges with policy making authority that should properly be reserved to elected officials. Left standing, it could soon have a costly impact upon employers and state government in Illinois and aggravate the federal deficit by hundred's of million's of dollars. Its impact could ultimately be compounded across the nation.

Background - State Base Period

Pennington is a class action lawsuit, challenging the provision of Illinois law that establishes the state's "base period." As you know, the base period is the period of time examined to determine whether an individual has earned enough wages to be eligible for unemployment insurance and, if so, the amount of the individual's weekly unemployment check. The base period in Illinois is the first four of the last five completed calendar quarters preceding the individual's filing an initial claim. To qualify for unemployment insurance in Illinois, an individual must have been paid at least $1,600 in wages during his or her base period, with at least $440 having been earned outside the quarter in which the individual's wages were highest.

Forty-nine other jurisdictions use the same base period as Illinois. Of those, eight have adopted alternate base periods for individuals who do not qualify using the standard base period. There are two reasons for the nationwide prevalence of the base period Illinois uses.

First, a base period of the first four of the last five quarters generally ensures that unemployment insurance will be available for workers with a genuine attachment to the labor force, but not necessarily for those with only a marginal connection.

The legislative history of the Social Security Act indicates that unemployment insurance was intended to be limited to individuals with established ties to the workforce. According to a 1935 report by the Committee on Economic Security, which drew the blueprint for today's unemployment insurance system, unemployment insurance was intended for the "ordinarily steadily employed." The Ways and Means Committee's report on the Social Security Act noted the program was not intended to provide relief for everyone who was out of work.

Congress' intent still makes sense today. Unemployment insurance is funded almost exclusively by employers. In Illinois, it is funded 100 percent by employers. Employers alone should not bear the burden for individuals with little or no attachment to the world of work.

Second, a base period like Illinois' streamlines administration and minimizes the risk of fraud. Within a month following the close of each quarter, Illinois employers provide the state with reports on the wages paid to their workers during that quarter. The state uses those reports to verify that claimants are monetarily eligible for unemployment insurance. With Illinois' base period, all reports needed to verify an individual's eligibility should already be in the state's computer system when the initial claim is filed.

Pennington Lawsuit

The plaintiffs in *Pennington* are arguing that Illinois' base period violates the Social Security Act's "when due clause." The plaintiffs maintain that anyone who has not earned $1,600 over the 12 months included in the base period, or has not earned $440 outside the high quarter, should be able to try to establish eligibility through an alternate base period using the last four quarters.

When the case was first heard in district court, the judge agreed with Illinois that, as part of the state's monetary eligibility requirement, Illinois' base period could not be challenged under the Social Security Act. However, the appellate court reversed and remanded the case, to determine whether the Illinois base period violated the "when due clause."

To make that determination, the appellate court instructed the district judge to balance the benefits which some claimants could derive from the alternate base period against the state's interest in holding down administrative costs and minimizing fraud. On remand, the district judge determined the claimants' interests outweighed the state's and, therefore, that Illinois had to adopt the alternate base period. Illinois has again appealed.

With all due respect, I submit the appellate court was wrong, for a number of reasons. The legislative history of the Social Security Act indicates Congress intended states to have broad freedom to set up the types of unemployment insurance systems they considered appropriate.

The United States Supreme Court has held that the Social Security Act was intended to recognize the importance of each state establishing its own eligibility criteria for unemployment insurance.

In addition, since the establishment of the unemployment insurance system, the Labor Department - the federal agency charged with enforcement of the "when due clause" - has considered a base period of the first four of the last five quarters to be consistent with the clause and, in fact, has suggested that the states use such a base period.

In the 1970's, Congress itself expressly recognized and took no issue with the states' widespread use of base periods consisting of the first four of the last five quarters.

Beyond all that, however, the appellate court was wrong because the balancing test it prescribed is essentially a policy judgment of the type that governors and state legislatures are elected to make and are better-suited to make. The appellate court's ruling has separated the authority to make policy decisions from accountability for those decisions, with potentially expensive consequences.

Potential Illinois Impact of *Pennington*

In deciding the case on remand, the district judge noted that the administrative costs of the alternate base period could be substantial - $12 million to $15 million in one-time costs and $2.5 million in additional yearly operating expenses according to the Department of Employment Security. He also acknowledged that additional federal dollars to cover those costs were not likely to be forthcoming. He did not, however, concern himself with where the money to cover those costs would come from or with any of the other significant implications of what the plaintiffs want.

In fact, in addition to hiking state government's costs of doing business, *Pennington* could substantially raise outlays from Illinois' Unemployment Trust Fund account and impose hefty increases in employer taxes.

The Department of Employment Security estimates the alternate base period the plaintiffs are seeking would increase Illinois' Trust Fund outlays by 1.5 percent. A Labor

Department study indicates alternate base periods raise state Trust Fund outlays by four to six percent. A 1.5-percent increase in outlays from Illinois' Trust Fund account would amount to more than $180 million over the next eight years; a six-percent increase would total $750 million.

As state law is currently written, additional outlays would automatically trigger tax increases for Illinois business. A 1.5-percent increase in outlays would result in nearly a $70-million tax increase. A six-percent increase in outlays would raise employer taxes by $350 million.

Since state Trust Fund accounts are part of the unified federal budget, the difference between the increased outlays and the higher taxes would translate into an increase in the federal deficit - a more than $100-million increase if outlays rose by 1.5 percent; a $400-million increase if outlays rose by six percent .

Moreover, determining eligibility based on wages earned after the first four of the last five quarters would entail either essentially taking a claimant's word for it as to the amount of those earnings, thereby increasing the risk of fraud, or requiring additional reporting from employers to verify the earnings, thereby imposing new "paperwork burdens."

Potential National Impact of Pennington

Pennington's impact in Illinois, including its effect on the federal deficit, could presage things to come for nearly every other state. The appellate court's decision is binding in Indiana and Wisconsin, as well as Illinois, and can be used as precedent to attack other states' unemployment insurance laws. Moreover, *Pennington's* use as precedent will not necessarily be limited to cases where an alternate base period is the difference between eligibility and ineligibility. States can expect the argument that the "when due clause" requires an alternate base period when an alternate base period would yield a higher weekly benefit check. *Pennington* has blurred the line between what a state can and cannot be sued for under the "when due clause."

In the friend-of-the-court brief it submitted to the appellate court, the Labor Department said, "Given the widespread use of the type of base period employed by Illinois, an order striking down the Illinois law undoubtedly would cause nationwide disruption in the various states' unemployment compensation systems."

The case's implications beyond Illinois' borders prompted 23 states to join Illinois in requesting Supreme Court review of the appellate court's decision.

Conclusion

The type or number of base periods a state uses is not the litmus test of the fairness of that state's unemployment insurance system. It is simply a reflection of how that state's policy makers have decided to allocate the system's limited resources to best serve the interests of everyone whom the system was established to serve.

My specific request to you is for an amendment to the "when due clause" to clarify the Social Security Act does not govern state base periods. The amendment will eliminate the need for further costly litigation. Consistent with the intent of the unemployment insurance system's architects, it will also ensure that requirements as to eligibility remain a decision for state policy makers, who are directly accountable to the people who will be impacted by that decision.

I look forward to working with you toward a speedy resolution of this issue.

Thank you again for your time and consideration.

Mr. CAMP [presiding]. Thank you very much.

Now we will hear from Andrew Richardson, commissioner of the West Virginia Bureau of Employment Programs.

STATEMENT OF ANDREW N. RICHARDSON, COMMISSIONER, WEST VIRGINIA BUREAU OF EMPLOYMENT PROGRAMS; ON BEHALF OF THE INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES

Mr. RICHARDSON. Thank you, Mr. Chairman and Members of the Subcommittee. My name is Andy Richardson. I am the commissioner of the West Virginia Bureau of Employment Programs. I am a past president of ICESA, the Interstate Conference of Employment Security Agencies. I am here in that capacity. ICESA is the national organization of the State officials who administer the employment security system which includes the unemployment compensation programs, the job service offices across the United States, labor market information, and in most States the job training programs as well.

I would like to thank Chairman Shaw and the staff and Members of the Subcommittee for inviting ICESA to present our views today. I would commend my written statement for your review, and I will summarize some of my thoughts here verbally in the interest of time.

I believe this particular issue strikes at the very heart of the very unique Federal-State relationship that the Nation's unemployment system has experienced since its creation in the thirties.

The Federal law, the Social Security Act, defers to the States to determine eligibility requirements for unemployment compensation benefits. An individual must have sufficient wages preceding the filing of a claim to demonstrate a sufficient attachment to the labor force in order to qualify for this insurance program.

That period is called the base period. In most States, that is, in fact, the first four of the last five completed calendar quarters. The wages that you have earned during that period will determine the amount of your unemployment benefits and how long they will be available.

For example, if you filed a claim today, July 11, 1996, your base period would be April 1, 1995, through March 31, 1996.

Even if they had worked all the period of time from April 1, 1995, right up through yesterday, that would be the period of time looked at, and it is a very predictable, manageable concept.

The legislative framework that created the unemployment system is the Social Security Act of 1935, and it gave States broad discretion in the establishment of their unemployment programs, including the terms and conditions under which benefits are payable.

Now, through the history of this program, determining the period that constitutes the base period for eligibility for unemployment compensation has been one of the many eligibility criteria that the Federal law has deferred to the State governments.

It is remarkable, really, that the structure of the State programs is very similar. Most States, in fact, do use the first four of the last five calendar quarters for the base period.

Why? Well, when they set up the system nationally in the thirties, draft legislation was prepared for the States by the Federal

Government, and that legislation became the genesis of virtually every unemployment compensation law across the United States. So the Federal Government provided all the States with draft legislation saying here is the way to comply with the Federal law.

Now we have the *Pennington* case coming along saying that that very concept of legislation that was provided in a model format for the States is not correct, and instead of using this framework to defer to the States on how to determine when meeting the "when due clause," we now have this different approach being proposed.

The view of the Interstate Conference of Employment Security Agencies is that this is a matter to be left to the States. We don't oppose alternative base periods. In fact, many States have opted to do that across the country. Most States, however, do use the first four of the last five quarters. Some States use more recent wages for qualifying purposes.

ICESA believes that States should continue to have latitude to establish such alternatives or other standard base periods—that the first four of the last five calendar quarters is only one of a variety that the States choose to use.

We are concerned that the *Pennington* case could establish a precedent for the determination of other qualifying and eligibility requirements for State unemployment benefits by the judicial rather than the legislative process.

Expansion of the court's authority in setting qualifying and eligibility requirements for unemployment benefits preempts the democratic process and, as a result, is likely to erode public support for the program.

For example, some States choose to make certain decisions relative to payment of unemployment compensation. What constitutes a just cause for quitting? Are we now going to have the court system direct us that certain things are a just cause for quitting and you, therefore, must pay unemployment compensation benefits?

This is a substantial encroachment into the deference to the States and the design of these programs, and the recommendation of the Interstate Conference of Employment Security Agencies is that it is in the best interest of this very precious national system, this unique Federal-State relationship in the Unemployment Insurance Program, the workers it serves and the employers it serves to maintain the historical interpretation of the Social Security Act's "when due clause"; that that interpretation would be substantially changed if the *Pennington* decision stands, and therefore, ICESA urges you to enact legislation making it clear that congressional intent is to leave establishment of base periods up to the States.

Thank you very much for the opportunity to be with you today. I would be happy to respond to any questions.

[The prepared statement follows:]

STATEMENT
BY
ANDREW N. RICHARDSON
COMMISSIONER
WEST VIRGINIA BUREAU OF EMPLOYMENT PROGRAMS
ON BEHALF OF THE
INTERSTATE CONFERENCE OF EMPLOYMENT SECURITY AGENCIES
TO THE
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HUMAN RESOURCES
JULY 11, 1996

Mr. Chairman and members of the Subcommittee, my name is Andy Richardson. I am Commissioner of the West Virginia Bureau of Employment Programs, and I am here today representing the Interstate Conference of Employment Security Agencies (ICESA). ICESA is the national organization of state officials who administer the nation's public Employment Service, unemployment insurance laws, labor market information programs and, in most states, job training programs.

I would like to thank Chairman Shaw for the invitation to present ICESA's views about the federal court's ruling in the Pennington case.

Background

To establish eligibility for unemployment benefits, an individual must have sufficient wages preceding the filing of a claim. The period surveyed for these wages is called the "base period."

Most states use a base period consisting of the first four of the last five completed calendar quarters. For example, if the claim were filed today, July 11, 1996, the base period would be April 1, 1995, through March 30, 1996. Even if the individual had worked during all of the period from April 1, 1996, through July 10, 1996, the wages from this work would not be used to determine eligibility for a claim.

The first four of the last five completed calendar quarters is the most common base period. It reflects the public policy judgement that unemployment benefits should be paid only when the claimant has an established attachment to the labor force. In addition, almost all states determine eligibility for benefits using wage information which is reported by employers on a quarterly basis for all workers. It takes time for these reports to be completed and submitted by employers and for states to enter the information into state computer databases.

Outline and Status of the Pennington Case

As you know, the plaintiffs in Pennington are a class of claimants who were not monetarily eligible for unemployment benefits using the standard Illinois base period but would have been eligible had earnings subsequent to the first four of the last five quarters been considered. They contend that the Illinois base period violates the Social Security Act's requirement that administrative methods ensure that UI benefits are paid "when due."

In 1994, the Seventh Circuit Court of Appeals reversed the district court and ruled that the base period provided for by the Illinois Unemployment Insurance Act is an "administrative provision" subject to the "when due" clause. The appellate court remanded the case to the district court for a determination as to whether the "when due" clause had been violated. To make the determination, the district court was instructed to balance the plaintiffs' interest in prompt payment of benefits against the state's interest in minimizing administrative costs and preventing fraud. The U.S. Department of Labor submitted an *amicus* brief to the court supporting the Illinois Department of Employment Security's position that the base period is an eligibility requirement, not an administrative method, and accordingly, not subject to the "when due" clause. The court appeared to give little weight to the Labor Department's arguments because the department has not issued regulations on the matter.

The Illinois DES appealed the seventh circuit's ruling to the Supreme Court which declined to hear the case in November 1994 and remanded the case to the district court. Twenty-three states signed an *amicus* brief supporting Illinois' position.

On remand, the district court weighed four factors: 1) the number of additional eligible claimants there would be under an alternative base period; 2) the amount of additional benefits that would be paid; 3) the increased promptness with which eligible claimants would receive benefits; and, 4) the administrative costs of implementing an alternative base period. There was no consideration of the potential impact on employers in terms of additional costs or administrative burden. With respect to administrative costs, the court found IDES' evidence credible--the agency would incur more than $13 million in one-time costs and additional annual operating expenses of more than $2.5 million. The court also stated it was likely that federal funding to cover the costs would not be forthcoming. Nevertheless, the court concluded that the first three factors inured to the plaintiffs' benefit and outweighed the fourth. Accordingly, Illinois' base period was held to violate the "when due" clause.

ICESA's Views

Our nation's unemployment insurance (UI) system is a unique federal-state partnership, grounded in federal law but executed through state law by state officials. The legislative framework created with the Social Security Act in 1935 gives states broad discretion to design their own unemployment insurance programs including determining the terms and conditions under which benefits are payable.

Prior to the court's interpretation in Pennington, Section 303 (a) (1) has been interpreted by the Executive Branch and by the courts since 1935 to mean that benefits should be paid as promptly as is feasible administratively under the terms and conditions of state laws.

Throughout the history of the unemployment insurance program, determining the period that constitutes the base period for unemployment insurance claims purposes has been one of many eligibility criteria that federal law has left to the states. For example, each state--through its legislative process--decides the amount of earnings necessary to qualify for benefits, whether various reasons for voluntarily leaving a job constitute "good cause" and when the reasons for discharge from a job are such that an individual is disqualified from benefits.

The legislation establishing the unemployment insurance system in this country makes it clear that Congress intends for the states to have wide latitude in designing their unemployment compensation programs. That being the case, it is remarkable that the structures of state programs are so similar. This phenomenon can most likely be traced back to "draft bills" for state unemployment compensation laws that were provided to the states by the Department of Labor to illustrate legislation that would meet federal requirements. The base period that Illinois and most other states use was included in a draft bill that many states used as a model for their respective state laws. Therefore in establishing a base period consisting of the first four of the last five completed calendar quarters, states were assured that their law conformed to federal requirements. In addition, each year the Secretary of Labor must certify to the Secretary of the Treasury that each state's unemployment compensation law is in conformity with federal law in order for employers doing business in the state to claim the 90% offset credit against federal unemployment tax obligations. The Secretary has certified the Illinois law and the laws of other states with the same base period structure for almost 60 years.

We believe that the court's decision in Pennington is an implausible interpretation of the Social Security Act's requirement that administrative methods be designed to ensure the prompt payment of benefits when due and is inconsistent with the intent of Congress that states have wide latitude to design state unemployment insurance programs.

A number of states have put alternative base periods in place to address the circumstances of the plaintiffs in Pennington -- individuals who would not qualify using the first four of the last five quarters but who would qualify if more recent wages were used. ICESA believes that states should continue to have latitude to establish such alternatives or other standard base periods -- that the first four of the last five quarters is only one of a variety of base periods that states might use. As technology that permits states to collect and process wage information more quickly becomes available, more states may wish to establish alternatives or more recent quarters as their base periods. However, purchasing the latest technology and implementing alternatives to standard practices are expensive. Administrative funding for unemployment insurance was cut about 6% in FY 1996, and increases in the future to support practices such as alternative base periods does not appear likely.

As you know, administrative funding for unemployment insurance is included under domestic discretionary spending caps although the program is an entitlement. There is currently no provision for increases in administrative funding for unemployment insurance under the discretionary caps--even though the number of beneficiaries who would be entitled to be served could increase substantially in an economic downturn.

Implications

The Pennington decision blurs the line between what is an eligibility requirement and what is an administrative method, potentially giving rise to further lawsuits against state employment security agencies regarding issues beyond base periods. We are concerned that Pennington could establish a precedent for determination of other qualifying and eligibility requirements for state unemployment benefits by the judicial rather than the legislative process. Expansion of the courts' authority into setting qualifying and eligibility requirements for unemployment benefits preempts the democratic process and, as a result, is likely to erode public support for the program.

In the legislative process, discussions about qualifying and eligibility are not an entirely intellectual exercise. The practical implications, as well as the intellectual basis, of new provisions must be recognized because the legislative body bears responsibility for the outcome. For example, in a state where individuals in the same circumstances as the plaintiffs in Pennington are not eligible for benefits, legislators must explain to constituents why they are not eligible; in a state where an alternative base period is put in place, legislators must explain to their employer constituents that their unemployment taxes will be higher. In the legislative process, all interests must be weighed. The courts simply issue an opinion and take no responsibility for implementation.

Recommendation

We believe that it is in the best interest of the unemployment insurance system and the workers and employers it serves to maintain the historical interpretation of the Social Security Act's "when due" clause; that interpretation would be changed significantly if the Pennington decision stands. ICESA urges you to enact legislation making clear Congressional intent to leave establishment of base periods to the states.

Mr. CAMP. Thank you.

First, before we go to questions, we will hear from Albert Miller, president of Phoenix Closures, Inc.

STATEMENT OF ALBERT R. MILLER, PRESIDENT AND CHIEF OPERATING OFFICER, PHOENIX CLOSURES, INC., NAPERVILLE, ILLINOIS

Mr. MILLER. Thank you, Mr. Chairman and Members of the Subcommittee. My name is Bert Miller, and I am the president and chief operating officer of Phoenix Closures. My company is located in Naperville, Illinois, and produces container caps for regional and national brands, both domestic and international. Our customers cover a variety of markets including foods, household chemicals, cosmetics, health care products, industrial products, and pharmaceuticals.

Phoenix Closures presently employs more than 200 workers and has been an Illinois employer for over 100 years.

I am here today to express my strong support for the legislation Governor Edgar and Comptroller Didrickson are seeking in connection with the *Pennington* case. I also have a general observation regarding devolution of the employment security system.

As to *Pennington*, there are problems both with the alternate base period itself and the manner in which its proponents are trying to implement it.

The *Pennington* alternate base period would provide for the payments of unemployment benefits financed exclusively by employers to individuals with no established connection to the work force. To that extent, it would turn the unemployment insurance system into a 100-percent employer-financed welfare program, something well beyond what I understand to have been Congress' intent and something employers cannot afford.

Comptroller Didrickson has already discussed the estimates regarding the alternate base period's potential impact on the trust fund and employer taxes. A 1.5-percent increase in outlays would raise employer taxes by nearly $70 million over the next 8 years. A 6-percent increase would increase taxes by nearly $350 million over that period.

To put those numbers into context, let me talk briefly about my own company's situation. Phoenix Closure's sales for the year to date are up 30 percent over last year. However, rising raw material costs left the company's bottom line essentially unchanged. In an environment where output has to improve by nearly one-third just for business to stay even, the prospect of any tax increase is daunting. The possibility of a $350-million tax increase is absolutely staggering.

The alternate base period's cost to employers, however, would not necessarily be limited to higher tax. I understand employers would also be faced with the additional reporting requirements with penalties for noncompliance in the event they failed to verify claimant's earnings not yet in the State's computer system on a timely basis.

I am also troubled by the potential impact on government, $12 to $15 million in startup costs and $2.5 million in extra annual costs with no identifiable source to cover those costs.

I am no apologist for government. By and large, it needs to work a whole lot smarter and cheaper than it does now. However, we cannot realistically expect results if we just keep it doing more things.

The alternate base period takes us further in the wrong direction. It just gives government one more thing to do.

Having said all this, I recognize there are reasonable people who might disagree with me. I could probably have a spirited debate with them on the wisdom of an alternate base period. The problem is, as the *Pennington* case has transpired, most of my concerns will never enter into the debate.

According to the most recent district court decision, the only relevant considerations in deciding whether a State should adopt an alternate base period are how much more would be paid in benefits, and what the impact would be on government's operating expenses. The cost to employers in terms of higher taxes and additional paperwork simply won't count. Employers won't even be able to have the satisfaction of voting against the judge who made the decision.

Mr. Chairman, employers are the ones who pay for the system. Our concerns should at least be considered relevant to the discussion.

The legislation Illinois is asking for is simple. It will just make sure that the decision about whether the benefits of an alternate base period justify its cost remains one for policymakers who will be accountable to the people affected by the decision. It will also ensure that as the cost and benefits are weighed, all sides' concerns are given their due. I respectfully ask you to support it.

As to devolution, as with everything, the devil is in the details. However, done correctly, I believe it could make the employment security system more accountable to the people it serves, allow for more flexibility and smarter choices by State officials and make the system cheaper for government and employers. Your consideration of the matter will be a real service to employers and jobseekers alike.

Thank you very much for taking the time to hear my point.

[The prepared statement follows:]

TESTIMONY
BEFORE THE HUMAN RESOURCES SUBCOMMITTEE,
HOUSE WAYS AND MEANS COMMITTEE,
BY
ALBERT R. MILLER, PRESIDENT,
PHOENIX CLOSURES, INC.

July 11, 1996

Thank you, Mr. Chairman and members of the Subcommittee. My name is Bert Miller. I am the President and chief operating officer of Phoenix Closures. My company is located in Naperville, Illinois and produces container caps for regional and national brand products, both domestic and international. Our customers cover a wide array of markets, including foods, household chemicals, cosmetics, health care products, industrial products and pharmaceuticals. Phoenix Closures presently employs more than 200 workers and has been an Illinois employer for over 100 years.

I am here today to express my strong support for the legislation Governor Edgar and Comptroller Didrickson are seeking in connection with the *Pennington* case. I also have brief observations regarding the devolution of the employment security system.

As to *Pennington*, there are problems both with the alternate base period itself and the manner in which its proponents are trying to implement it. The *Pennington* alternate base period would provide for the payment of unemployment benefits, financed exclusively by employers, to individuals with no established connection to the workforce. To that extent, it would turn the unemployment insurance system into a 100-percent employer-financed welfare program - something well beyond what I understand to have been Congress' intent and something employers cannot afford.

By increasing outlays from Illinois' Trust Fund account, the alternate base period would also raise employer taxes. The greater the rise in outlays was, the higher the tax increase would be. The lowest estimate I have seen is that the alternate base period would increase outlays from Illinois' account by 1.5 percent. An increase of that size would raise employer taxes by nearly $70 million over the next eight years. There is a Labor Department study that estimates an alternate base period can raise a state's Trust Fund outlays by four to six percent. A six-percent increase in outlays from Illinois' account would raise taxes on Illinois business by $350 million over the next eight years.

To put those numbers into context, permit me to discuss briefly my own company's situation. Phoenix Closures' sales for the year to date are up 30 percent over last year. However, rising materials costs have left the company's bottom line essentially unchanged. In an environment where output has to improve by nearly a-third just for a business to stay even, the prospect of any tax increase is daunting. The possibility of a $350-million tax increase is absolutely staggering.

The alternate base period's cost to employers, however, would not necessarily be limited to higher taxes. I understand employers could also be faced with additional reporting requirements, with penalties for noncompliance, to verify claimant earnings that had not yet been reported and entered into the state's computers.

I am also troubled by the potential impact on government - $12 million to $15 million in start-up costs and $2.5 million in extra annual costs according to the Department of Employment Security, with no identifiable source to cover those costs. I am no apologist for government. By and large, it needs to work a whole lot smarter and cheaper than it does right now. However, we cannot realistically expect those results if we just keep giving it more things to do. The alternate base period takes us further in the wrong direction in that it just gives government one more thing to do.

Having said all this, I recognize there are reasonable people who might disagree with me. I could probably have a spirited debate with them on the wisdom of an alternate base period. The problem is, as the *Pennington* case has transpired, most of my concerns will never even enter into the debate. According to the most recent district court decision, the only relevant considerations in deciding whether a state should adopt an alternate base period are how much more would be paid in benefits and what the impact would be on government's operating expenses. The cost to employers, in terms of higher taxes and additional paperwork, will simply not count. Employers will not even be able to have the satisfaction of voting against the judge who made the decision. Mr. Chairman, employers are the ones who pay for the system; our concerns should at least be considered relevant to the discussion.

The legislation Illinois is seeking will simply make sure that the decision as to whether the benefits of an alternate base period justify its costs remains one for policy makers accountable to those who will be affected by the decision and that, as the costs and benefits are weighed, all sides' concerns are given their due. I respectfully ask you to support it.

As to devolution, as with everything else, the devil is in the details. However, done correctly, I believe it could make the employment security system more accountable to the people it serves; allow for more flexibility and smarter choices by state officials, and make the system cheaper for government and employers. Your consideration of the matter will be a real service to employers and job seekers alike.

Thank you for you taking the time to have this hearing today and for considering my views.

Chairman SHAW. Thank you.

Mr. McCrery.

Mr. MCCRERY. Mr. Richardson.

Mr. RICHARDSON. Yes, sir.

Mr. MCCRERY. Are you familiar with the holding in the *Pennington* case by the appeals court?

Mr. RICHARDSON. Yes.

Mr. MCCRERY. Can you explain it? In other words, what did the court say was wrong with having no alternate base period? Why isn't Illinois base period adequate?

Mr. RICHARDSON. I think it has to do with their interpretation of when benefits are due and the imposition of a very liberal interpretation of that concept to ensure that the most attractive way of paying the benefit is found for the unemployed worker.

To me, it rejects the consideration of the level of attachment to the work force, the attachment to the labor market that is sufficient for consideration of this insurance program.

Mr. MCCRERY. Give me an example of an alternate base period that the court would have you use.

Mr. RICHARDSON. An alternate base period example would be the four most recent completed calendar quarters, instead of the first four of the last five. I believe in the example I used, April 1, 1995, through March 31, 1996, would be the base period under the first four of the last five concept, if you were to file a claim today.

With an alternative base period, you would not only look at that, but you would look at July 1, 1995, through June 30, 1996, and whichever produced the best benefit for the unemployed worker would be the base period that you would use to determine the benefit amount.

Now, this is problematic for the States. To begin with, the wage reports for June 30, 1996, aren't even due in my State until the end of July. Now, I don't have that data. That means that I am going to have to request that last quarter from the employer in order to make that determination.

Now I request that. Now we get into some verification issues. We get into some accuracy issues. I think you raise the risk of increasing errors on the part of the payment processes. It could delay the payment of benefits while you are waiting to get that data from the employer.

Mr. MCCRERY. Mr. Uhalde, I gathered from your testimony that the Department of Labor's primary objection to legislation moving forward at this time is that it is premature. Is that correct?

Mr. UHALDE. That is correct.

Mr. MCCRERY. You don't have any problem with the substance of the legislation. I mean, are you in agreement still, as your amicus brief stated, that this should be a State's right to establish the base period?

Mr. UHALDE. The amicus brief that the Department filed was answering a very narrow question, and that was, Is the Illinois base period consistent with current law and regulations, and in our amicus brief we stated that in our opinion it was. That is our current interpretation, our present interpretation of the existing law.

The question that is being asked here is whether there ought to be legislation on that particular issue, and we think it is premature

probably for three or four reasons. One, we think there are appeal rights that currently exist, and I think it is important to get the court decision. We would have argued that the legislation is intended to correct, within the law, this one narrow interpretation, but that could leave open, then, what is primary State responsibility in other areas. This is a very narrow surgical legislative point.

Second, we now have some research ongoing, and legislative decision should be made with full information.

We have already heard that Illinois believes the cost would be about 1.5 percent. That also means benefits that people aren't getting is about 1.5 percent, but our preliminary analysis is that it could be as much as 6 percent.

Well, 6 percent in terms of benefits not paid to individuals, as well as 6 percent cost to the trust fund; that is quite a difference, and if we are going to legislate, we ought to legislate with the best information possible. In March, we will have pretty solid information on this question. We think it is reasonable to have such information.

Mr. McCrery. So, in other words, you are telling us today that even though the Department filed an amicus brief that you were filing the amicus brief strictly as a lawyer interpreting what you appreciated to be the current law, but if you were writing the law, you may arrive at a different conclusion. You may write a different law. You may not give the States the right to determine their own base periods. Is that correct?

Mr. Uhalde. Historically, our position has been that this issue is an eligibility issue, a determination of the States.

Mr. McCrery. Right.

Mr. Uhalde. That is correct.

Our position with regard to eligibility issues is unchanged—it is a position for the States, but there is a legitimate question; if you are going to change the Social Security Act and change the law now, then we should do this with full information. There isn't full information.

Mr. McCrery. Mr. Chairman, if you will indulge me just to continue this point.

Chairman Shaw. Yes, go ahead.

Mr. McCrery [presiding]. I am confused because you seem to be saying now that you are in agreement with the law as you interpret it, that this ought to be an eligibility issue and, therefore, determined by the States. If, in fact, that is your position, then why would you quarrel with legislation which would clarify the law?

Mr. Uhalde. Because we believe that at this point that is premature to be able to do.

Mr. McCrery. That brings us back to my original statement that your only objection is that it is premature.

Mr. Uhalde. I attempted to clarify why we believed that was premature in this instance.

Mr. McCrery. Again, if your only objection is that it is premature, I don't understand why. If we are willing to go through the trouble, it is no sweat off your back if we do the work and pass the bill. All you have to do is sign it. If we are willing to do the work to clarify the law to do what you say you think it should do, give the States the right to determine their eligibility periods or

their eligibility criteria, then I don't understand your objection. If we are willing to do the work and make the court case moot, basically, by making sure the interpretation of the law is clear along the lines that you think it should be, then I don't see that you should object to our moving forward.

Mr. UHALDE. We object because we don't think we ought to go forward without full information on this. We have quite a diverse understanding of what the impacts of this are going to be.

Our preliminary analysis is looking at the impact of people in filing in a static period over 1 year. We don't know, for example, how many of these individuals ultimately would have waited and filed anyway, so that these net benefit costs may be lower in this case. There are both costs to the system and to employers, but there are also benefits to individuals.

We stated our opinion in terms of the legal opinion, but I think if one is going to take the next step in terms of the legislation, the Congress as well as the administration ought to be informed.

We also think we can improve the system working with States using electronic filing to help reduce the lag period for individuals. We are working with States to be able to do that.

Mr. MCCRERY. OK. Well, thank you very much for responding to my questions.

Mr. Rangel.

Mr. RANGEL. Thank you. To the comptroller from Illinois, I assume the State opposes the decision that has been made in the *Pennington* case?

Ms. DIDRICKSON. That is correct.

Mr. RANGEL. I assume, further, that you are appealing that decision?

Ms. DIDRICKSON. We have. We have gone with 23 States all the way up to the U.S. Supreme Court after the decision by the U.S. District Appellate Court and were not successful. We've spent over half a million dollars to do that.

Illinois really has no choice.

Mr. RANGEL. I would assume, not having read your papers on appeal, that if you are successful then existing law will be what you, what the State will be guided by.

Ms. DIDRICKSON. If we are successful in appealing, right. But we have not been successful, there is a track record out there. And we have no choice.

Mr. RANGEL. What is going to happen?

Ms. DIDRICKSON. We went to the U.S. Supreme Court and were turned down and remanded back to the district court.

Mr. RANGEL. Have you exhausted your legal remedies?

Ms. DIDRICKSON. Other than the U.S. Supreme Court which we have already tried to appeal to, with 23 other States, and the case was not heard, we are currently back before the Federal appellate court.

Mr. RANGEL. So, would you support the Congress drafting legislation that would clarify this issue?

Ms. DIDRICKSON. Yes, we would. We see it as a preemption issue, 60 years ago, the question really is, Did Congress intend to preempt States rights? I think we've clearly heard that that wasn't the intent and we would like to be able to clarify that. Because, other-

wise, we are facing in the next year a potential $15 million cost in the State of Illinois and we don't know where we will get that $15 million. And that's just the administrative costs.

Mr. RANGEL. But you haven't the slightest clue what the Congress would come up, do you?

Ms. DIDRICKSON. Pardon me?

Mr. RANGEL. You have no idea what legislation we would come up with.

Ms. DIDRICKSON. I understand that Congressman Crane is introducing legislation this afternoon.

Mr. RANGEL. Well, it is generally true that when the Majority wants something done, the Minority does not have much influence. Under the normal way legislation is prepared you really don't know what will be signed into law.

My point, really, is that the Department of Labor indicated that they have an advisory council and there are a lot of recommendations out there that they support. As they've indicated today, the State would determine the base period. Since everyone does not agree with what you have said, that you have exhausted your legal remedies, that the best thing that could be served is that we get all of these people—Mr. Secretary, how long has your Department been working on this issue?

Mr. UHALDE. I believe the original case was filed in 1985.

Mr. RANGEL. No. I mean the revisions, the Council on Unemployment. Are you familiar with this?

Mr. UHALDE. Yes. And the Advisory Council has issued its report this year——

Mr. RANGEL. And these are experts?

Mr. UHALDE. Yes. This was a bipartisan commission appointed part by the administration, part by the Congress, both Majority and Minority and——

Mr. RANGEL. And so, the Congress will be best served if we just look at the basis of the recommendations. Most people believe that the States should control the base period. I don't think there is any disagreement out there.

And the question is, whether we do it on what makes us feel good, or act on the information of those people who specialize and recognize that there is a problem out there.

So, unless there's something urgent, is there anything urgent that any of the panel members feel——

Ms. DIDRICKSON. I think the question here is, you know, what is the benefit to waiting? And as I reread the Secretary of the Department of Labor's testimony here it is clearly stated. It is Illinois choice or any State's choice of how to balance the various pros and cons of immediate access versus demonstrated attachment to the labor force.

Mr. RANGEL. Well, let me ask the Secretary, do you believe that Illinois has exhausted its appeals rights?

Mr. UHALDE. No. We believe there is still an appeal right——

Mr. RANGEL. The Supreme Court?

Mr. UHALDE [continuing]. To the Supreme Court on this issue. I recognize that they have been not accepted once but we understand that could——

Mr. RANGEL. Well, you have no idea what this Congress will come up with if we come up with anything at all. And I hope that we might take into consideration all the available information based on studies, not to do what Illinois wants, but what is good for the entire Nation.

Illinois has seen what they perceive as States rights violated. I guess there is a lot of support for that. But I would assume, Secretary Uhalde, that this panel has discussed issues that go far beyond the Illinois court decision. Is that correct?

Mr. UHALDE. That's correct.

Mr. RANGEL. So, listen, we got a lot of things to do between now and the time we get out there to change this Congress. I would hope that we will just move on to something else and then when we get back in, we will do it the right way.

Mr. MCCRERY. Mr. Collins.

Mr. COLLINS. Good morning, Mr. Chairman.

Ms. Didrickson, as I understand though, you have not entered this case as just Illinois?

Ms. DIDRICKSON. That's correct.

Mr. COLLINS. There are how many other States involved?

Ms. DIDRICKSON. We had 23 other States that appealed with us to the U.S. Supreme Court when we were denied a hearing.

And, as you heard, Andy Richardson, who has testified on behalf of ICESA, all the other States, there's a very clear danger here that this legislation from the bench for Illinois is going to—and I believe the U.S. Department of Labor has also said—it's going to serve as precedent in other States.

So, there's a legal lawsuit pending right now, I understand, in the State of Washington and there are other States where similar action is pending.

Mr. COLLINS. And how many States have used this same criteria?

Ms. DIDRICKSON. My understanding is that there are 49 States.

Mr. COLLINS. And you're saying the danger here is that the Congress may not legislate but the bench may legislate.

Ms. DIDRICKSON. I'm saying that the bench has legislated.

Mr. COLLINS. Leaving very little of the voice of the people to be heard, just the bench.

Ms. DIDRICKSON. That's right.

Mr. COLLINS. Mr. Uhalde, you've talked a lot about alternatives, alternative criterion. Is it not true that each State, through their legislature, could establish their own criteria or an alternative criteria than what these 47 States now use?

Mr. UHALDE. That's correct.

Mr. COLLINS. But based on your testimony though you are saying that Washington should do it or as Mr. Richardson has said, the bench should do it?

Mr. UHALDE. No. As I said, we filed an amicus brief supporting the State of Illinois in our interpretation of the current law and regulation that supported the State in their position. Historically, it has been an eligibility issue and the States have preeminence in setting those eligibility criteria. The question that we are asked now is ought there be new legislation enacted for this issue?

And we think that before anything like that is done that there is information that this Congress does not have that it ought to have in order to make its decision.

Second, this is one court in one district, the seventh circuit, and we believe historically that our position with regard to States and the Federal/State relationship has been upheld throughout courts over many years, I mean since 1932.

We believe, on an appeal, that it's very likely that this position of Illinois could be sustained. And it would be beneficial if one went through this appeal process and got that ruling rather than reacting to this immediate one-court decision.

Mr. COLLINS. But you keep mentioning though that we should seek more information. Where are you seeking your information from? I mean I believe that's what this panel is for today.

Who are you going to for your information?

Mr. UHALDE. We're getting our information from all the 50 States and an actuarial analysis of the impact of these decisions. We have had contracts let. We work with the States in order to make these actuarial estimates of the impacts on both benefits and on costs, including costs of employers and administrative costs.

Mr. COLLINS. Well, we have 60 years of history, is that not information well enough to make a determination?

Mr. UHALDE. That is information on the status quo.

Mr. COLLINS. You said yourself that we have had several court rulings that have upheld those decisions. Why should we force Illinois and 22 or 23 other States to continue to spend money to try to seek the same decision that has been made and rendered by other courts, why?

Mr. UHALDE. Because we believe that it's important. We believe that it is also——

Mr. COLLINS. But the other decisions were not important? We are seeking another decision, even though you think that it may be the same decision? Why not go ahead and legislate this thing and send it down to the White House and let the President sign it? Would you not recommend he sign or uphold what other courts have already upheld?

Mr. UHALDE. No, we think it is premature at this time to do the legislation.

Mr. COLLINS. That wasn't the question I asked. Would you recommend the President sign, yes or no?

Mr. UHALDE. I don't make recommendations to the President on signature of legislation at this point. I would have to see the legislation; I would have to see what it's going to do. I would have to see whether it is going to address other issues in this area. This is a very piecemeal approach to an issue.

Mr. COLLINS. It would do exactly what's been rendered by the courts for the last 60 years that you have said you agreed with.

Mr. UHALDE. That's correct.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. MCCRERY. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman.

I wasn't planning to ask a question but Mr. Uhalde, I was struck by something you had said that I may have misunderstood, to the effect that this court decision primarily would have an impact on

Illinois. Am I misquoting you on that or is that a misunderstanding of the thrust of your remarks?

Mr. UHALDE. I believe the impact is within that circuit court district which is Illinois, Wisconsin and Indiana.

Mr. ENGLISH. OK. I was curious because looking at the amicus brief filed in this case by the administration and I'm going to quote from it, the claim was made,

> Given the widespread use of the type of base period employed by Illinois an order striking down the Illinois law undoubtedly would cause nationwide disruption in the various States' unemployment compensation system.

So, you are arguing that the claim in the brief maybe was overstated? That there was not likely to be that kind of orbit of comparison?

Mr. UHALDE. I think the direct—as I understand the law—the direct legal interpretation by the circuit court applies to these three States I mentioned. I believe probably the amicus brief was then talking about the influence that that might have on other States over time.

Mr. ENGLISH. I guess my concern is—and, again, I have not seen the legislation myself—that given the legislative process here, if the existing court decision is upheld and the Supreme Court does not knock down the *Pennington* case as it has been currently decided, is this not a decision likely to be applied nationwide before Congress would have an opportunity to act in a year or two?

That, to me is a very real concern suggesting that we ought to be acting quickly if, in fact, this is potentially a major source of disruption of unemployment insurance.

Mr. UHALDE. I believe quick is relative. We don't believe that this is going to impact nationwide within the period that we're talking about. We want to get information back. We have all the analysis and reports coming in, in March of next year. So, we don't believe that this is going to spill over between now and then and if we can go to the Supreme Court, as you are suggesting, that certainly isn't going to happen between now and March or the spring of next year.

Mr. ENGLISH. Thank you very much.

I will yield back the balance of my time.

Mr. MCCRERY. Mr. Nussle.

Mr. NUSSLE. Thank you, Mr. Chairman.

I wasn't going to ask any questions either but you have me baffled. What information are you waiting for? What's coming in March that—I mean you filed an amicus brief without this information in support of Illinois and now you are telling us to wait. What was enough information for you to file a supporting amicus brief to start with but you're telling us now when it's going to affect, nationwide, possibly 49 States that we ought to wait until March to get some information. What information are you, are we going to get that is going to help us here that we don't already have?

Mr. UHALDE. The amicus brief was filed and in reading in the amicus brief the amicus brief spoke strictly to the legal question.

Mr. NUSSLE. OK, that's fine, but what information are we going to get by March?

Mr. UHALDE. The question and the information that we are going to get is on the impacts and the costs of the alternative base periods or not having alternative base periods. Which individuals are affected, what are the administrative costs, what are the benefits paid and the costs to employers of this court ruling if it went to the balance of the 47 States.

Already here, we've discussed the difference between an impact of 1½ percent in terms of benefits and the impact of 6 percent in terms of benefits. That's quite a difference and we think we need that information to then——

Mr. NUSSLE. To do what? To recommend whether or not we are going to preempt the States or not? I mean no matter what information you get back, are you going to come to us and say, Now, we want to make this Federal if it is six or if it's five or if it's one? Are you going to come to us at any of those ranges and recommend that we take over this system and preempt the States and not let them determine the base period?

Mr. UHALDE. No. We don't believe that we have——

Mr. NUSSLE. Well, then what information are we waiting for that is going to impact this decision, that's what I don't understand.

Mr. UHALDE. I do not believe and we do not believe that the Congress wants to make a decision without knowing the implications as to costs.

Mr. NUSSLE. You made the decision to support with an amicus brief without this information. Now, you're telling us to wait. It was OK for you to do it?

Mr. UHALDE. It was a decision in terms of our interpretation of the law and regulation.

Mr. NUSSLE. And we are interpreting the court decision and the information we have. We have our bevy of attorneys and staff looking into it. We have the opportunity to listen to the experts who are here today from Illinois and West Virginia and elsewhere. They're telling us it is probably a good idea to get involved in this.

And why are your experts more interesting or more accurate than our experts or why is it that there's information—I mean, what information are we going to get? You have not convinced me that there is any information out there that we're going to get between now and March that is going to either affect your recommendation to us on legislation or on our decision to pass or write legislation.

What is there out there?

Mr. UHALDE. I've stated what we believe is the importance of the information. It is not compelling to you but it's information that we think is important and ought to be considered.

Mr. NUSSLE. Well, I mean you're giving us a pretty strong recommendation here to wait. I would like you to be a little bit more compelling than I don't know what it will be or I don't know what impact it will have. I mean you're telling the States to wait and you're telling us to wait and you're telling them basically go ahead and file another appeal.

Can I ask, who pays for these appeals?

Ms. DIDRICKSON. The State of Illinois.

Mr. NUSSLE. And where does this money come from?

Ms. DIDRICKSON. Obviously from our employers. It comes back through administrative——

Mr. NUSSLE. So, you are asking small business people to put more money into the system to pay for more appeals because you want to wait for information you can't tell us about that you don't know whether it's going to be compelling? I mean this is a pretty serious—I mean that's why I wasn't even going to get involved in this. I was coming to see—Charlton Heston's going to be here. [Laughter.]

And I thought that was going to be interesting. I wasn't even going to get involved but this has got me a little bit baffled that you would tell us to wait when, you know——

Mr. RANGEL. Would my dear friend yield?

Mr. NUSSLE. No. I would like to hear from the administration what do they want us to wait for?

Mr. RANGEL. He's exhausted his answer.

Mr. NUSSLE. Well, I don't think you've got the answer, Charlie. You tell us that we ought to wait until maybe the Democrats take control which could take a long time.

Mr. RANGEL. You'll never know now, will you?

Mr. NUSSLE. Do you have any more information you can help us with as to why we ought to wait other than it may be a percentage that comes out that is not going to affect your recommendation?

Mr. UHALDE. No. I have presented to you, I believe, the reasons why we think it would be inappropriate to act now.

Mr. NUSSLE. OK.

Mr. UHALDE. Thank you.

Mr. MCCRERY. Mr. Rangel, would you like to——

Mr. RANGEL. Thank you, Mr. Chairman.

Mr. Nussle, as I see it, if we got away from the present law and the court decisions, it seems as though the court decision is more sensitive to the benefits as relates to the worker and that present law is more conservative as relates to protecting the employer.

As I understood the Secretary of Labor, he was saying that he thought it would be a cost estimate involved in this. And knowing your concern, as well as your colleagues, our colleagues' concern about cost, it would seem to me that we would not want to look at this and saying the poor employers will have to pay more money in order to exhaust our legal remedies, or that the unemployed wretched souls are getting too much.

If it's a question of degree—and nobody is against anybody, employers who create the jobs or employees who do the labor—it's just how much do you think is a fair amount and how much does it cost the State of Illinois or the employers throughout the country?

And, would that, Mr. Secretary, be one of the things that you could bring to this Subcommittee?

Mr. UHALDE. That is precisely the information that we feel is important for the Subcommittee to have—the costs to employers, both the continuing benefit costs and the administration costs and the benefits that accrue for an alternative base period to claimants. And that's information that we just think is relevant to this.

Mr. RANGEL. Now, we don't have any objection, Madam Comptroller, that the courts would be creating the law and the voice of the people will not be heard. I know you adopted that from one of

the Members. But you don't truly believe that the voice of the people will be denied as a result of us waiting, do you?

Mr. UHALDE. No.

Ms. DIDRICKSON. I guess, Congressman, my question is, what is the benefit of waiting? And I believe that the real question here is a preemption question, did Congress, 60 years ago, intend to preempt States rights?

Mr. RANGEL. Well, let me ask you this.

Because I don't presume that you know whether the voice of the people are the unemployed workers or whether the voice of the people are the more politically powerful employers but isn't the issue really whether an employee receives more or less benefits?

Ms. DIDRICKSON. No. The issue really is whether or not 60 years ago did Congress intend to preempt States rights? Should we have the ability, as a State, to be able to establish our base period? That is the issue.

Mr. RANGEL. And if the voice of the people had an opportunity to be expressed, you think they would think that is the issue?

Ms. DIDRICKSON. The voice of the people do have a voice in the State of Illinois through their legislative body——

Mr. RANGEL. But we are talking about——

Ms. DIDRICKSON [continuing]. When we established the base period.

Mr. RANGEL. But notwithstanding the sovereign rights of the State of Illinois, there is a Federal role here, don't you agree, please, yes?

Ms. DIDRICKSON. I believe that there is a Federal role here in terms of the legislative body here to determine whether or not did Congress intend to preempt States rights 60 years ago.

Mr. RANGEL. And I know you would not deny us the opportunity to have as much information in front of us as possible to make certain that we get it right.

Ms. DIDRICKSON. Well, I think you've heard from your colleagues on this panel how much information and what information and 60 years' worth of precedents with regards to allowing States to be able to establish their own base period and the fact that 49 States have a similar situation with Illinois and that there is a nationwide implication here that is very, very immediate and very clear.

Mr. RANGEL. Your response shatters the reason for panels. If I have to listen to my colleagues, in the Majority, then I'm out of business.

Ms. DIDRICKSON. But you could also then listen to it. It also shatters it if we are going to let the bench legislate versus you, Congressman.

Mr. RANGEL. Well, the court made a decision and under our legal system you appeal it and after you exhaust your legal remedies then that would be the time for us to act. Unless there is an emergency and the Congress believes that we have to make certain that the voice of the people, as heard through the employers, is protected, then let's move swiftly.

But if we want to find out whether or not the decision is too generous for the employers in the States, then I think that I would want as much information as possible.

Mr. Secretary, can we accelerate whatever information is available and let your people know that this is a very urgent issue, that the whole Nation is waiting to see how we're going to handle this case that comes out of Illinois? Could we do this because we are floundering for something besides cigarettes to deal with. Can you find out how quickly can we get that information? Can we get it so we can get a bill out of here before we adjourn?

Mr. UHALDE. Absolutely, Mr. Rangel. We will see how quickly we can get that information.

Mr. RANGEL. OK. I assume when I get home at the townhall meetings they are going to be asking, What the heck have you done with that case in Illinois and I want to be able to say we are responding because we want the voice of the people in this Congress to be heard. I can't wait to get the information.

Thank you.

[The following was subsequently received:]

STUDY

Analysis of Unemployment Insurance (UI) Claims - Revised Base Period in the UI Program

VENDORS

Planmatics Inc. (Primary)
Urban Institute (Sub)

PURPOSE

The purpose of this study is to examine the implications of states providing Alternative Base Period (ABP) options to UI claimants. This study will provide information which will assist national and state level policy analysts in decision making with regard to the implementation of ABP.

In its Request for Proposals process, the Department of Labor outlined twenty three research tasks. Cost concerns limited this study to twelve of those tasks. These tasks can be grouped into three major areas of study. They are:

(A) Effects on UI Trust Funds

(B) Effects on UI Administrative Costs

(C) Effects on Employers

DELIVERABLES

	DELIVERABLE	DELIVERABLE DATE
1.	Preliminary report on the Trust Fund Model based on one state.	January 1996
2.	Preliminary report on the Administrative Cost Process Model	May 1996
3.	Completed Trust Fund Model based on eight states.	July 1996
4.	Preliminary report on Employer Costs	October 1996
5.	Draft final report on the entire project	May 1997
6.	Final Report	June 1997

Mr. McCrery. I thank the gentleman for attempting to clarify the issue.

I thank the members of the panel for your testimony. It has been very helpful. I think the issue to most of us is quite clear. We do look forward to trying to clarify this issue for the States. Thank you.

Mr. Uhalde. Thank you.

Ms. Didrickson. Thank you.

Mr. Camp [presiding]. If we could have the next panel come forward please. Hon. David Poythress, Warren Blue, Walter Curt.

Good morning and welcome to our witnesses. This panel is on the devolution of unemployment insurance and we will begin with Hon. David B. Poythress, Georgia Commissioner of Labor.

Let me just say that your full written comments will be placed in the record and we are asking that witnesses confine their remarks to 5 minutes. A small red light will go on to let you know when your time has expired and, at that point in time, if you could wrap things up we would appreciate it.

Thank you.

STATEMENT OF HON. DAVID B. POYTHRESS, GEORGIA COMMISSIONER OF LABOR

Mr. Poythress. Thank you, Mr. Chairman.

I appreciate the opportunity to be here extended by the Chairman and my fellow Georgian, Mr. Collins.

I'm the State Labor Commissioner of Georgia. Before talking about devolution I would like to add one observation on the *Pennington* case that was made quite astutely by Ms. Didrickson and I think it is worth bearing in mind. *Pennington*, pressed to its logical conclusion, stands for the proposition that a State unemployment insurance agency would have to do whatever it takes to pay the maximum amount of money to any given claimant.

That case imposes on a government insurance program an organizing principle which is essentially welfare. And I think that is, not only is *Pennington* a bad decision, it is bad for a profoundly important reason and we wholeheartedly support the Illinois legislation. We would recommend that it be passed as soon as possible.

On the subject of devolution, Mr. Chairman, I have submitted my written report. I would like to speak informally a little bit about the history of that concept and then to describe the existing unemployment insurance system and then how I have proposed that it be changed for the better.

First, I would say that this concept has been around for a long time. It has been discussed in labor circles for at least a decade. From a technical standpoint most all of the issues have been hashed over, and it has been very thoroughly thought out from a technical standpoint.

The concept that I have proposed is based on some pioneering work that was done in New Hampshire. Colleagues in other States, most notably in Virginia, concur with it. I believe it provides a wonderful opportunity to genuinely return power to the States, to lay the groundwork for major tax cuts and for minimizing some of the Federal regulations that States have to put up with. It's an op-

portunity to minimize paperwork on the American business community.

The present employment security system is funded by two taxes. The first is the State benefit tax. That money is collected locally by State departments of labor. It is deposited in State-specific trust accounts which are managed by the Treasury Department. That money is expended only for benefits, unemployment insurance benefits. Within general operating guidelines, States have essentially unrestricted access to their own benefit moneys.

The other payroll tax is the FUTA tax or the Federal Unemployment Tax Act tax. Those funds are collected to pay for the administration of the system.

They are collected by the Internal Revenue Service. They are also computed against salaries. They are collected quarterly. The Internal Revenue Service transmits that money to the U.S. Department of Labor and the U.S. Department of Labor expends it in various ways.

Our best information is that the cost of collecting that tax by the IRS is about $75 to $85 million a year. Our friends in the small business organizations have estimated that as much as a half a billion dollars is expended by American businessmen, businesspeople in maintaining the separate tax system. Paying two taxes, two checks, two forms, two audits, two everything.

When the money is received in the U.S. Department of Labor it basically goes to four different spending categories. The first is subsidies to small States which do not have an employer base big enough to generate enough tax to pay overhead. That does not necessarily represent any sort of inefficiency on the part of those States. They are simply small States. That's a fact of life and the proposal that I have made would hold those States harmless.

The second amount of money goes to pay actually the operating costs of the U.S. Department of Labor, that's about 5 percent, and we think that's about right.

And about 60 percent of the money is returned to the States for administration. The problem is it is not returned dollar for dollar. In some States, they get materially less than what their employers pay in. In Georgia, we get about 40 cents on every dollar that our employers pay. Therein is the nut of this problem.

The fourth avenue through which those funds are channeled is into a series of trusts which are maintained by the U.S. Department of the Treasury and the money, in effect, cascades through three sets of trusts. The first is called the administrative account or the administrative trust. The second is the extended benefits account. And the third is a loan account for loans to States whose benefit accounts go insolvent.

The proposal that I have made is that the two taxes be combined. Not legally. They would be maintained as separate legal taxes. But they would be combined and collected by the States. There would be a single tax form, a single check, and a single audit. The moneys would be deposited in State-specific benefit accounts, as they are now, but also State-specific administrative accounts, also maintained by the Treasury for security purposes. And the States would have, within broad guidelines, unrestricted access to their own administrative money.

From those administrative collections, a percentage amount as determined by the Congress through the budget process would be redirected to the U.S. Department of Labor to fund their operating costs. In Georgia, as I mentioned, we get back about 40 cents on the dollar. If we were able to keep 95 percent on the dollar, we would be postured to extend to our employer community enormous tax cuts almost immediately. Also, we see the implementation of this as taking no more than 12 months and not a lot of money.

The final point of the recommendation has to do with the disposition of the trusts. This is the most technically and the most legally and politically complex part of the whole proposal. We have recommended that the administrative trust be abolished and that those funds be redistributed to the States on a pro rata basis, that is, on the basis of covered wages, to be used initially to fund the cost of the conversion. There would be some data processing costs involved.

And we have recommended that the extended benefits account trust also be eliminated and those moneys redistributed to the States into their benefit accounts on the same basis of covered wages. The Extended Benefits Program is used very little by only a few States and we feel like it has very little real utility as far as a national public program is concerned.

And then, finally, we have recommended that the loan account be maintained but that it be capped at a certain amount as determined by the Congress, so that funds do not continue to build and build and build.

As I said at the outset, Mr. Chairman, this is a wonderful opportunity to really return power to the States, to minimize the paperwork burden on American business and to posture the States to grant major tax cuts to their employers.

Thank you.

[The prepared statement and attachments follow:]

Statement

By

David B. Poythress

Georgia Commissioner of Labor

To The

House Committee on Ways and Means

Subcommittee on Human Resources

July 11, 1996

Mr. Chairman and Members of the Subcommittee, my name is David Poythress, and I am Commissioner of Labor in Georgia.

I appreciate the invitation to appear today and present my views on both the federal court's ruling in the Pennington Case and my proposal to transfer the Administration and Financing of the Employment Security System to the States.

Position on the Pennington Case

With the unique Federal-State partnership created by The Social Security Act of 1935, states have retained broad discretion to design their own unemployment insurance programs including allowable benefits, amount of earnings necessary to qualify for benefits, and all other eligibility requirements within broad fairness guidelines.

The 1994 decision by the Seventh Circuit Court of Appeals ruled that the base period process used by the Illinois Unemployment Insurance Act is an "Administrative Provision" subject to the "when due" clause of the Social Security Act. This ruling is plainly contrary to the universal understanding, throughout the 60 year history of the Unemployment Insurance program that "base period" determination is an eligibility requirement within the ambit of state authority. The base period concept is not a matter of administrative convenience. It represents the public policy judgment of states that UI benefits should be payable only to persons with a demonstrated continued attachment to the workforce.

The Social Security Act of 1935 clearly envisions broad latitude by states in designing their unemployment insurance programs. I urge you to enact legislation making congressional intent clear that states are responsible for determining the terms and conditions under which unemployment benefits are paid including the establishment of base periods.

Transfer of Administration and Financing of the Employment Security System to the States

The Employment Security System is composed of two major components. The Unemployment Insurance system (UI), created by the Social Security Act of 1935, is designed to provide workers with insurance against involuntary unemployment by partial replacement of lost wages. The Employment Service (ES), established by the Wagner-Peyser Act of 1933, is designed to provide job search assistance to individuals and recruitment and referral services to employers to get workers back to work as quickly as possible.

The UI and ES programs are highly integrated, and each depends on the other for efficient administration, success in serving job seekers and employers and keeping employer payroll taxes as low as possible.

Currently each state sets and collects a state payroll tax for UI benefits and deposits those funds into state-specific Benefit Accounts maintained by the federal government as part of the Unemployment Trust Fund (UTF). A separate federal payroll tax, collected by the Internal Revenue Service (IRS) under the Federal Unemployment Tax Act (FUTA) is a dedicated employer tax to support administration of the Unemployment Insurance (UI) laws and the Employment Service (ES). FUTA was established as a contract with private sector business that these dedicated taxes would be used only for unemployment and employment services.

The concept of "devolution" of most of the management of the Employment Security System from the U. S. Department of Labor to the states has been studied carefully for many years in labor department circles. It is fiscally sound, administratively simple and politically realistic. I believe the time to implement it is now.

I have attached, for the record, a copy of the Executive Summary of Georgia's Proposal to transfer the administration and financing of the Employment Security System to the states.

This very straightforward proposal does three main things.

1) It establishes a single, state-collected payroll tax for both UI benefits and UI/ES administration,

   --Eliminating the current duplicative tax system and saving private sector employers approximately half a billion dollars annually in filing costs;

   --Eliminating IRS collection of the federal payroll tax, thus saving $75 to $80 million each year;

   --Making the marginal additional cost to the states to collect "both" taxes negligible.

These savings could begin as soon as states - instead of the IRS - begin collecting the .8% FUTA tax. At the point when a state adopts its own administrative tax, the .8% federal FUTA tax would be completely offset to the employer. State collections would be deposited in state specific accounts in the UTF to avoid any adverse impact on the federal deficit.

2) It eliminates micro-management of state programs by the U. S. Department of Labor (USDOL) and establishes the foundation to downsize the USDOL bureaucracy by 50% to 75%.

3) It assures that the employers who pay FUTA taxes get the full benefit of those taxes. Reduction of IRS and USDOL roles will greatly reduce the costs and improve the efficiencies of the system.

In summary, Mr. Chairman, this is a wonderful opportunity to:

--Truly return power to the states;
--Lighten the paperwork burden on American business;
--Save millions in wasted tax dollars and
--Lay the foundation for future tax cuts.

I strongly encourage the committee's favorable consideration of this proposal.

A Proposal to Transfer the Administration and Financing of the Employment Security System to the States

Executive Summary

By

David B. Poythress, Commissioner
Georgia Department of Labor

The Employment Security System is composed of two major components. First, the Unemployment Insurance system (UI), created by the Social Security Act of 1935, is designed to provide workers with insurance against involuntary unemployment by partial replacement of lost wages. Secondly, the Employment Service (ES), established by the Wagner-Peyser Act of 1933, is designed to provide job search assistance to individuals and recruitment and referral services to employers, to get workers back to work as quickly as possible.

The UI and ES programs are highly integrated and each depends on the other for efficient administration; success in serving individuals and employers; and, keeping employer unemployment taxes as low as possible.

Currently each state sets and collects a state payroll tax for UI Benefits and deposits those funds into state specific Benefits Accounts maintained by the Federal Government as part of the Unemployment Trust Fund (UTF). A separate federal payroll tax, collected by the Internal Revenue Service (IRS) under the Federal Unemployment Tax Act (FUTA), is collected as a dedicated employer tax to support administration of the Unemployment Insurance (UI) laws and the Employment Service (ES). FUTA was established as a contract with business that these dedicated taxes would be used only for unemployment and employment services.

The concept of transferring the Administration and Financing of the Employment Security System to the States, usually referred to as "Devolution", has been studied for many years and is fiscally sound, administratively simple, and politically realistic. It also would be easily compatible with any of the several Employment and Training block grant proposals currently before Congress.

Our relatively simple devolution proposal would accomplish several objectives:

- *Establish a single, state-collected payroll tax for both UI benefits and UI/ES administration;*
- *Eliminate the current duplicative tax system saving American businesses approximately half a billion dollars annually in paperwork and filing costs;*
- *Eliminate IRS collection of the FUTA taxes, thus saving $75 to $80 million each year;*
- *Significantly reduce micro management by the USDOL and establish the foundation to downsize the USDOL by up to 75%;*
- *Assure that employers get the full benefits of the FUTA taxes they pay by reducing the roles of IRS and USDOL;*
- *Return power to the states and lay the foundation for possible tax cuts.*

Our guiding principles, applied in Georgia's proposal for a devolved employment security system, are these:

* *The primary Federal role should be to assure that state laws and policies conform to requirements to maintain a public employment service and an unemployment insurance program as prescribed in federal law;*

* *Authorize states to collect a single payroll tax including administrative and benefits components, to be maintained in separate state-specific Trust Accounts managed by the Treasury Department;*

* *Treasury Department would continue to manage all unemployment Trust Fund accounts so that funds will continue to be counted in deficit calculations;*

* *Develop clear, strict solvency standards for state administrative trust accounts structured similar to current state unemployment benefit trust accounts;*

* *Allow a 100% offset of FUTA taxes to employers (currently .8% of wages) at the point a state adopts its own administrative tax;*

* *Maintain a hold harmless funding level for states who would lose grant funds with devolution;*

* *Provide financing of national activities from state Administrative Accounts; but only for essential federal oversight requirements and state "hold harmless" supplements. We anticipate this would not exceed 5% of total administrative taxes collected;*

* *Assure states full access to state administrative Trust Accounts within solvency standards established. This would mirror current handling of State Benefits Trust Accounts;*

* *Relinquish all federal claims on equipment and property purchased with FUTA funds upon approval of each state's plan to assume responsibility for administration and financing of the Employment Security System.*

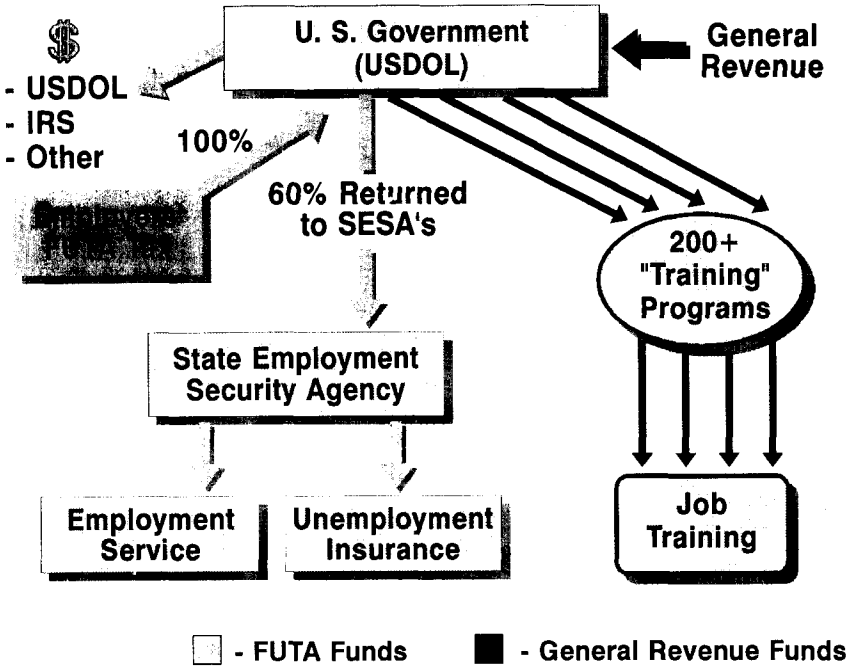
I am attaching several diagrams showing the present and proposed employment security systems at a conceptual level. The differences in the several state devolution proposals are primarily form rather than substance and can be readily reconciled in the legislative process.

This is a wonderful opportunity to:

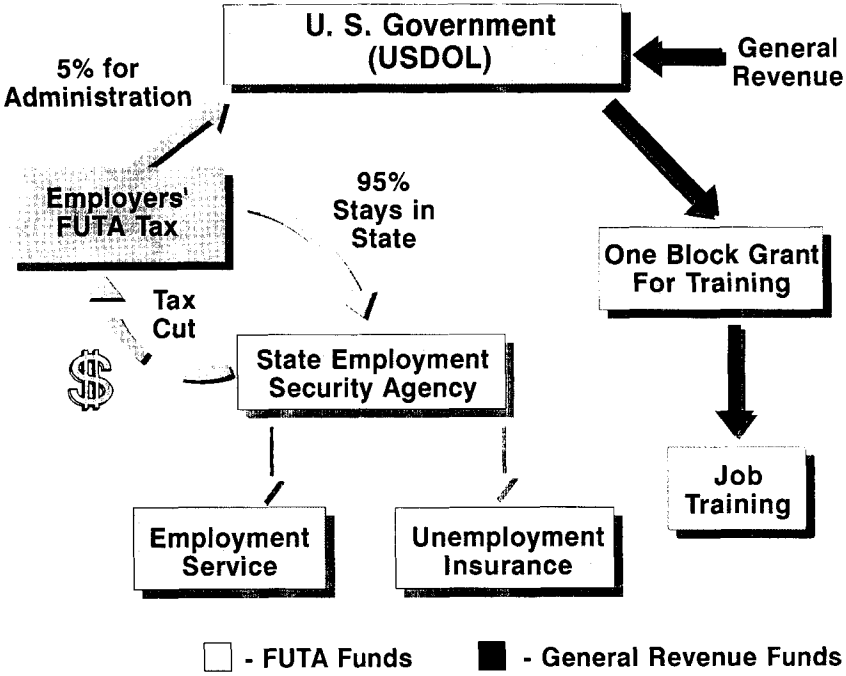
--Truly return power to the states;
--Lighten the paperwork burden on American business;
--Save millions in wasted tax dollars; and
--Lay the foundation for future tax cuts.

I strongly encourage your review and support of this proposal.

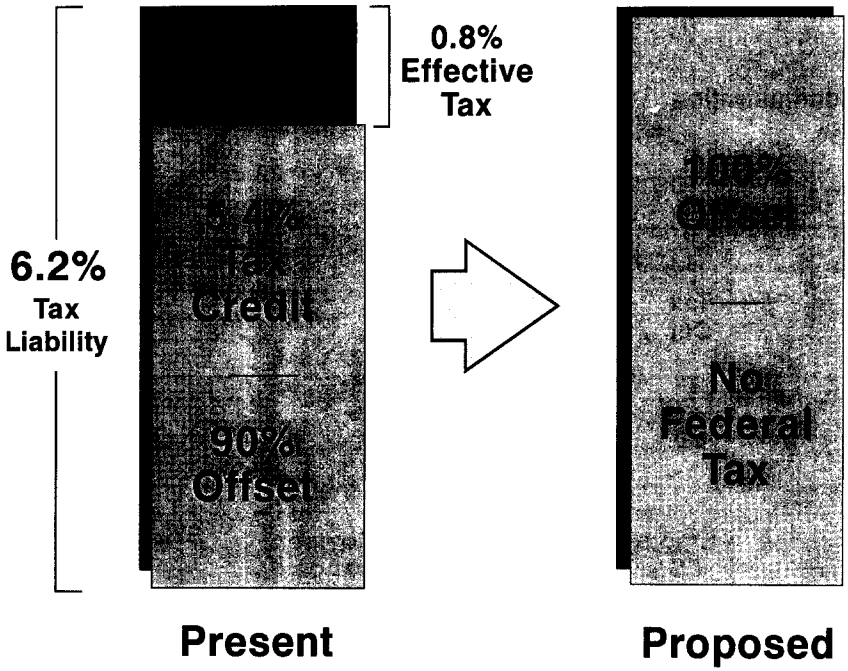
Employment Security and Training Financing
Present



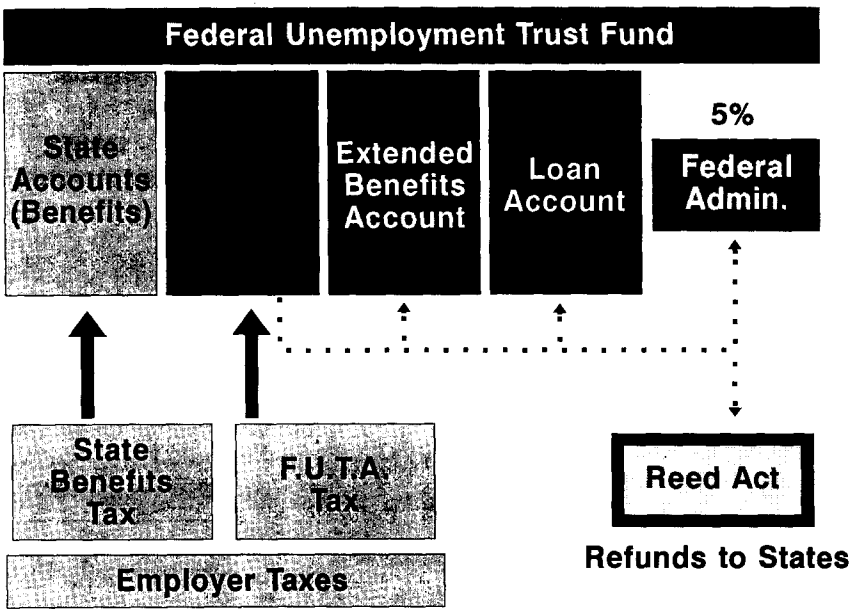
Employment Security and Training Financing Proposed



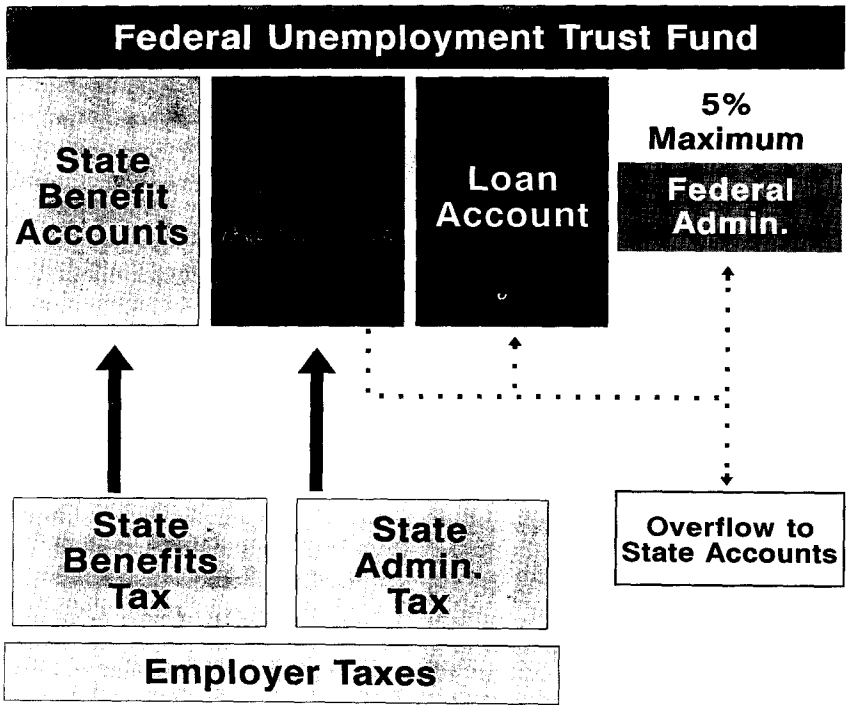
Employment Security System
Administrative Financing



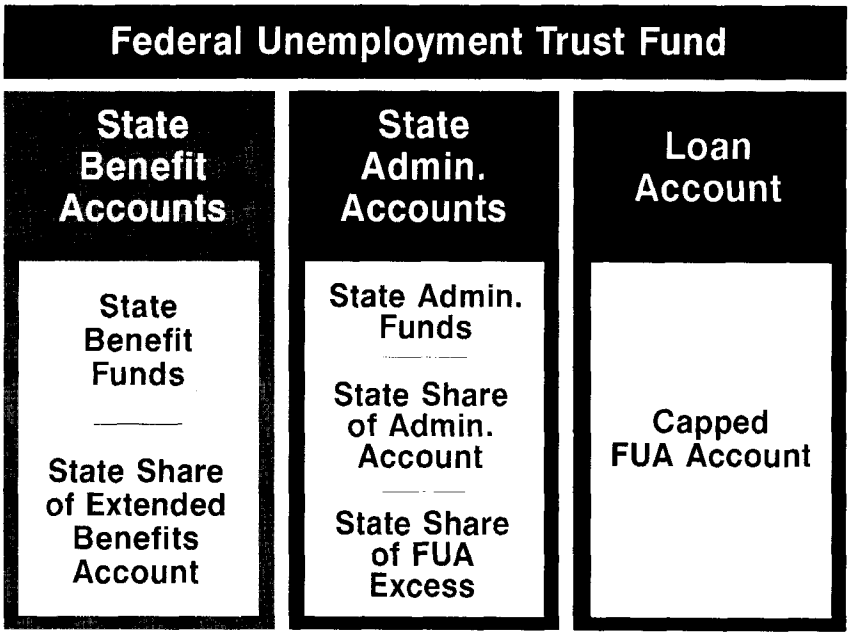
Employment Security System Financing
Present



Employment Security System Financing Proposed



Employment Security System Financing Proposed



Mr. CAMP. Thank you very much.

And now, Warren Blue, senior vice president and general counsel of R.E. Harrington, Inc.

STATEMENT OF WARREN G. BLUE, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, R.E. HARRINGTON, INC., COLUMBUS, OHIO; AND CHAIRMAN, NATIONAL COALITION FOR UNEMPLOYMENT COMPENSATION TAX REFORM

Mr. BLUE. Thank you, Mr. Chairman.

I'm appearing here today as the chairman of the National Coalition for Unemployment Compensation Tax Reform.

This is an organization consisting of employer associations and hundreds of individual employers who have concerns with the very point that Mr. Poythress was making as to the efficiency of the use of the Federal taxes collected from employers.

Some of the organizations that are part of the coalition include the National Association of Manufacturers, NFIB, U.S. Chamber of Commerce, the American Payroll Association, and the UBA, Inc., of which Charles Little, who is president of UBA is here with me, and I'm on the board of UBA, Inc.

There are two major problems that have brought employers to this position of having formed this coalition. The first one has been an ongoing problem since the middle or late eighties and that is the continual taxing of employers with a two-tenths percent surtax which was imposed in 1976 to pay off a debt that the Congress incurred when they extended the Unemployment Benefit Program, borrowed general revenue funds and then told employers they were going to have to pay the money back. That debt was paid off in 1987. It has since been extended four times and most recently extended to the first part of January, January 1, 1999.

To make matters worse, the administration has proposed extending this two-tenths to 2006, and after 2002, require employers to report and pay this tax monthly, rather than quarterly.

We see no need for the extension of this tax. We are in favor of a repeal of this tax and we obviously oppose the administration's concept of continuing taxing to reduce the deficit, because that's what the money is used for. This costs about $1.5 billion a year to the employers of this country.

Our second major problem consists of the system which now basically is taxing the employer community twice to pay for the administration of the program throughout the United States. Congress has seen fit to only appropriate 60 percent of the money that the employers are paying in the FUTA tax to be used for administration in some of these other trust funds that Mr. Poythress has just mentioned.

And to make matters worse, some 21 States have decided since they are not getting enough money back—remember Congress is only giving 60 percent of the money back—that they have come up with separate taxes, including the State of Georgia, to pay for the administration since they need the funds in order to provide the program to claimants and employers.

All States, except five and the Virgin Islands, receive less than collected from the tax the employers pay. Indiana only receives 37

percent back of the moneys that the employers in that State are paying.

This shortfall is a disservice, Mr. Rangel, to claimants and to employers, and we believe something should be done and we believe that devolution offers an opportunity to correct this problem.

Let me give you some ideas of what this service is. Federal law requires that benefits be paid through the public employment offices. Most States have cut those back. Some of them have almost done away with them because of the lack of funds. It is intended that the UC claimants are exposed to job search assistance at these offices and many of these offices just don't exist any more in some States. Ohio has cut back by over 40 or 50 percent.

Federal law also requires the public employment service to administer the work test to UC claimants and this is intended to identify claimants who are not making conscientious efforts required by the State law to find new work and, thus, should not be receiving benefits. Identifying these claimants properly, having the funds to identify these claimants properly is vital to maintaining the integrity of the system. And studies have shown that money being placed in job placement services is an effective use of scarce resources.

Included among the advantages of devolution, we believe, are many of the comments that Mr. Poythress just made, more resources at lower cost, increased compliance by employers due to State enforcement. There are a lot of employers out there not paying the tax and it's only going to be really enforced if the States can get at that. The Federal Government cannot get at that.

Reduce administrative costs, we believe will get fewer forms. IRS won't be involved any more, that costs money. The State agencies will have more flexibility and with fewer mandates and probably have more money at lower costs to employers.

Now, we do believe that you need to address the Federal Extended Benefits Program because this is important in crafting the legislation. And the wage base differential, a need for borrowing by States when they do run out of funds, and perhaps in situations where there is a temporary shortfall of funds.

We are not advocating eliminating the DOL function in compliance issues. We are not advocating eliminating some of the Federal compliance requirements. We are advocating a more efficient and flexible use of the funds.

Let me finish up—and I almost hesitate to bring this up—on the *Pennington* case. The Advisory Council was mentioned as getting into alternative base periods. If you read that report, the Advisory Council said, it's a States rights issue. It suggests that States look at alternative base periods, but it does not suggest a mandate by either the court system or by Congress to do that.

We have done a little survey and the employer community is estimating the cost to research the information, the wage information that is needed to comply with this other base period that has been added on could run between $15 and $20 per claim. And we wonder what a cost benefit analysis would really produce.

Now, I understand the Department of Labor claims that they need one. I don't think it's necessary, it just ought to be done and done now. California and New York have already proposed legisla-

tion for alternative base periods. And it is our opinion that they are being proposed only because they think the court system has already told them to do so. Those are big States. California is a $75 million administrative cost item for just to put the program in place.

So, it's got to be done and it's got to be done now. We look forward to working with you on all these issues.

Thank you.

[The prepared statement and attachments follow:]

Statement of Warren G. Blue to the House Ways and Means Subcommittee on Human Resources

Re: Unemployment Compensation Reform

July 11, 1996

I am Warren G. Blue and appear here today as Chairman of a Coalition of business organizations, including UBA, Inc. and the American Payroll Association, and businesses concerned with Unemployment Compensation issues. A list of the members of this Coalition for U. C. Tax Reform are appended to my statement. I am Senior Vice President and General Counsel of R. E. Harrington, Inc., Columbus, Ohio, a nationwide Unemployment Compensation Third Party Administration firm representing many thousands of employers in all states.

Before we discuss solutions, it seems appropriate to identify the existing problem for employers regarding the collection and use of FUTA tax revenue.

1. Present Federal revenue collected from employers to pay for the administration of the state unemployment compensation program, as well as to reserve some money for specific funding of possible loans to states and to pay the federal share of the extended benefit program, is almost $5.6 billion per year. Department of Labor figures for fiscal year 1994 indicate that the states received back in grants only 60.1% of the revenue paid by employers in FUTA taxes. In that year, total FUTA taxes amounted to $5,538,600,000 while grants were only $3,327,800,000. The amount returned to states range from a low of 37.5% for Indiana to a high of 268.5% for Alaska. Only six states received more in grants than they paid in FUTA taxes. All the overages for these six states could have been paid by the short-fall of a single state - Florida, for example.

We believe that the refusal by Congress to appropriate tax revenue to the states for the purpose collected has resulted in claimants being under served as it undermines the efforts of the state Employment Agency to match available jobs to appropriate claimants, and has consequently increased the duration of the payment of benefits. The effect is obviously also detrimental to employer interests because the result is not only increased costs but also unfilled jobs.

2. As a result of this shortfall of revenue to the states to administer programs, fourteen states have enacted separate taxes on employers to pay for needed administration costs and thus employers are paying the tax twice. The states with specific administrative surtaxes are Alabama, California, Colorado, Delaware, Georgia, Idaho, Iowa, Louisiana, Maryland, Montana, Nevada, New Hampshire, South Carolina and Wisconsin. In addition, seven other states (Hawaii, Minnesota, Oregon, Rhode Island, South Dakota, Texas and Washington) have surtaxes to support what is referred to, variously, as job or economic development, training, work search or aid to dislocated workers, which in reality are administrative surtaxes by another name.

3. The present system is inefficient and costly as it requires employers to complete both federal and state forms, pay a collection fee to the Internal Revenue Service, has cumbersome rules for state agencies to comply with federal mandates, created large separate federal funds with significant reserves which may not be necessary and perpetuates a "temporary" 0.2% surtax on employers which is not necessary and should have been terminated as the law originally provided in 1987. Attached is a chart showing the history of this tax.

In regard to the separate funds it should be pointed out that FUTA funds are deposited in the following Federal Accounts: Administration Account (ESAA), Loan Account (FUA) and the Extended Benefit Accounts (EUCA). The projections contained in the President's FY 1997 Budget show the balance in these three accounts increasing from $15.8 billion in 1996 to $26.8 billion in 2001.

These projections assume that the 0.2% surtax will finally be permitted to terminate at the end of 1998 as provided in current law.

Employers have reason to be skeptical that the 0.2% FUTA surtax will actually be permitted to expire at the end of 1998. This tax was first enacted in 1976 to repay a $6.2 billion Extended Benefit (EUCA) debt. The tax was supposed to be paid for five years. In 1982 it was extended until the debt is repaid. The debt was repaid in 1987, but the tax has been extended four times since then and in 1994 the Clinton Administration proposed to make it permanent to fund their proposed Reemployment Training program. The Administration has proposed extending the 0.2% FUTA surcharge to 2007, and requiring depositing state and FUTA taxes monthly starting 2002 for employers of 20 or more.

A possible solution to many of these problems just discussed could be accomplished by the adoption of the concept of devolution of the FUTA tax to the states while still maintaining some federal control of the system.

The most common means suggested for "devolving" power from the Federal government to the states has been the use of block grants without the strings and detailed Federal requirements of categorical grants. However, in the case of the Federal-State Employment Security Program the most logical and best approach may be by use of a "100% Offset". The Offset would increase the current 90% credit to 100% of the 6.0% Federal Unemployment (FUTA) tax rate which is applied against unemployment taxes of states complying with Federal requirements.

Use of a 100% Offset would reduce the FUTA tax rate to zero and relieve employers of the burden of filing returns and depositing the tax with the IRS. It would save some $94.9 million the IRS projects as their cost of collecting the tax in 1996, and millions used by the Department of Labor to determine state allocations, conduct audits, etc.. A prior 1985 devolution proposal by the then OMB Assistant Director, John Cogan suggested simply reducing the effective net Federal tax, rather than 100% Offset, in order to fund those Federal Employment Security activities that would continue. However, from an employer viewpoint, not providing a 100% Offset would eliminate an important advantage of devolution - that is doing away with the filing of returns and depositing funds with the IRS.

There are a number of benefits from devolution that could be realized by all parties concerned - the states, employers, claimants and the Federal government:

1. The states would be given the resources to operate more efficient employment security services that meet the needs of workers and business and the employers' taxes would be used for the purposes for which they were intended.

2. Tax collections will improve and compliance burdens on employers would be lessened.

Employers will no longer have to make reports and pay two separate taxes to two layers of government - federal and state. States will collect more taxes as a result of this consolidation since this is the primary tax for State Employment Security Agencies. The states' expertise on this particular tax is much greater than the IRS which is focused primarily on other taxes. In fact the IRS relies heavily on the state agencies for audits and employer information. Also compliance will be simplified because the differences in definitions and coverage that exist between FUTA and state law will be eliminated.

3. States would be relieved of burdensome Federal regulations and requirements that hinder them in providing efficient services to employees and employers.

Federal controls have increased over the years and new Federal programs administered by the states have been added. Separate funding sources have mandated unnecessary expenditures and hindered efficiencies that might otherwise been realized. Federal savings also would result from the need for less Department of Labor program staff.

The Department of Labor would still be responsible for: (1) oversight of compliance and conformity, (2) administration of federal programs through contracts with states, and (3) federal budget and reporting requirements.

Some devolution proposals which have been suggested would make the application of the "work test" optional with the states. This is a Federal requirement, contained in the Wagner-Peyser Act, which should not only be continued, but strengthened. The "work test" is applied when the Employment Service refers an unemployment compensation claimant to suitable work. A basic requirement of all state UI laws is that for a person to draw UI benefits he or she must be able and available for suitable work. Any devolution legislation should contain specific provision to assure the close integration of the State Unemployment Insurance Services and the State Employment Services. Some states have not always done a very good job of integrating the two services and the application of the "work test" has not been as effective as it should have been. While dealing with welfare recipients and first time job seekers is an important service, the needs of the insured claimants should still be given first priority.

Employer Concerns

As we have explained, business in principle is supportive of devolution. However, we have some concerns about how specific areas would be implemented such as:

* What happens to the State Extended Benefit Programs which are financed on a 50/50 Federal-State basis with the Federal 50% coming from FUTA funds?

* Since many states have higher tax bases than the FUTA base of $7,000 will some states collect more in taxes from some employers than under the present system? And would these additional funds be needed?

* What happens to states that need to borrow from the Federal Loan Account that is funded by FUTA?

* What happens to states that may experience a temporary shortfall in funds needed to administer their programs?

The Extended Benefit Program has not worked as employers had hoped when we supported its enactment. We had hoped that Congress would rely on this program and not enact special supplemental "emergency" benefit programs every time it perceived a serious unemployment problem. This has turned out to be a naive hope. Fortunately, many times when Congress has enacted these "emergency" supplemental benefit programs it has recognized that they should be financed from general revenue and not by employer payroll taxes.

Some proponents of devolution have contended that many states will be able to reduce employer taxes that fund employment security administration. The savings, which it has been estimated could amount to as much as $291 million annually, would result from joint filing of FUTA taxes and state taxes with one collection agent, the state. However, if a state with a higher wage base than the federal base of $7,000 used its higher base for calculating the administrative tax, this would result in some shifting of the tax burden to higher wage employers.

It should be noted that regardless of how the administration tax is calculated many proposals still require all state employment security taxes, both for administration and benefits, would still

be deposited in the Federal Unemployment Trust Funds and so would still be in the Unified Federal Budget for purposes of deficit calculations.

As to the Loan Account, it has been suggested that funds currently in the account be used to create a revolving fund since states must repay loans with interest. If at some point additional funds to pay U.C. benefits were needed, repayable advances could be made from general revenue, as has been done in the past. More recent experience has shown that states are hesitant to use this fund and have adopted alternative funding mechanisms. This same approach (repayable advances), should it ever occur, could be used to assist in financing temporary shortfalls in administrative funds.

Regardless of the exact method, which requires much attention to detail, employers must be relieved of the present double taxation.

Need to Overrule Pennington Decision on Base Period

We support amending the Social Security Act to provide that determination of a state's base period is a decision that should be left to the state. This would overrule the decision of the Seventh Circuit Court of Appeals in the case of Pennington v. Doherty. This decision held invalid Illinois' use of a base period of the first 4 of the last 5 completed calendar quarters to determine if the wages earned by the claimant were sufficient to qualify for unemployment compensation. This is the definition of base period used by most states. However, a few states use an alternative base of the last 4 completed quarters if it results in more favorable treatment for the claimant. Pennington claimed, and the Circuit Court agreed, that since it is technically feasible for Illinois to use this alternative base period, its failure to do so violates section 303(a)(1) of the Social Security Act which requires a state unemployment compensation program to provide for such methods of administration that are found by the Secretary of Labor to insure full payments of unemployment compensation when due. The Secretary of Labor has never found that the first 4 of the last 5 completed calendar quarter base period violated this provision, but the 7th Circuit Court did. We feel this is a matter that is best left to each state to decide what will work best in its particular case.

Conclusion

We appreciate this opportunity to appear before your Subcommittee today and look forward to working with you to develop a proposal to reduce taxes. If I or any member of our Coalition can be of service to you in your deliberations we are ready to assist in any way we can.

The Coalition for U.C. Tax Reform

AT&T
Acordia of Ohio
American Automobile Manufacturers Assoc.
American Iron and Steel Institute
American Payroll Association
Ames Department Stores, Inc.
Armco, Inc.
Associated Builders and Contractors, Inc.
Associated Industries of Florida
Associated Industries of Kentucky
Associated Industries of Massachusetts
Associated Industries of Missouri
Associated Industries of Vermont
BF Goodrich Company
Bank of America
Barnard Insurance Company
Barnett Associates, Inc.
Barry Trucking, Inc.
Bee Industries, Inc.
Betz Laboratories, Inc.
Business & Industry Assoc. of New Hampshire
C & M Services, Inc.
C. & S. Development, Inc.
CBI Industries, Inc.
California Association of Hospitals and Health Systems
California Taxpayers' Association
Carnochan & Felton Gardiner
Casper Housing Authority
Caterpillar, Inc.
Clay's Electrical Service, Inc.
Clorox Company
CoGo's Co.
Connecticut Business & Industry Association
Council of State Chambers of Commerce
Crystal Flash Petroleum
DVR Inc.
Delaware State Manufacturers Association
Digital Equipment Corporation
E & S Services
E.I. DuPont de Nemours and Company
East Alco
Eastman Kodak Company
Employer's Unemployment Compensation Task Force
Employer's Unemployment Compensation Council
Employers Group
Employers Service Corporation
Employers Unity, Inc.
Federated Department Stores
Food Marketing Institute
Frank Gates Service Company
Frick Company
Gates McDonald
Georgia-Pacific Corporation
Gibbens Company
Grainger Manufacturing
Gulf Copper Manufacturing Corp.
Hair Works
Harrington Services
Heat Transfer Equipment Company
Heiss, Gibbons & Company, Inc.
Herbruck Poultry Ranch, Inc.
Illinois Manufacturers Association
Illinois State Chamber of Commerce
Indiana Manufacturers Association
Iowa Association of Business & Industry
JC Penney
Jarvis F. Windom & Assoc.
John Deere & Company
Jon Jay Associates, Inc.
KSK Inc.
Kysor Industrial Corporation
Laurdan Associates, Inc.
Liberty Mutual Group
Louisiana Assn. of Business & Industry
M. A. Hanna Company
MS Manufacturers Assn.
Management Assoc. of Illinois
Marriott International, Inc.
Martin Boyer Company, Inc.
Maryland Benefit Advisors, Inc.
Maryland Chamber of Commerce
Masco Corporation
May Department Stores
Meredith Corporation
Met Life Insurance
MI Health & Hospital Assn. Service Corp.
Michigan Manufacturers Association
Mississippi Hospital Association
Mississippi Manufacturers Association
Missouri Merchants & Manufacturer's Assn.
Monsanto Company
Nat'l Assn. of Professional Employee Orgs.
National Association of Manufacturers
Nat'l Federation of Independent Business
New Jersey Business & Industry Assn.
NM Association of Commerce & Industry
Ohio Chamber of Commerce
Ohio Manufacturers' Association
Oklahoma State Chamber
Oneida Ltd.
PA Chamber of Business and Industry
PPG Industries, Inc.
Paradise Valley Golf Club, Inc.
Pennsylvania Manufacturers Association
Pfizer, Inc.
Pratt & Lambert United
Procter & Gamble Company
Rockwell International Corporation
Ryder Systems, Inc.
Sears
Sherwin-Williams Company
Society for Human Resources Management
Sukup Manufacturing Company
Sun Company, Inc.
Sybron International Corporation
TRW, Inc.
Texas Association of Business
Thrift Drug, Inc.
Timken Company
Toyota Motor Manufacturing USA Inc.
U.S. Chamber of Commerce
U.S. Steel Group
UBA, Inc.
USX Corporation
Updike Brothers, Inc.
Varian Associates
Vermeer Mfg. Company
Walt Disney Company
Washington State Hospital Association
Wellington Sears Company
WestPoint Stevens, Inc.
Western Sugar Company
Westinghouse Electric Corporation
Weyerhaeuser Company
Whirlpool Corporation
White and Associates
Wisconsin Manufacturers and Commerce
Wise Company, Inc.
Woodcraft, Inc.

The Coalition for U.C. Tax Reform
1331 Pennsylvania Avenue, NW
Suite 1500 North Tower
Washington, DC 20004-1703

HISTORY OF 0.2% FUTA SURTAX

October 1976	0.2% surtax enacted to pay EUCA debt ($6.2 billion at that time). EUCA debt grew to $8.6 billion in 1977. Projection: Tax was to be paid for 5 years and retire the existing debt ($6.2 billion)
August 1982	0.2% surtax extended until debt is repaid.
May 1987	Debt repaid -- 10 years and 5 months after the 0.2% tax was enacted. The 0.2% tax was to terminate at the end of 1987.
December 1987	0.2% surtax extended for 3 years -- through 1990 -- to build EUCA and offset deficit.
November 1990	0.2% surtax extended for 5 years -- through December 1995 -- to build EUCA and offset deficit.
November 1991	0.2% surtax extended for 1 year -- through December 1996 -- to offset deficit and build EUCA.
August 1993	0.2% surtax extended for 2 years -- through December 1998 -- to build EUCA and offset deficit.
March 1994	Clinton Administration proposes a permanent extension of the 0.2% surtax -- to be used to fund a new FUTA account (Reemployment Training Assistance Account) from which income support, while in training, could be paid for up to 78 weeks (including regular and extended benefits, if available).
March 1996	Clinton Administration proposes an extension of the 0.2% surtax through December 31, 2006. The stated purpose of this extension is to support the continued solvency of the Federal unemployment trust funds and maintain the ability of the unemployment system to adjust to economic downturns.

Mr. CAMP. Thank you for your comments.

Walter Curt, president of Shenandoah Electronic Intelligence.

STATEMENT OF WALTER CURT, PRESIDENT, SHENANDOAH ELECTRONIC INTELLIGENCE, INC., HARRISONBURG, VIRGINIA

Mr. CURT. Distinguished Members of the Subcommittee, my name is Walter Curt. I am president of SEI, Inc. It is an electronics, research, and development firm located in Harrisonburg, Virginia.

I am privileged by your invitation to offer the perspective of a small business man and an interested citizen on the topic of unemployment insurance reform.

At the beginning, let me say that I believe our Federal/State system of unemployment insurance has generally served us well since it was created in 1935. Tens of millions of workers who have lost their jobs without fault have been sustained with temporary assistance until returning to gainful employment. This has often kept families from losing their homes or automobiles or suffering the indignity of public assistance. At the same time, the limited benefits and work search requirements help keep the program a bridge to reemployment rather than a path to welfare dependency.

While it is not uncommon for employers, me included, to complain about individual cases, few question the wisdom and necessity of a sound national system of unemployment insurance, nor do I think employers as a whole object to paying reasonable charges to support an efficient system.

My purpose in appearing today, therefore, is not to advocate the elimination or curtailment of America's unemployment system. I am here instead to discuss ways the program can be improved by reducing unnecessary tax and paperwork burdens.

As you know, employers pay not one, but two unemployment insurance taxes. First is the employer payroll tax imposed by each State to pay the actual benefits to the jobless. Taxes everywhere are experience rated, rising or falling for each employer depending on its layoff record, in much the same way motorists' automobile insurance premiums vary with their driving records.

Less well known is the employer payroll tax levied by Congress under the Federal Unemployment Tax Act, also known as FUTA. The FUTA tax is intended primarily to finance program administration through Federal grants to States to maintain State unemployment offices and pay their workers. Paperwork on these taxes is estimated to cost American employers about $300 million annually or up to $500 million as we have heard here today. That does not include $70 million in FUTA revenues for the fiscal year 1994 used to pay the IRS to collect the tax.

The problem is the gulf between the FUTA revenue collected and the amount returned to the States as administrative grants. According to the U.S. Department of Labor in fiscal 1996, national FUTA revenues are expected to total about $6 billion with only $3.5 billion, or 62 percent, being sent back to the States to run the programs.

This disparity is often wider for individual States. For example, in fiscal year 1994, employers in my own State, the Commonwealth of Virginia, paid an estimated $140 million in FUTA taxes, but

only $60 million, or 42 percent, was returned to run the Virginia Employment Commission.

We have heard about Indiana and their ratio today and how poor that is, but overall in fiscal year 1994, only five States and the Virgin Islands were winners, getting back more than they paid in, while 45 States, including the District of Columbia and Puerto Rico, were losers in this lottery.

What happens to the rest of the money? A relatively small amount estimated at $50 million for fiscal year 1996 is expected to be spent to finance the Federal share of extended benefits to workers in certain States in times of high unemployment while $250 million is expected to be on loan to State trust funds with solvency problems. That will leave an estimated $15 billion in FUTA revenues in Federal trust fund accounts at the end of the fiscal year.

Another problem is the inefficiency created under the current system. For instance, rather than receiving a single, annual Federal grant, each State receives funds through several single-purpose grants. This makes it impossible to achieve economies of scale by using equipment or personnel funded under one grant to provide customers with services designated for financing under another program.

Federal grants are inevitably accompanied by a welter of regulations, restrictions, and reporting requirements. While some Federal oversight is reasonable, much of the regulation by the Department of Labor is needless or even counterproductive.

Several detailed and technical proposals have been advanced for unemployment insurance reform. Here are three broad principles that I hope can form a basis for further discussion.

First, let States finance the administration of their own State unemployment offices. Nearly every State would be able to impose a much lower tax on employers and raise revenue equal to or greater than the amounts it currently receives in Federal grants.

Second, end the Federal/State extended benefits system and close the Federal trust fund accounts for administration. Extend the benefits and loans to State benefit funds distributing the nearly $15 billion on hand to individual State trust fund accounts.

State accounts would receive a massive infusion of assets. That would permit in most cases the reduction of existing State taxes, increases in benefits, or both.

Third, pare the Federal oversight back to the essentials, while retaining important protections such as minimum national standards for employer coverage and Federal requirements for fair hearings for individuals whose claims have been denied.

As I said earlier, employers do not object to paying reasonable taxes to support an efficient system of employment security. The current figures suggest that employers may be overpaying $2 billion a year in taxes, resulting in the accumulation of nearly $15 billion in idle funds to finance a system that lacks the flexibility to make the best use of the funds it does receive.

I firmly believe reform along the lines I have suggested will produce a fairer policy for employers and a more supportive system for jobless Americans.

Thank you.

[The prepared statement follows:]

STATEMENT OF WALTER CURT
PRESIDENT
SEI, INC.

Chairman Shaw, Members of the subcommittee, my name is Walter Curt. I am President of SEI, Inc., an electronics research and development firm with headquarters in Harrisonburg, Virginia.

I am privileged by your invitation to offer the perspective of a small businessman and interested citizen as you take up the topic of unemployment insurance reform.

At the beginning, let me say that I believe our federal-state system of unemployment insurance has generally served us well since it was created in 1935. Tens of millions of workers who have lost their jobs without fault have been sustained with temporary assistance until returning to gainful employment. This has often prevented families losing their homes or automobiles or suffering the indignity of public assistance. At the same time, the limited duration and amount of benefits, as well as work search requirements, help ensure that the program is a bridge to reemployment rather than a path to welfare dependency.[1]

While it is not uncommon for employers (me included) to complain about an individual adjudication of benefit eligibility, few question the wisdom and necessity of a sound national system of unemployment insurance. Nor do I think employers as a whole object to paying reasonable charges to support an efficient system.

My purpose in appearing today, therefore, is not to advocate the elimination or curtailment of America's unemployment system, which is expected to serve more than 9 million people and distribute more than $24 billion in benefits during the current fiscal year[2]. I am here instead to explore with you ways in which the program can be improved by reducing *unnecessary* tax and paperwork burdens on employers, and streamlining administration to enhance services to the out-of-work.

The Two-Tax System

As you are aware, employers pay not one but two unemployment insurance taxes.

The State Tax: The most familiar and visible tax is an employer payroll tax imposed by each state to pay the actual benefits to the jobless. Each state legislature determines the tax rate range. Taxes everywhere are "experience rated," rising or falling for each employer depending on its layoff record, in much the same way motorists' automobile insurance premiums vary with their driving records.

The Federal Tax: Less well known is a second employer payroll tax, levied by Congress under the Federal Unemployment Tax Act (FUTA), that is intended primarily to finance program administration, in the form of federal grants to states enabling them to maintain state unemployment offices and pay their workers. This tax is imposed at an effective flat rate of 0.8 percent[3] on the first $7,000 in wages earned by each worker employed by a covered employer.[4]

Of course, employers must also file two tax returns, a quarterly return to the state, and an annual return to the federal government. This duplicative paperwork exercise has been estimated to cost American employers collectively

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[1] 'According to the U.S. Department of Labor, the FY1996 average duration of benefits is expected to be only 14.7 weeks. *UI Outlook*, March 1996, Key Data Summary.

[2] Ibid.

[3] The gross tax rate is 6.2 percent, but all employers in all states that have programs meeting certain federal conditions receive a 5.4 percent tax credit. All states have approved programs and thus all covered employers enjoy the tax credit. The 6.2 percent rate also includes a 0.2 percent surtax that now extends until January 1, 1999.

[4] "In 1994, about 108 million workers — 98 percent of all wage and salary workers and 90 percent of all employed individuals — were covered by the (unemployment insurance) system." *How the Unemployment Compensation System Works*, Congressional Research Service, The Library of Congress, Sept. 2, 1994, p. CRS-2.

about $291 million annually.[5] That does not include $72.6 million in FUTA revenues (FY1994) used to pay the Internal Revenue Service to collect the tax.[6]

The Problem of Overtaxation

The federal problem of overtaxation focuses on the gulf between the revenue collected from employers under the FUTA tax and the amount appropriated to the states in the form of administrative grants to operate the system. According to the U.S. Department of Labor, in FY1996, national FUTA revenues are expected to total $5.74 billion, while only $3.54 billion, or 62 percent, will be sent back to the states to run the program.[7]

Since actual grants to individual states are determined according to complicated formulas administered by the Labor Department, the disparity is often far wider when the FUTA revenue collected from employers in a particular state is compared with the grant money received by the state for program management. For example, in FY1994, the last year for which such state-by-state figures are available, employers in my own state, the Commonwealth of Virginia, paid an estimated $142.6 million in FUTA taxes, but only $60 million, or 42.1 percent, was returned to run the Virginia Employment Commission. Indiana received only 37.5 percent of the revenue produced from its employers, the poorest ratio of any state. Overall, in FY1994, only five states and the Virgin Islands were "winners," receiving more in grant funds than their employers paid in taxes, while 45 states, the District of Columbia, and Puerto Rico, were "losers."

What happens to the rest of the money?

A relatively small amount, estimated at $50 million for FY1996,[8] is expected to be spent to finance the federal share of extended benefits to workers in certain states in times of high unemployment, while $250 million is expected to be on loan to state trust funds with solvency problems.[9] That will leave an estimated balance of $14.97 billion in FUTA revenues in federal trust fund accounts at the end of FY1996![10]

The Problem of Inefficient Administration

Even more than taxpaying employers, the jobless have a concrete interest in efficient operation of the unemployment system because, to a degree, their livelihoods and career prospects depend on it. "Unemployment Office" is a misnomer, since services provided go well beyond taking and paying claims: Employment services are offered to anyone seeking a job change, and critical labor market information is furnished to employers and the general public. So in a sense, everyone has a stake in what is more aptly described as the employment security system.

Here are a few brief examples of some of the problems and inequities in the system as it operates now:

- Rather than receiving a single annual federal grant to support its employment security system, each state receives funds through several grants, one for unemployment insurance administration, one for the employment service, and several for the collection and dissemination of labor market information. The existence of distinct funding streams makes it impossible to achieve economies of scale by using equipment or personnel funded under one

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[5] *Devolution, Governor George Allen's Proposal to Transfer the Administration and Financing of the Employment Security System to the States*, Third Revision, p. 6.

[6] Ibid., p. 3, citing U.S. Department of Labor figures.

[7] *UI Outlook*, p. 5.

[8] Under the program, the federal and state governments share equally the cost of extending benefits for eligible claimants by up to 13 weeks. Normal maximum eligibility is 26 weeks.

[9] *UI Outlook*, p. 15.

[10] Ibid., pp. 13-15.

grant to provide customers with services designated for financing under another. For example, a computer obtained for use in processing unemployment claims cannot be used to help a job applicant find new work.

- Federal grants are inevitably accompanied by a welter of regulations, restrictions, and reporting requirements. While some federal oversight is reasonable, much of the regulation by the Department of Labor is needless or even counterproductive.

- The Labor Department's allocation formulas for its unemployment insurance grants create perverse incentives by rewarding states with more money the longer it takes to process an average insurance claim. This discourages automation and innovation.

Sensible Unemployment Insurance Reform

Several detailed and technical proposals have been advanced for unemployment insurance reform. Rather than addressing these or offering a complete blueprint of my own, I would like to outline three broad principles of reform I hope can form a basis for further discussion.

First: Give responsibility to the states to finance administration of their own state unemployment offices. Each state legislature would decide how large a state tax to impose upon employers to bring in sufficient revenue to support its own system. Nearly all states would be able to impose a much lower tax on employers and raise revenue equal to, or greater than, the amounts they currently receive in federal grants.[11] Dual tax returns would no longer need to be filed, and problems associated with multiple funding streams would disappear.

Second: End the federal-state extended benefit system, and close the federal trust fund accounts for administration, extended benefits, and loans to state benefit funds, distributing the nearly $15 billion on hand to individual state trust fund accounts. State accounts would receive a massive infusion of assets that would permit in most cases the reduction of existing state taxes that finance benefits, increases in benefits, or both. States would also have the option of introducing their own extended benefit programs and determining the conditions under which they would become effective. Loans to insolvent state trust funds could be made from federal general revenues.

Third: Pare back to the essentials federal oversight rules, while retaining important, substantive protections, such as minimum national standards for employer coverage and federal requirements for fair hearings for individuals whose claims are denied.

Conclusion

As I said earlier, employers do not object to paying reasonable taxes to support an efficient system of employment security. But current figures suggest that employers may be overpaying $2.2 billion a year in taxes, resulting in the accumulation of nearly $15 billion in idle funds, to finance a system that lacks the flexibility to make the best use of the funds it does receive. I firmly believe reform along the lines I have suggested will produce a system not only fairer to taxpaying employers, but also more effective in serving its primary client, jobless Americans.

[11] More than sufficient funds exist in federal accounts to hold harmless at current funding levels the six "winner" jurisdictions for a five-year transition period.

Mr. CAMP. Thank you very much.

Mr. Rangel, would you like to inquire?

Mr. RANGEL. Yes. We are moving quickly into a period where a lot of people believe that the States are in a better position to take care of problems that are local, and we are getting involved in the block grant proposals which reduces the size of the Federal expenditures, as well as their interference, because in the areas of health care and welfare reform we say trust the Governors. After all, you haven't done a good job.

If we block grant it, we will be in the posture of having to determine how to redistribute the money, and the easiest way is that you get back what you put in. Then, when we run for reelection, whether it is health care or unemployment or welfare, ultimately we could say we are getting out of this Federal interference, Governors know best, States know best, why don't you just take care of your own. Tax what you think is fair, and then we will really reduce dramatically the Federal tax.

It is just a step further, I think, from what you are talking about. If we are abusing the system, not giving you back your fair return, trust your State legislators in doing the right thing. Keep your own employers' tax money. Take care of your own unemployed, and let us just get on with the national defense.

Do any of you object to just taking that extra step, and if so, why?

Mr. POYTHRESS. I think you described the system that we are recommending.

Mr. RANGEL. That the Federal Government not collect, not do anything, just say whatever we are doing, just repeal the law. You don't touch your employment taxes. Let the States do it.

Mr. POYTHRESS. No. No, that is not the recommendation at all. The recommendation——

Mr. RANGEL. Well, I am saying that is what I am saying. That the next step would be that we will not be the collection agency for the States. You are smart. You are sensitive. You know how to balance budgets. We don't. So you do it.

Mr. POYTHRESS. That is what we are recommending.

Mr. RANGEL. Well, then what is it that you—where do we differ? Then the Federal Government will not collect any of your employers' taxes, right? You are recommending that?

Mr. POYTHRESS. Correct.

Mr. RANGEL. And that we will just——

Mr. POYTHRESS. Excuse me. The government would not collect it directly. Now, some of the money would be made available. Some of that money would come to the Federal Government to fund the oversight role which all of the recommendations embrace that there is a Federal oversight role.

Mr. RANGEL. Wait 1 minute. What oversight role? We are talking States rights here. So please don't agree with half of it.

I am saying take the Federal Government out of it. The Governors are oversighted.

Mr. POYTHRESS. Nobody has recommended that.

Mr. RANGEL. Why not?

Mr. POYTHRESS. Because there needs to be a national system of unemployment insurance.

Mr. RANGEL. Oh, you mean the national collection of employers' taxes, don't you?

Mr. POYTHRESS. No, I don't.

Mr. RANGEL. What role would we play? You want us to collect the taxes and then give a block grant. Have you got a formula for the redistribution of the block grant?

Mr. POYTHRESS. That is exactly what we do not wish. That is what we have now, and this changes it.

Mr. RANGEL. Well, what is it that you want?

Mr. POYTHRESS. The States to collect the tax——

Mr. RANGEL. Yes.

Mr. POYTHRESS [continuing]. To keep in the State the amount that they collect to run State activities, subject to the reallocation of a portion thereof to fund the necessary portion of the Federal Government's role.

Mr. RANGEL. What Federal Government's role?

Mr. POYTHRESS. The U.S. Department of Labor.

Mr. RANGEL. What?

Mr. BLUE. None of us have recommended that the Federal Government be taken entirely out of a national unemployment system.

Mr. RANGEL. Why not?

Mr. BLUE. I think there is a role in the States for the Federal Government.

Mr. RANGEL. What role?

Mr. BLUE. The role is being one of being sure that States are complying with certain requirements.

Mr. RANGEL. Oh, no. We trust the Governors. Now, cut out that business. We have screwed it up. Let the Governors do it.

Mr. BLUE. I suspect if you would want to go that far, there would probably be a lot of people who would be in favor of it.

Mr. RANGEL. Well, let me ask you this.

Mr. POYTHRESS. There is a new party out there, I think, that has recommended that——

Mr. RANGEL. Well, let me ask you this. Those that reflect business now, do you think we would find employers, not feeling good about saying it, because no one likes to pay taxes to the Federal Government? So, if you want to pick up a vote or two, not the Federal Government. Do you think there would be employers that would want 50 States deciding what the benefits are going to be?

Mr. BLUE. No. The States decide that now. That is a State issue right now.

Mr. RANGEL. Then we could really keep the Federal Government out of oversight. What would you want us to do in providing oversight?

Mr. CURT. Let me mention a couple of things.

Mr. RANGEL. What?

Mr. CURT. You mentioned, one, that you thought you had failed or that the system had failed. I don't think this system has really failed.

Mr. RANGEL. Oh, I shouldn't have said that.

Mr. CURT. I think it has been very successful.

Mr. RANGEL. What reason should we stay in it and all of this, extended benefits?

Mr. CURT. Well, you are really not in it now. The States collect the taxes. The Federal Government collects the taxes, but the State really distributes the money, handles all the administrative work right now.

All I am proposing, at least to some extent, is that the excess money that the Federal Government collects just stay in the States; that the function of the Labor Department pretty much stay the same as it is now, but the excess money stay in the States, and the States pick up more of a responsibility, but not to wipe out the whole system. I think it has been very successful.

Mr. RANGEL. Well, I just don't see why we should be involved in this if the States believe they can do a better job.

How about extended benefits? Is there a Federal role in that, or could the States handle that, too, just collect the money?

Mr. BLUE. Well, the Extended Benefits Program which, by the way, was supported by employers, just simply hasn't worked——

Mr. RANGEL. So we can drop it.

Mr. BLUE [continuing]. Because every time something happens, Congress decides they are going to go ahead and do something in addition to the Extended Benefits Program.

Mr. RANGEL. So we can drop that.

Mr. BLUE. So I think you could drop that.

Mr. RANGEL. All agree?

Mr. BLUE. I think that could probably be dropped, yes.

Mr. RANGEL. So, really, after all the testimony is done, forgetting what little we are doing, you can tell me what is it besides oversight and monitoring you. What would the sanctions be if you didn't, besides pay the money that you didn't put up——

Mr. CURT. Well, I think the proposal would——

Mr. RANGEL [continuing]. Or pay the money that you lost because of a State recession, but besides being your insurance policy, what could we do?

Mr. CURT. I think the proposal calls for leaving the trust fund money still sort of in control of the Federal Government.

Mr. RANGEL. Why?

Mr. CURT. It is the safest place to put it, I would say.

Mr. RANGEL. You have to trust the States, and you have to trust the—you don't have deficits. We have them.

Mr. CURT. As far as I am concerned, in Virginia, I would be perfectly comfortable with you giving our portion back to Virginia.

Mr. RANGEL. Good. There is no one that objects to that.

Mr. CURT. But you were asking what sanctions. The proposal basically says the Federal Government could, if they needed to, access that trust fund and withhold money or change the scope of the money that was going to States that were not in line.

Mr. RANGEL. OK. Well, listen, the red light is on.

I hope you send to me, besides all of the things that you can do better, the limited role that you do see the Federal Government can and should be doing.

Mr. BLUE. And that is part of the proposal.

Mr. RANGEL. Because you would have to agree with me it is frustrating to get all of this money from Federal citizens and then turn welfare over to them, Medicaid over to them, soon Medicare, whatever is left of it, and just have us in the role of oversight. Let us

find out whether we can get back to where we used to be, where we have States in charge of their own rights as relates to this specifically.

Thank you.

Mr. CAMP. Thank you.

Mr. Collins may inquire.

Mr. COLLINS. Thank you, Mr. Chairman.

First of all, I would like to welcome Commissioner David Poythress, the Labor Commissioner of Georgia. Not only is he well-knowledged in the area of Department of Labor, but he has a history and background in the area of Medicaid, too, because at one time he was the Commissioner of Medical Assistance for the State of Georgia. As a county commissioner back at that time, he was very helpful to me in many ways when I approached him with questions and problems that we had.

Commissioner Poythress, what are the advantages to employers that you see in the proposal that you outline, also to taxpayers and to employers?

Mr. POYTHRESS. The advantage to the employer most immediately is they pay only one tax, or at least they fill out only one tax return, write one check, and are subjected to only one audit.

The administrative costs to the business community are hard to estimate, but they run to the hundreds of millions of dollars, which would be saved.

Second, the proposal would position the States to do two things. First, as Mr. Blue pointed out, the proposal would make available to State agencies more funds to run their own operations, and there are agencies, mine among them, who are feeling very financially strapped these days to pay administrative costs, but more importantly, it would position the States to authorize very, very substantial tax cuts. That is to say, the amount of money collected for the administration of the program could be cut by, in some States, as much as 60 or 50 percent.

Mr. COLLINS. What about employees, the folks who would become unemployed and seek benefits? Do you see any danger to them?

Mr. POYTHRESS. It would be invisible to them. It would be invisible to them.

Mr. COLLINS. Do you see an enhancement to them, possibly?

Mr. POYTHRESS. Well, there could be an enhancement in terms of improved efficiencies in the State. If the State had more money and had less—or should I say, more flexibility in terms of managing its own administrative affairs.

Mr. COLLINS. Based on our scoring techniques on revenues if we are going to devolve this tax back to the States, how could we remedy the fact that today we use those funds to cover part of the deficit?

Mr. POYTHRESS. My proposal is that the trust fund moneys be reallocated to either the State benefit accounts or the State administrative accounts, both of which would be maintained by the U.S. Treasury Department.

The benefit account funds are now scored as part of the national asset side of the balance sheet, as I understand it.

It has been suggested that if the administrative accounts were treated the same way, though, they could not be scored as being

part of the asset side of the balance sheet, and I don't understand that.

It seems to me that if you have the benefit money and this trust and the administration money and a trust that is exactly like it, how can one count and the other not? I think they should both count and be counted against the national debt.

Now, the bigger question, I think, goes to what happens when the States bleed down the accounts, as they surely would. The tax cut that I am talking about would result in long-term diminution in the size of those trusts, and I think that is just a judgment that the Congress has got to make.

As Mr. Curt pointed out and as we have all pointed out, those funds serve very little useful purpose at this point except to minimize the apparent size of the national debt, even though they can only be spent for the specific purposes for which they were collected. Their presence simply masks the size of the national debt.

Mr. COLLINS. In other words, get back to truth in budgeting.

There are a variety of State proposals along these lines. How would you characterize the major differences between the various State proposals?

Mr. POYTHRESS. Minimal. The differences between—there are three proposals out there, New Hampshire, Virginia, and Georgia. We talk continually among ourselves, the three players in those States, and I believe it would be fair to say that at this point the differences are minimal and could be resolved easily through the legislative process.

Mr. COLLINS. You mentioned the *Pennington* decision. I think you went straight to the heart of why there are a lot of people that would like to retain or uphold the *Pennington* decision. You mentioned the word "welfare" versus insurance benefits. There are a lot of people in this town who like to use the dependency of the welfare system. If they can create additional welfare systems, it helps to enhance their reelection to come back here and govern and control those benefits.

Again, I appreciate the job you do for the people of the State of Georgia and your efforts in this proposal.

Mr. POYTHRESS. Thank you.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. CAMP. Thank you.

Mr. English.

Mr. ENGLISH. No questions, Mr. Chairman.

Mr. CAMP. Thank you.

Mr. Nussle.

Mr. NUSSLE. Yes. I just want to thank the panel for coming forward with some good ideas. It is a complicated issue, and yet, there are some seemingly commonsense solutions to it that you have come forward with.

I just want to show my appreciation for those ideas and just ask one thing about when it comes to the devolution issue. You were kind of getting into it a little bit with Mr. Rangel, but I want to be clear on what you envision within your proposal would be the Federal role and give you an opportunity to answer it without getting hit.

What will we still be doing?

Mr. POYTHRESS. I would say not much different from what you are doing now.

I think, and while we love our friends in the U.S. Department of Labor, many of us feel like there are parts of it that are overstaffed, specifically the field offices which were created in an earlier time when communications are not what they are today. We feel like it could be significantly downsized, if not eliminated, but as Mr. Blue said and as all of these proposals contemplate, there is a requirement for a consistent—reasonably consistent national policy as far as an unemployment system is concerned, and we would see that as essentially staying in place, not being qualitatively different from what it is today.

Mr. BLUE. If I can comment, what you are really doing for the most part is eliminating the jobs in the employment and training division, the UI division, of people who sit and try to find a way to reallocate this money back to the State agencies of which none of the State agencies are happy with for the most part. There are people sitting there looking at unit cost and so forth, and obviously if this were accomplished, that wouldn't be necessary anymore.

For the most part, the rest of the functions of DOL would probably remain in place.

Mr. NUSSLE. Go ahead.

Mr. CURT. There is one other aspect of it, and that would be the reduction of the Internal Revenue Service requirements.

Mr. BLUE. Yes.

Mr. CURT. If you got rid of the IRS secondary collection, you could significantly reduce the effort and the labor involved in that in terms of the IRS.

Mr. NUSSLE. All right. I am just keeping a mental list here, as well as on paper. IRS jobs are at stake. DOL jobs are at stake, and I haven't heard anybody yet at least—and this is what we need to find out, if there is anyone who disagrees with the efficiencies that you have outlined here vis-a-vis allowing the States to continue their role, but basically taking over the administration of these different proposals as you have outlined them.

The third, of course, is that we don't have as much money out here to play with, to make the deficit look smaller, which means it is not that the deficit looks smaller. It means that money can be used for something other than labor or unemployment benefits or issues. We can build roads and we can do whatever.

Mr. BLUE. You have the money. You just decided because you are siphoning it off as it comes through here and it goes back to the States, about 40 percent of it.

Let me make an observation. Something that I believe could be utilized for the use of those funds by the States, which is not being done now, is the effort to obtain jobs for claimants.

State agencies are not doing a good job, and there are a lot of reasons for that, about getting claimants jobs. The statistics show that since 1975 up through 1993, even though the insured unemployment rate has gone from 6.1 to 2.6, the average duration of people who are on unemployment, average duration has not changed one whit, 15.7, 15.9, 15.9. How could this be when the unemployment rate has gone down and the insured unemployment

rate by one-third, yet everybody is still collecting benefits for the same period of time?

It is our philosophy that if we can turn this back to the States and they can use their funds properly that they will be able to obtain jobs for claimants; that the employer will have less cost; that the government will collect more money because they will be paying taxes on their wages; and the system will have credibility.

One way of doing that is a system which is now in place, but not well financed. It is profiling. I am sure that Mr. Poythress could probably comment on that.

Getting people jobs who are unemployed claimants is one of the targets the employers are looking for in this system.

Mr. NUSSLE. Thanks. Thank you.

Chairman SHAW. Does anyone have anything further?

Mr. Collins.

Mr. COLLINS. No questions.

Chairman SHAW. OK. I want to thank the panel for being with us this morning.

There is a vote on the floor, which I understand is a rule on HHS. The Subcommittee will recess for approximately 15 minutes while we go vote. We will come right back, and at that time we will bring the third and final panel before the Subcommittee.

[Recess.]

Chairman SHAW. If we could go ahead and get started, we have Mr. English. We are awaiting Mr. Upton and Mr. Farr, and Mr. Heston is now with us.

If you would like to take a seat at the witness table, I think you and Mr. English will be, in part, talking about the same subject.

Mr. English.

STATEMENT OF HON. PHILIP S. ENGLISH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. ENGLISH. Thank you, Mr. Chairman, and thank you for the opportunity to testify today and for holding this hearing on a variety of necessary unemployment insurance reforms.

As you may know, prior to being elected to Congress, I served briefly as research director for the Senate of Pennsylvania's Labor and Industry Committee. During my service, I dealt with many of the issues being discussed today, and I can tell you from my own hands-on experience that the current UC system is badly in need of reform.

States are not equipped to tackle unemployment in the nineties with an unemployment insurance system that has changed very little since its inception and cannot deal effectively with the changing nature of unemployment. I will discuss several changes to the system that I am proposing, as well as unfair taxation of benefits.

Late last month, Mr. Chairman, I introduced legislation designed to empower States to meet the needs of the long-term unemployed. The current unemployment insurance system was created to help States combat short-term unemployment. Unfortunately, workers who are laid off from their jobs now are less likely to return to their previous jobs than in the past, and long-term unemployment is increasing. The current system cannot adequately address long-term unemployment.

Unemployment is hard enough on families without the worry that benefits will not be available because of the arcane structure of the system. H.R. 3738, the legislation that I introduced, will make several significant changes in the current system.

First of all, it will make it easier for States to provide extended unemployment benefits to workers who have been unemployed for long periods of time by broadening the trigger States can use to access benefits.

Research has shown that the combination of the reduction of the insured unemployment rate and the increase in the trigger level during the recession of the eighties resulted in the failure of the Extended Benefits Program to trigger on as unemployment continued to rise.

As a result, Congress found it necessary to pass a series of emergency extensions of UI benefits. Put simply, no State was able to tap into EB during the most recent recession. Therefore, it is necessary, in my view, to reform the program prior to the onset of the next recession. Emergency extensions of the benefits are a jerry-built policy prescription, neither well timed nor well targeted. Our best guess is that by lowering the trigger 1 percent the next few years, 16 States might benefit.

During 1991 and 1992, my home State of Pennsylvania, if this trigger had been in place, would have been able to offer workers an additional 13 weeks of benefits. Other changes proposed in this bill are, one, to encourage States to achieve forward funding of unemployment insurance by maintaining sufficient Unemployment Trust Fund balances to cover the needs of unemployed workers in the event of a recession. States that maintain adequate reserves based on their own experience to cover expenses in future recessions would receive slightly increased interest earnings on the part of their trust fund. States that fall short would receive slightly reduced interest earnings.

Another change we would propose is to allow interest-free cash flow, Federal loans only for States that have sufficient trust fund reserves to last through a future recession.

Another change would be to allow States to collect the Federal share of unemployment insurance taxes from employers allowing employers to fill out one form and write one check, not two, and providing a more accurate accounting of revenues collected.

Finally, this legislation would require States to distribute information packets explaining unemployment insurance eligibility conditions to unemployed individuals.

All of these provisions, Mr. Chairman, are based on the Advisory Council on Unemployment Compensation's collected findings and recommendations for 1994 through 1996.

I have concluded that if the recommendations were enacted into law as I propose in H.R. 3738, States like Pennsylvania would have the tools to assist workers faced with long-term unemployment.

I am particularly concerned about forward funding, Mr. Chairman. When I served as a staffperson, we had a $1 billion debt to the Federal Government hanging over Pennsylvania like a sword of Damocles. We need to have incentives built into the system to avoid that situation in the future.

Another important issue I would like to address is the current tax on unemployment compensation benefits. Before 1979, UC benefits were excluded from the income for tax purposes. UC benefits are currently subject to tax. This is grossly unfair because the UC tax is not a tax on income. It is a tax on benefits, benefits received during one of the most difficult times in a person's life.

The UC tax hurts the economic security of workers throughout America. Our system should be structured to provide benefits to taxpayers, not dump penalties on the unemployed.

Mr. Chairman, I have talked to literally dozens of people in western Pennsylvania who have collected UC benefits and then paid taxes on the benefits as normal income. Their experiences highlight how grossly unfair the tax is.

The tax on UC kicks workers when they are down. Unemployment benefits are intended to stabilize the income of individuals and families in the face of layoffs. Yet, someone who experienced lengthy unemployment, a situation which depletes the financial reserves of most middle-class families, will face a large and usually unexpected tax liability the next year.

For many who have struggled to survive a layoff, this tax bill is the last straw. Simply allowing tax withholding on these benefits is no solution. It merely depletes the value of compensation that is already merely adequate.

I would argue, however this tax is administered, it is fundamentally inequitable and perversely burdensome to a beleaguered middle class.

Mr. Chairman, I also welcome the opportunity to testify in favor of H.R. 3677, which addresses one of the problems, kind of a unique problem, a loophole in the law that falls disproportionately on members of the acting profession. I would strongly urge that we consider action on this particular problem because it is grossly unfair on this particular profession.

Charlton Heston is here to testify with far greater experience and eloquence than I possess in this matter, but I would like to say I think this is an issue that this Subcommittee ought to act on.

Finally, Mr. Chairman, I will conclude by emphasizing my strong support for reforming our unemployment system. It is my hope that our Subcommittee will give its strongest consideration to developing legislation that will encompass many of the suggestions heard here today.

Following through on these recommendations will result in a more manageable system and a more secure U.S. work force.

Mr. Chairman, I appreciate the chance to testify, and I would like to submit my testimony in full for the record.

[The prepared statement follows:]

Testimony
The Honorable Philip S. English
before the House Ways and Means
Subcommittee on Human Resources
July 11, 1996

Mr. Chairman and fellow Members of the Subcommittee, I want to thank you for holding this important hearing and for allowing me to address my colleagues and everyone in attendance today on unemployment reform. As most of you may know, before being elected to Congress, I was the Research Director for the Senate of Pennsylvania's Labor and Industry Committee. During my tenure, I dealt with many of the issues being discussed today and I can tell you from my own hands-on experience that the current unemployment insurance (UI) system is badly in need of reform. States are not equipped to tackle unemployment in the 90's with a UI system that has changed very little since its inception and cannot deal effectively with the changing nature of unemployment. I will discuss several changes to the system I am proposing as well as the unfair taxation of benefits during my testimony today.

Late last month, I introduced legislation designed to empower states to meet the needs of the long-term unemployed. The current unemployment insurance system was created to help states combat short-term unemployment. Unfortunately, workers who are laid off from their jobs now are less likely to return to their previous jobs as in the past -- and long-term unemployment is increasing. The current system cannot adequately address long-term unemployment.

Unemployment is hard enough on families, without the worry that benefits will not be available because of the arcane structure of the system. H.R. 3738, the legislation I introduced, will make several important changes to the current system:

1.) Make it easier for states to provide extended unemployment benefits to workers who have been unemployed for long periods by broadening the trigger states can use to access benefits.

Research has shown that the combination of the reduction in the Insured Unemployment Rate and the increase in the trigger level during the recession of the 1980's resulted in the failure of the Extended Benefits program to trigger "on" as unemployment continued to rise. As a result, Congress found it necessary to pass a series of emergency extensions of UI benefits. Put simply, no state was able to tap into Extended Benefits during the most recent recession. Therefore, it is absolutely necessary to reform the program pricr to the onset of the next recession. Emergency extensions of benefits are a Jerry-Built policy prescription neither well-timed nor well-targeted.

2.) Encourage states to maintain sufficient unemployment trust fund balances to cover the needs of unemployed workers in the event of a recession. States that maintain adequate reserves (based on their own experience) to cover expenses in future recessions would receive slightly increased interest earnings on part of their trust fund; states that fall short would receive slightly reduced interest earnings.

3.) Allow interest-free, cash-flow federal loans only for states that have sufficient trust fund reserves to last through a future recession.

4.) Allow states to collect the federal share of unemployment insurance taxes from employers, allowing employers to fill out one form and write one check, not two.

5.) Require states to distribute information packets explaining unemployment insurance eligibility conditions to unemployed individuals.

All of these provisions are based on the Advisory Council on Unemployment Compensation's Collected Findings and Recommendations for 1994-1996. As most of you know, the Advisory Council was established under the Emergency Unemployment Compensation Act of 1991. That law instructs the Council to evaluate the unemployment compensation program and make recommendations for improvement. The long process of drafting H.R. 3738 allowed me to utilize my experience when considering the effects each recommendation would have on the UI system. I have concluded that if the recommendations were enacted into law, as I propose in H.R. 3738, states (like Pennsylvania) would have the tools to assist workers faced with long-term unemployment.

Another important issue I would like to address is the current tax on unemployment compensation (UC) benefits. Before 1979, UC benefits were excluded from inclusion in income for tax purposes. UC benefits are currently fully subject to tax. This tax treatment, in place since 1987, puts UC benefits on a par with wages and other ordinary income in regard to income taxation. Last year, I introduced legislation, H.R. 2461, the "Unemployment Tax Repeal Act," to again exclude UC benefits from inclusion in gross income for tax purposes. The pre-1979 exclusion was upheld by Internal Revenue Service rulings based on three arguments: 1.) the law did not explicitly require taxation of UC, 2.) the benefits were viewed as part of the social welfare system and not regarded as wages, and 3.) taxation would undercut UC's income support objectives. I feel the final justification is particularly true. The UC tax is not a tax on income, it is a

tax on benefits -- benefits received during one of the most difficult times in a person's life. The UC tax hurts the economic security of workers throughout America. Our system should be structured to provide benefits to taxpayers, not dump penalties on the unemployed.

Mr. Chairman, I have talked to literally dozens of people in Western Pennsylvania who have collected unemployment benefits -- and then paid taxes on the benefits as normal income. Their experiences highlight how grossly unfair the tax is.

The tax on unemployment compensation kicks workers when they are down. Unemployment benefits are intended to stabilize the income of individuals and families in the face of layoffs. Yet someone who experiences lengthy unemployment -- a situation which depletes the financial reserves of most middle class families -- will face a large (and usually unexpected) tax liability the next year. For many who have struggled to survive a layoff, this tax bill is the last straw.

Simply allowing tax withholding on these benefits is no solution: it merely depletes the value of compensation that is already merely adequate. I would argue that however this tax is administered, it is fundamentally inequitable and perversely burdensome to a beleaguered middle class.

Mr. Chairman, I will conclude by emphasizing my strong support for reforming our unemployment system. It is my hope that our Committee will give its strongest consideration to developing legislation that will encompass many of the suggestions heard here today. Following through on these recommendations will result in a more manageable system and a more secure U.S. workforce.

Thank you for the opportunity to testify today.

Chairman SHAW. Without objection, all of the testimony will be submitted for the record.

Mr. Upton.

STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman. Thanks for the opportunity to testify before you today.

The bill I bring before you today, H.R. 3430, introduced by myself and Mr. Farr, is extremely simple, yet extremely important.

Under current law, cities and counties in your districts are responsible for paying unemployment benefits for folks who work as an election official, even if they only work 1 or 2 days a year.

An unemployment claim was filed against one city in Michigan by an election inspector who worked in the August primary and November general elections in 1994. Amazingly, now the city is responsible for paying unemployment benefits to this worker.

Recognizing this injustice, the Michigan State Legislature attempted to change unemployment laws in Michigan. However, the Department of Labor was quick to point out that this situation must first be corrected by amending the Federal Unemployment Tax Act known as FUTA. H.R. 3430 makes this correction in the FUTA law, and it allows the States to provide this exemption if they choose to do so.

The CBO has assured us that the bill is budget neutral. H.R. 3430 simply gives the States the freedom to run their unemployment compensation programs as they see fit. As we all know, municipal budgets are extremely tightly stretched, providing our constituents with the services that they need and deserve.

I know of no opposition to this bill. We have received many letters of support from around the country, and we appreciate your help in getting this bill out the door.

[The prepared statement and attachment follow:]

Congressman Fred Upton's Opening Statement
H.R. 3430 - Poll Worker Unemployment Reform
July 11, 1996

"The 104th Congress is looking for as many ways as possible to relieve local governments from unnecessary federal regulations. HR 3430 accomplishes this goal by eliminating the requirement that States pay unemployment compensation on the basis of services performed by election workers.

"Under current law, cities in your district are responsible for paying unemployment benefits for people who work as an election official, even if they only work two days a year. An unemployment claim was filed against one city in Michigan by an Election Inspector who worked the August Primary and November General elections in 1994. Amazingly, the city is now responsible for paying unemployment benefits to this worker.

"Recognizing this injustice, the Michigan State Legislature attempted to change unemployment laws in Michigan . However, the U.S. Department of Labor was quick to point out that this situation must first be corrected by amending the Federal Unemployment Tax Act, known as FUTA. HR 3430 makes this correction in FUTA and allows the States to provide this exemption, if they chose to do so.

"The Congressional Budget Office has assured me that this bill is budget neutral. HR 3430 simply gives the States the freedom to run their unemployment compensation programs as they see fit.

"Municipal budgets are already tightly stretched to provide your constituents with the services that they need and deserve. I know of no opposition to this bill and have received many letters of support from local governments from across the country.

"Please help get HR 3430 to the House Floor and help free local governments from a costly and unnecessary requirement."

STATE OF MICHIGAN

CANDICE S. MILLER, Secretary of State
MICHIGAN DEPARTMENT OF STATE
TREASURY BUILDING, LANSING, MICHIGAN 48918

May 14, 1996

The Honorable Bill Archer
Chairman, Ways and Means Committee
United States House of Representatives
1236 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Archer:

As Michigan's Chief Elections Official, I am writing to urge your support of House Resolution (HR) 3430, introduced by Congressmen Fred Upton and Sam Farr, which deals with poll workers and unemployment benefits.

Under current Federal regulations, an elections official who files for unemployment benefits is entitled to those benefits, even though he or she may work only two or three days per year. Recently, a claim was filed against the City of Grand Rapids, Michigan, by an Elections Inspector who only worked the August Primary and the November General Election in 1994. Incredibly, the City was responsible for paying a portion of his unemployment benefits.

When our Legislature tried to amend Michigan law to remedy the problem, the U.S. Department of Labor informed them that the change would first need to be made on the Federal level. House Resolution 3430 makes the necessary changes in Federal law and allows states to make their own individual changes should they so choose.

Ordinarily, those who work in the polls are volunteers who feel working at elections is a part of their civic duty or a service to the community. They are compensated, but their position is not treated as a full-time employment opportunity. The possible abuse to our unemployment system under the current regulations places an unjust burden to our local governments. I encourage your full support of and leadership in passage of HR 3430.

Sincerely,

Candice S. Miller

Candice S. Miller
Secretary of State

c: Congressman Fred Upton
Congressman Sam Farr

Chairman SHAW. Thank you.
Mr. Farr.

STATEMENT OF HON. SAM FARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. FARR. Thank you, Mr. Chairman.

I just want to add to Congressman Upton's comments that we found in California a pollworker who worked 1 day, but because he had retired from county business and because the job was terminated through no fault of his own—the election was over, it was a 1-day event—he was able to go back and collect $12,000 in unemployment insurance.

There is obviously a loophole. This bill closes it. It is a very simple bill. It leaves it up to the States, and it uses the same threshold that the Federal Government has determined to use in income tax and Medicare, the thousand-dollar threshold.

So we are leaving it up to the States. The State of California did repeal the law last year, but it is dependent upon Federal action. We think this bill remedies a problem, and we hope that you will move it with due haste.

Thank you.

[The prepared statement follows:]

SAM FARR
17TH DISTRICT, CALIFORNIA

COMMITTEE ON AGRICULTURE
SUBCOMMITTEES:
DEPARTMENT OPERATIONS, NUTRITION, AND FOREIGN AGRICULTURE
RISK MANAGEMENT AND SPECIALTY CROPS

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Washington, DC 20515–0517

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(408) 424–2229

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ROOM 318
SANTA CRUZ, CA 95060
(408) 429–1976

STATEMENT OF CONGRESSMAN SAM FARR BEFORE HOUSE COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON HUMAN RESOURCES JULY 11, 1996

Mr. Chairman, Members of the Subcommittee, I appreciate the opportunity to testify on behalf of H.R. 3430, legislation introduced by myself and Congressman Fred Upton, to fix a serious flaw in the unemployment compensation system.

Unemployment compensation is designed to give temporary assistance to workers who would otherwise suffer from serious economic setbacks due to generally unexpected and sudden loss of employment. It eases a tremendous burden for unemployed workers who lose their sole source of income, providing them with a small "cushion" of support while looking for a new job.

Interestingly, election poll workers -- individuals who serve their community on election day at a polling place -- are also eligible for unemployment compensation. This seems odd, since the very nature of the job is to serve for one day. Furthermore, poll workers receive a small reimbursement for their time and expenses -- usually sixty to eighty dollars -- and generally do not rely on their service as a poll worker as their main source of income.

In most cases unemployment compensation is usually reserved for long-term employees; thus, not many poll workers have qualified for these benefits. But more and more have exploited their eligibility to obtain significant compensation benefits -- creating a financial drain on local governments and increasing costs to the American taxpayer.

In my district, for example, a poll worker was eligible to receive up to $12,000 in unemployment compensation after "losing his job" when the election ended. Because he had held, and retired from, a prior job with the county elections board, the county was liable for the entire benefit -- an enormous financial burden they could scarcely afford.

States have tried to close this loophole themselves. Unfortunately, they have been hampered by the fact that only federal law can specify who is not eligible for unemployment compensation.

H.R. 3430 would allow states, if they so chose, to close this loophole. It uses a $1,000 dollar per year income threshold -- based on the income reasonably expected to be earned by the average poll worker volunteer -- to separate poll workers from longer-term, wage-based election workers. I would add that election workers earning under $1,000 per year are already exempt from paying Social Security and Medicare taxes.

Abuse of the unemployment compensation system not only costs taxpayers more money, but hurts those who have legitimate need for unemployment compensation. I thank the subcommittee for their consideration of this measure to close a costly loophole in federal law.

Chairman SHAW. Thank you. I think that presents to us a no brainer.

Mr. Heston.

STATEMENT OF CHARLTON HESTON, ON BEHALF OF THE SCREEN ACTORS GUILD, AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, AND WRITERS GUILD OF AMERICA, WEST, LOS ANGELES, CALIFORNIA

Mr. HESTON. Thank you, Mr. Chairman.

First, let me thank you and the Members of this Subcommittee for addressing this issue, particularly Congressman English and the other Members who have joined the sponsorate.

I am also grateful for the chance to testify not on my own behalf, but for my colleagues in the entertainment industry, in particular, my fellow senior performers represented by the Screen Actors Guild, the American Federation of Television and Radio Artists, and the veteran writers who are members of the Writers Guild of America, west.

As for me, I am an actor, writer, and director. I helped found a television actors union, now defunct, in the early days of live TV. I currently belong to four unions. I was president of one of them for six terms. I have chaired an international conference of performers unions and a presidential task force in the arts. I led a contingent of our members behind Dr. King in his march in this city in 1963. That's simply to say that this old horse knows the road.

I'm here today to express my support for H.R. 3677, which would amend a provision of section 3304 of the Federal Unemployment Tax Act. That section, as currently written and interpreted by the courts, operates to the detriment of senior entertainment industry professionals who are participants in multiemployer pension plans, depriving them of unemployment insurance benefits for which they are otherwise qualified.

To help understand this issue, let me give you some perspective on our profession. While some of us are millionaires, most struggle. The Screen Actors Guild has 82,000 members. The last figures I saw said that 80 percent of them make less than, much less than $10,000 a year. Just about every one of us, performer and writer alike, is a freelance worker. When we are employed, it is often short term and always temporary.

Artists in entertainment move from employer to employer. Periods of unemployment are a fact of life; even the best and most successful performers have lean times.

I am not just talking about motion picture and television actors, but of the writers, television and radio commercial performers, voice-over artists, broadcasters, singers; in short, the men and women whose images, voices, and words entertain and inform the Nation, indeed, the whole world, through visual and audio media and film, the art form of this century and the next.

These workers are covered by multiemployer pension plans which have been established by collective bargaining between our organizations and the producers, advertising agencies and the broadcasting entities who employ us, by agreement between the negotiating parties.

The plans are wholly funded by employer contributions. It is this unusual set of facts which creates the onerous application of section 3304 that now exists.

Parenthetically to this, let me point out that American films are overwhelmingly dominant in the world market, producing an unmatched trade surplus for our country.

Our organizations have been helping to encourage employment for seniors in support of the national interest and in ensuring that senior citizens remain active, contributing members of society. Senior images in our media make a major contribution to that objective, but such images are very rare.

Senior performers typically continue to seek employment in their chosen profession after they begin to receive the pension benefits they have earned over a lifetime of work in our industry.

Now, when the performer gets a new part, the new employer will make an additional contribution to the multiemployer pension fund, an additional contribution which will create an incremental increase in his pension plan, his monthly pension.

Should these performers later apply for unemployment benefits for which they have qualified, section 3304 requires that the amount of the benefit be offset by the total amount of the performer's pension, not just by the amount of the increase, but by the total amount of the pension. The offset will substantially reduce or even erase completely the unemployment insurance benefit. H.R. 3677 would very simply limit the offset to the amount of the increase.

We have for the Subcommittee a package of correspondence which began in December 1992 between our attorney, the California Employment Development Department, and ultimately the U.S. Department of Labor. With the Chair's permission, I ask that this package be accepted and included in the record of today's proceedings. This correspondence shows that efforts were made to correct this inequity at the State level, we hoped by administrative interpretation.

The need for congressional action was confirmed, however, in a letter dated June 9, 1993, in which the Department of Labor stated, "Offset of only the amount of pension increase would appear to be a more equitable alternative to offset of the total amount of the pension." However, the language of this statute does not permit proportional offset.

Passage of H.R. 3677 will provide the change in language we need here and provide our community with a more equitable alternative, as acknowledged by the Department of Labor.

Most significantly, the encouragement to senior artists to continue contributing to their industry, to their own self-esteem, and to America's culture would be a valuable corollary of your favorable action.

Thank you, sir.

[The prepared statement and attachments follow:]

TESTIMONY BY CHARLTON HESTON
IN SUPPORT OF H.R. 3677
BEFORE THE HOUSE SUBCOMMITTEE ON HUMAN RESOURCES
OF THE HOUSE COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES
July 11, 1996

My name's Charlton Heston.

First, Mr. Chairman, let me thank you and the members of this Subcommittee for addressing this issue and giving me the chance to testify, not on my own behalf, but for my colleagues in the entertainment industry, in particular my fellow senior performers represented by the Screen Actors Guild, the American Federation of Television and Radio Artists and the veteran writers who are members of the Writers Guild of America, west.

As for me, I'm an actor, writer and director. I helped found a TV actor's union, now defunct, in the early days of live TV. I currently belong to four unions, was president of one for six terms, chaired an international conference of performers unions and a Presidential Task Force on the arts. I led a contingent of our members behind Dr. King in his march in this city in 1963. That's simply to say that this old horse knows the road.

I'm here today to express my unconditional support for H.R. 3677 which would amend a provision of Section 3304 of the Federal Unemployment Tax Act. That Section, as currently written and interpreted by the courts, operates to the detriment of senior entertainment industry professionals who are participants in multi-employer pension plans, depriving them of unemployment insurance benefits for which they have otherwise qualified.

To help understand this issue, let me give you some perspective on our profession. While some of us are millionaires, most struggle. The Screen Actors Guild has 82,000 members. The last figures I saw said 80% of them make less than $10,000 per year. Just, about every one of us, performer and writer alike, is a freelance worker. When we're employed, it's often short term and always temporary. Artists in entertainment move from employer to employer. Periods of unemployment are a fact of life; even the best and mast successful performers and writers have lean times. I'm not just talking about motion picture and television actors, but of the writers, television and radio commercial performers, voice-over artists, broadcasters, singers -- in short, the men and women whose images, voices and words entertain and inform our nation...indeed, the whole world, through visual and audio media and film, the art form of this century and the next. These workers are covered by multi-employer pension plans which have been established by collective bargaining between our organizations and the producers, advertising agencies and broadcasting entities who employ us. By agreement between the negotiating parties, the plans are funded by employer contributions. It is this unusual set of facts which creates the onerous application of Section 3304 that now exists. (Parenthetically, let me point out that American films are overwhelmingly dominant in the world market, producing an unmatched trade surplus for our economy.)

Our organizations have been helping to encourage employment for seniors in support of the national interest in insuring that senior citizens remain active, contributing members of society. Senior images in our media make a major contribution to that objective, but such images are all too rare. Senior performers typically continue to seek employment in their chosen profession after they begin to receive the pension benefits they've earned over a lifetime of work in our industry. When the performer gets a new part, the new employer will make an additional contribution to the multi-employer pension plan -- an additional contribution which will create an incremental increase in the performer's monthly pension check. Should these performers later apply for unemployment benefits for which they've qualified, Section 3304 requires that the amount of the benefit be offset by the total amount of the performer's pension -- not just by the amount of the increase-- but by the total amount of the pension. The offset will substantially reduce or even erase completely the unemployment insurance benefit. H.R. 3677 would, very simply, limit the offset to the amount of the increase.

We have for the Subcommittee a package of correspondence which began in December 1992, between our attorney, the California Employment Development Department, and ultimately, the U.S. Department of Labor. With the Chair's permission, I ask that this package be accepted and included in the record of today's proceedings. This correspondence shows that efforts were made to correct this inequity at the state level, we hoped by administrative interpretation. The need for congressional action was confirmed, however, in a letter dated June 9, 1993, in which the Department of Labor stated:

> "Offset of only the amount of pension increase... would appear to be a more equitable alternative to offset of the total amount of the pension. However...the language of the statute does not permit proportional offset."

Passage of H.R. 3677 will provide the change in language we need here and provide our community with the more equitable alternative, as acknowledged by the Department of Labor. Most significantly, the encouragement to senior artists to continue contributing to their industry, to their own self-esteem and to America's culture will be a valuable corollary of your favorable action.

July 11, 1996

Subcommittee on Human Resources
Committee on Ways and Means
United States House of Representatives
Washington, D. C.

Re: H. R. 3677

Ladies and Gentlemen:

This letter will provide a concise explanation of the problem under the current Federal Unemployment Tax Act and of the proposed solution as encompassed in H. R. 3677. While it is written with reference to the Pension Plan established through collective bargaining by the Screen Actors Guild (SAG), the basic facts are equally applicable to the American Federation of Television and Radio Artists and to the Writers Guild of America, west who are also participating in this effort.

Under the terms of the Screen Actors Guild-Producers Pension Plan (established in 1960 by negotiation between SAG and the motion picture producers) an actor who has met the minimum requirements to qualify for benefits can take normal retirement at age 65 (or early retirement as early as age 55). Having begun to receive monthly pension checks, he will probably continue to seek work as an actor. When motion picture, television film or television commercial work is obtained, the actor's employer will, in compliance with the collective bargaining agreement with SAG, contribute to the Pension Plan. Under the rules of the plan, such contributions will result in an increase in the actor's monthly pension check.

Once the actor's employment has ended, he may qualify for unemployment insurance. While he has otherwise met the qualifications for unemployment benefits, current law requires that an individual's unemployment insurance benefit be offset by his Pension benefit when

(1) he works for any employer-member of a multi-employer unit which contributed to his pension, and

(2) where that work results in an increase in benefits.

The actor's new employer is, in all probability, an employer- member of the same multi-employer unit which contributed to the actor's pension. As stated above, the new employment increased his Pension. Under the law, his unemployment benefit is subject to the offset.

It would be reasonable if the offset were limited to the amount of the increase. Unfortunately, the current law requires that the unemployment benefit be offset by the total amount of the Pension. H.R. 3677 would limit the offset to the amount of the increase.

5757 WILSHIRE BOULEVARD • LOS ANGELES, CA 90036-3600 • TELEPHONE (213) 465-4600 • FAX (213) 549-6603
Branch of Associated Actors and Artistes of America / AFL-CIO • Affiliate of International Federation of Actors

EXAMPLE

(for the purpose of illustration, the figures are hypothetical)

Assume that the actors's monthly pension benefit prior to his new employment was $600 per month. As a result of his new employment his monthly benefit is increased by $7 to $607 per month.

Assume that the determined unemployment insurance benefit is equal to $650 per month.

Under current law, the monthly unemployment benefit of $650 would be reduced by $607, leaving a net unemployment benefit equal to $43 per month.

Under the change encompassed in H. R. 3677, the monthly unemployment benefit of $650 would be reduced by $7, leaving a net unemployment benefit equal to $643 per month.

It is important to remember that absent the two criteria cited above (an employer in the same employer group and an increase in the pension) there would be no offset of any kind; the individual's unemployment insurance benefit would not be reduced. Accordingly, the current law discriminates against persons in our industry who enjoy the benefits of a multi-employer plan (which is essential to a freelance marketplace) and who are allowed to benefit from the fruits of their post-retirement work by virtue of the increased pension.

Respectfully submitted by,

Leonard Chassman
Hollywood Executive Director

LEONARD CHASSMAN
Hollywood Executive Director

July 8, 1996

Subcommittee on Human Resources
Committee on Ways and Means
United States House of Representatives
Washington, D.C.

Re: H.R. 3677

Ladies and Gentlemen:

In conjunction with the testimony of Mr. Charlton Heston before your subcommittee on this date, we herewith submit copies of the following correspondence:

1. Letter dated December 22, 1992 from Ira L. Gottlieb, Esq. of the law firm of Taylor, Roth, Bush & Geffner (now Geffner & Bush) to Mr. Thomas P. Nagle, Director, Employment Development Department of the State of California;

2. Letter dated May 4, 1993 from Mr. Nagle to Mr. John Humphrey, Regional Director for Unemployment Insurance Services of the Employment Training Administration of the United States Department of Labor;

3. Letter dated May 17, 1996 from Mr. Gottlieb to Mr. Humphrey;

4. Letter dated June 9, 1993 from Mr. Don A. Alcar, Regional Administrator of the Employment and Training Administration of the United States Department of Labor.

Sincerely,

Leonard Chassman
Hollywood Executive Director

Encl's.

5757 WILSHIRE BOULEVARD • LOS ANGELES, CA 90036-3600 • TELEPHONE (213) 549-6612 • FAX (213) 549-6603
Branch of Associated Actors and Artistes of America / AFL-CIO • Affiliate of International Federation of Actors

TAYLOR, ROTH, BUSH & GEFFNER
A Law Corporation

Robert A. Bush
Leo Geffner
Ira L. Gottlieb*
Joseph A. Konanski*
Robert Kropp, jr.
Miriam Lopez
Jesús E. Quiñonez
Jay D. Roth
Hope J. Singer*
Jonathan K. Walters#

*Admitted in New York
*Admitted in Nevada
#Admitted in Pennsylvania or Washington, D.C.

3500 West Olive Avenue
Suite 1100
Burbank, California 91505
(818) 973-3200

Las Vegas (702) 387-1292
San Diego (619) 292-1840
San Francisco (415) 731-7292
Telecopier (818) 973-3201

Of Counsel:
Carson G. Taylor
J. Weldon Granger*
Jeffrey L. Cutler

* Admitted in Texas Only

VIA UPS NEXT DAY AIR

File No.:
11640-0041

December 22, 1992

Thomas P. Nagle
Director
Employment Development Department
800 Capital Mall
Sacramento, California 95814

RE: Unemployment offset

Dear Mr. Nagle:

This office represents the Screen Actors Guild (SAG), the American Federation of Television and Radio Artists (AFTRA) and the Writers Guild of America, west (WGA west) jointly referred to as the "Unions." Please accept the thanks of the Unions for arranging for our meeting with your representative, Marie Lopez, on October 15, 1992 in Los Angeles. The meeting proved to be worthwhile and informative. Indeed, it is partly at her suggestion that we now address our concerns directly to you, and request a meeting with you in an effort to obtain relief from a serious problem the senior members of the Unions are experiencing.

As I am sure you are aware, in this era of dual income households and high unemployment (especially in California), it is difficult for most retirees to make ends meet just with income from social security and their pensions. For this reason many retiree members of the Unions are compelled to supplement their fixed pension incomes through post-retirement employment. Unfortunately, the inherent nature of virtually all the work in the entertainment industry is seasonal, and sporadic. The competition for the few employment openings made available to performers and writers of retirement age is intense. The inevitable result of the combination of all these economic realities is that many retirees find themselves relying substantially on unemployment benefits to cover their living costs in the interim periods between what little employment they are able to find.

As if these circumstances were not difficult enough, the retiree members must overcome an additional burden in their struggle to maintain solvency and a decent living standard: in accordance with the EDD's current interpretation of applicable tax law, members' unemployment benefits will be offset by their pension benefits where they work for any employer-member of a multi-employer unit which contributed to their pension and where that work results in pension eligibility or an increase in benefits. This severely restricts the ability of many retirees to find work that will not, ironically, cause them financial hardship, and arbitrarily punishes employees who happen to work in an industry dominated by multi-employer entities. Since, as will be demonstrated below, California law requires that the pension offset be minimized to the greatest possible extent, and federal law does not require such an offset in this instance, the unions urge that the EDD adopt and apply an interpretation, consistent with the applicable statutes, that requires pension offset only where the pension employer and the base period employer are the identical, single employer.

THE APPLICABLE LAW

In 1980 Congress amended 26 U.S.C. §3304(a)(15), to read in pertinent part:

> "(A) the [pension offset] requirements of this paragraph shall apply to any pension . . . only if -
>
> (i) such pension . . . or similar payment is under a plan maintained or (contributed to) by a base period employer or chargeable employer (as determined under applicable law), and
>
> (ii) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 . . ., services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase, the amount of, such pension, . . . and
>
> (B) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, . . . or other similar periodic payment. . . " (emphasis added).

The state of California is required to conform its unemployment benefits policy to federal strictures such as the pension offset

provision to maintain its federal certification, but the state legislature has left no doubt that EDD is to comply "with the letter of the federal law, and nothing more," in light of the "self-destruct" clause of Unemployment Insurance Code §1255.3(b), and the legislature's view that

> the pension offset provision was both unfair and misguided, . . . that . . . many workers pushed into early retirement actively seek() new employment . . . (and) a pension offset unfairly discriminates against workers wholly dependent upon income from pensions and unemployment compensation. . . .

Evans v. Unemployment Ins. Appeals Bd., 39 Cal.3d 398, 409, 410 (1985). The EDD is therefore under legislative and judicial mandate to maximize unemployment benefits and minimize the impact of the pension offset, as long as such policy is not inconsistent with clear federal law.

ANALYSIS OF THE PENSION OFFSET

Abiding by the legislative command to accord the federal law no more than its most restrictive, literal meaning, requires the pension offset to be operative only when the pension plan has been contributed to by the base period employer, and the work performed for "such" employer results in pension eligibility or an increase in the amount of the pension.

Thus, the offset applies where an employee works for employer A, retires with a pension, then returns to A, and as a result of the second stint, his/her pension amount increases. By the same token, if the employee worked for and retired from employer A, and then went to work for employer B, any unemployment benefits resulting from an eventual layoff from B would not be offset. Why should that result change if B happens to be in a multi-employer unit which also contains A? Given that the legislature and the Supreme Court authorize only the narrowest, leanest application of the offset, and that nothing in the federal law requires a different result in the multi-employer context, the EDD must not extend the offset to that situation.[1]

---

[1] At our October 15, 1992 meeting, Ms. Lopez stated that she was unaware of any federal law or regulation that required the EDD to maintain its current interpretation, and our research has revealed no such federal law.

The EDD's interpretation of the offset statute is broader than is required by its literal language, in fact, erases a key word, and furthermore injects ambiguity and uncertainty, all of which can and should be avoided by a narrower reading.

Under the EDD's interpretation, Congress meant to apply the offset to any employment which results in pension eligibility or increase. If Congress intended that result, it could have stated so with fewer words and greater clarity. The EDD's interpretation thus lends a gloss of ambiguity that clouds the meaning of "employer" for no discernible reason.

More fundamentally, the EDD's interpretation renders the word "such" in subparagraph (A)(ii) superfluous. If the only criteria for applying the offset were that the base period employment result in pension eligibility or increase, (as the EDD's interpretation demands), there would be no need for the words "for such employer" to appear in (A)(ii). In order to instill meaning in that phrase and the remainder of (A)(ii) as well, "for such employer" must be understood to mean the same employer as the base period employer. Thus, subparagraph (A)(ii) is comprised of two separate components: (a) a requirement that the base period employer be the same employer as that with which the employee became pension eligible, and (b) a requirement that the base period employment result in pension eligibility or increase.[2] In other words, (A)(ii) requires both a match between pension and base period employer, and in addition, a change in pension status resulting from that last employment.

Congress was certainly aware of the existence of multi-employer pension plans, and could easily have provided for the broad reading of §3304(a)(15) adopted by the EDD if it intended to do so. In fact, it has chosen in analogous contexts in the Internal Revenue Code (§§415 and 401(a)(17)) to apply the statute on an employer-by-employer rather than on a plan-wide basis. Again,

---

[2] At the October 15, 1992 meeting, Ms. Lopez cited Rivera v. Becerra, 714 F.2d 887 (9th Cir. 1983), a social security case, as a possible analog in support of EDD's position. However, subparagraph (A)(ii) expressly does not apply at all to social security, and does apply to private pensions such as those covering SAG, AFTRA and WGA members. The Ninth Circuit recognized and articulated that distinction in its discussion of the legislative history, 714 F.2d at 893. Indeed, the Seventh Circuit Court of Appeals recognized that in the private pension context, the limitation of offset applicability to a return to work with the same employer would apply. Peare v. McFarland, 778 F.2d 354, 356-357 (7th Cir. 1985).

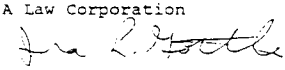
given the legislative admonition enunciated in §1255.3(b) and Evans, if there is any room for discretion in interpreting the federal law, the EDD must opt for the position that most severely confines the offset burden. The above discussion demonstrates that such a limiting construction is dictated by the statute.

In sum, the interpretation of the federal offset adopted by the EDD, rather than being required, is in fact not justified by its literal language. A more sound interpretation, and one in keeping with state policy, would apply the offset only where the same employer provided both the pension and the base period work resulting in pension eligibility or increase.

We hope the above persuades you to reconsider and revise the EDD's position consistent therewith. We request the opportunity to meet with you to further explicate our position and address any questions you may have, sometime in mid to late January. Please contact the undersigned so we may arrange for such a meeting. Thank you for your cooperation.

Very truly yours,

TAYLOR, ROTH, BUSH & GEFFNER
A Law Corporation



IRA L. GOTTLIEB

ILG:pjw

cc: Ken Orsatti
Leonard Chassman
Vicki Shapiro
Bert Freed
Warren Kimmerling
Mark Farber
Pamm Fair
Brian Walton

sag\nagil.ltr.pjw

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EDD Serving the People of California
State of California / Health and Welfare Agency

RECEIVED
MAY 11 1993
SCREEN ACTORS GUILD
LEONARD CHASSMAN

Pete Wilson, Governor

May 4, 1993
REFER TO: 40:10:93.0241:arm
(916) 654-8210

Mr. John Humphrey
Regional Director
for Unemployment Insurance Services
Employment and Training Administration
U. S. Department of Labor
P. O. Box 193767
San Francisco, CA 94119-3767

Dear Mr. Humphrey:

In December 1992, we received a letter from the law firm which represents the Screen Actors Guild (SAG), the American Federation of Television and Radio Artists (AFTRA) and The Writers Guild of America, west (WGA, west), hereafter referred to as the "Unions." The letter requested that we reconsider our Department's position with respect to when a pension from a multi-employer pension plan is deductible from unemployment insurance (UI) benefits. Enclosed for your information is a copy of the letter dated December 22, 1992.

California law requiring the offset of pension benefits from UI benefits conforms with federal law, 26 U.S.C., Section 3304(a) (15). Based on our interpretation of both state and federal law, a pension which is based on an individual's own work is deductible from UI benefits if:

1. A base period employer on the UI claim maintained or contributed to the fund from which the pension is paid, and

2. The work performed by the individual after the beginning of the base period affected the individual's eligibility to receive the pension or increased the award of the pension.

The Unions agree with the Department that a pension received by one of their members would be deductible under the following circumstances:

> An individual worked for 30 years for employer A and employer B, both of whom had contracts with SAG and so contributed to the pension fund provided for in the collective bargaining

agreement. The individual filed for UI benefits and both employer A and employer B were base period employers on the UI claim. The work performed by the individual after the beginning of the base period increased the individual's pension award.

The Unions and their attorneys urge that a pension received from a multi-employer pension plan should be deductible "only where the pension employer and the base period employer are the identical, single employer" as in the example shown above.

In those instances where the base period employer is not an employer for whom the individual worked while earning his or her initial entitlement to the pension, the Unions argue that the pension should not be deductible from the UI benefits. For example:

> The same individual mentioned above secured work with employer C some two years after applying for his SAG pension which was based on employment with employers A and B. Employer C also had a collective bargaining agreement with SAG and contributed to the pension fund on the individual's behalf while he worked. After being laid off by employer C, the individual filed a valid claim for UI benefits. The only base period employer was employer C.
>
> The Department determined that the work the individual performed for employer C after the beginning of the base period did result in an increase in the pension award. Thus, the entire pension (and not merely the increase) will be deductible from the UI benefits.

The Department's position is that employer C contributes to the same multi-employer pension fund from which the individual's pension is paid. Employer C is a base period employer and the work the individual performed after the beginning of the base period did result in an increase of the pension award.

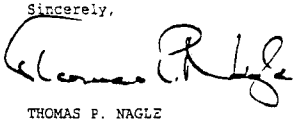
The Unions and their attorneys disagree with this interpretation. Their position is that the individual earned his initial eligibility for the SAG pension based on his work with employer A and employer B, neither of whom were base period employers in the second example. Thus, employer C is not the "pension" employer and the pension benefits should not be deducted from the UI benefits.

While the Department feels that its interpretation of state and federal law with respect to the offset of pension payments from UI benefits is correct, we agreed to request an opinion from the Department of Labor (DOL) as to whether there would be a conformity issue should our Department change its interpretation of how the pension offset law applies to pensions paid from a multi-employer pension fund and adopt the interpretation urged by the Unions.

We request an opinion as to whether the DOL would consider that the Department was exempting retirement income which meets the requirements of subparagraph (A) of Section 3304(a) (15) from deduction and whether this would result in a conformity issue.

Thank you for your assistance in this matter.

Sincerely,



THOMAS P. NAGLE
Director

Enclosure

cc: Screen Actors Guild
Ira L. Gottlieb

TAYLOR, ROTH, BUSH & GEFFNER
A Law Corporation

Robert A. Bush
Leo Geffner
Ira L. Gottlieb*
Joseph A. Kohanski*
Robert Kropp, Jr.
Miriam Lopez
Jesús E. Quiñones
Jay D. Roth
Hope J. Singer*

* Admitted in New York
* Admitted in Nevada

3500 West Olive Avenue
Suite 1100
Burbank, California 91505
(818) 973-3200

Las Vegas (702) 387-1292
San Diego (619) 292-1840
San Francisco (415) 731-7292
Telecopier (818) 973-3201

Of Counsel:
Carson G. Taylor
J. Weldon Granger*
Jeffrey L. Cutler

* Admitted in Texas Only

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SCREEN ACTORS GUILD
LEONARD CHASSMAN

File No.:
11640-0041

VIA EXPRESS MAIL

May 17, 1993

Mr. John Humphrey
Regional Director for the
Unemployment Insurance Services
Employment and Training Administration
U.S. Department of Labor
Post Office Box 193767
San Francisco, California 94119-3767

RE: Unemployment Benefit Offset by Pension

Dear Mr. Humphrey:

This is to supplement the position taken by SAG, AFTRA and the WGA, west which was set forth in my December 22, 1992 letter to Thomas Nagle, and enclosed with Mr. Nagle's May 4, 1993 letter to you.

As you are aware, it is the policy of the State of California to maximize the availability of unemployment benefits to employees in this state, and concomitantly to encourage people to seek and obtain gainful employment. The current position of the EDD does not fulfill those goals to the greatest extent consistent with applicable law, and as will be explained in this letter, in fact inhibits the search for employment among retirees. We are confident that the EDD would reconsider its policy if the Department of Labor provides it with assurances that it will not be considered out of conformity with federal law in doing so. Since there is no federal law expressly prohibiting the adoption of the Unions' position in the multiemployer context, there is no reason for the DOL to intervene in this matter. The Unions therefore urge the Department to give the EDD approval to reconsider its policy on this point.

THE PROBLEM

As noted in our December 1992 letter, especially in the current economy, the Unions' retirees find it necessary to supplement their base retirement income with earnings from new employment. Retirees already encounter severe difficulties in this endeavor because of the tendency of employers not to hire older workers, the intermittent character of the work they perform, and generally because of the dismal economic conditions that currently prevail in California.

The difficulties faced by the retirees are compounded by the problem the Unions seek to address in this letter. The industry in which the Unions' members work is dominated by a multi-employer unit consisting of individual employers who contribute to a collectively-bargained pension plan. The EDD's treatment of the unit as one large employer for offset purposes is neither mandated by federal law, nor serves the legislative purpose of avoiding having an employer pay twice to benefit an unemployed retiree. Under the current EDD regime, if a retiree works for an employer who contributes to the multiemployer pension, and as a result of that work, her pension increases, then the entire amount of her pension (not just the amount of the increase) is applied to offset any claim for unemployment benefits. The EDD applies this rule even to base period employers who did not contribute to the original pension of the employee. The deterrent effect of this rule is clear: why perform intermittent work for relatively little income and a minute increase in pension, if that increase will erase the unemployment benefits needed to tide oneself over between jobs? At least where the pension employer and base period employer are not the same, there is no rule or reason to justify that result.

LEGISLATIVE HISTORY

Our December 1992 letter provides the textual analysis supporting the desired change in the EDD's policy. Enclosed with this letter are excerpts from the legislative history demonstrating that the amendments to the federal law relating to pension offset were designed to limit that offset to "only those unemployed workers who were collecting unemployment benefits and retirement payments from the same employer" (Tab A, p.23048 (highlighted portion)). Senator Bradley's remarks

included in the booklet are to the same effect: if an employee works for an employer who is "separate and apart" from the employer paying his pension, and is laid off, he is entitled to unemployment benefits (Tab B, pp. 26040-26041). There is no reason to expand the narrow legislative focus, trained on avoiding an employer "double" payment, in the context of multi-employer-dominated industries.

That Congress was aware of the existence of such industries and nevertheless chose not to broaden the scope of the pension offset as the EDD has done is evidenced by the portion of legislative history at Tab C. Congress was addressing changes in ERISA specifically with respect to multiemployer pension plans at the very time it was enacting the pension offset amendments that are found at 26 U.S.C. §3304(a)(15). Congress recognized certain advantages to the utilization of such plans, and found them "particularly but not exclusively important in industries such as . . . the performing arts, which (is) characterized by mobility of employees, or employers, or rapid turnover of both" (Tab C, p.2921). If Congress had wished to require expansion of the pension offset in the multiemployer context in the manner of the EDD's policy, given its consciousness of the prevalence of such plans in certain prominent industries, it would have done so. In the absence of such a clear federal requirement, the DOL need not impose one on the state of California.

CONCLUSION

In our telephone conversation last week, you mentioned that your initial response to the EDD's correspondence was to avoid intervention in the absence of a federal mandate contrary to any suggested EDD action. Acknowledging that that response was neither final nor the official DOL position at this time, the Unions urge the DOL to follow that initial impulse, and allow the EDD the latitude necessary to modify its policy in the manner advocated herein. That modification would be consistent with federal law and Congressional intent, and would effectuate California policy to the benefit of employees in this state.

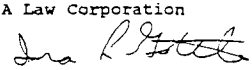
Once you have had an opportunity to consider this matter, we

would request a meeting with you to discuss the DOL's response and the steps to be taken thereafter.

Thank you for your consideration.

Very truly yours,

TAYLOR, ROTH, BUSH & GEFFNER
A Law Corporation



IRA L. GOTTLIEB

ILG:pjw

Enclosure(s)

cc: Ken Orsatti
Leonard Chassman
Vicki Shapiro
Bert Freed
Warren Kimmerling
Mark Farber
Pamm Fair
Brian Walton
Thomas Nagle (Director, EDD)

sag\hum01.ltr.pjw

haseu #399
afl-cio

U.S. Department of Labor

Employment and Training Administration
P.O. Box 193767
San Francisco, California 94119-3767

Reply to the Attention of: 9TGU

June 9, 1993

Mr. Thomas P. Nagle
Director
Employment Development Department
P.O. Box 826880 (Attn: MIC 40)
Sacramento, CA 94280-0001

Dear Mr. Nagle:

I am writing in reply to your May 4, 1993, request for an opinion on the issue of pension offset. In particular, you asked whether altering the Employment Development Department's interpretation of the pension offset provision as requested by attorneys for several entertainment industry unions, would raise an issue of conformity with Federal statute.

The law corporation of Taylor, Roth, Bush & Geffner, as representatives for the Screen Actors Guild, the American Federation of Television and Radio Artists and the Writers' Guild of America, hereafter referred to as the "unions", argue that by incorporating a broader than necessary interpretation of Federal pension offset provisions, California policy needlessly penalizes individuals in the entertainment industry who are covered under a multi-employer pension plan. States may, of course, choose to broaden the application of the offset provision beyond the minimum Federal requirement. However, a State may not consistently with Federal law exempt any pension income from offset if offset is required by application of the minimum Federal requirements. Although we are sympathetic to the difficulties faced by retirees, it is our opinion that adoption of the policy suggested by the unions and their attorneys would exempt from offset pensions which are subject to offset under the minimum Federal requirement.

The provisions of Federal law relevant to pension offset of unemployment insurance benefits are found at Section 3304 (a)(15)(A)(i & ii) of the Federal Unemployment Tax Act (FUTA) which states:

> "(15) the amount of compensation payable to an individual . . . which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) *by an amount equal to the amount of such pension*, retirement or retired pay, annuity or other payment which is reasonably attributable to such week except that -

> (A)the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if-
>
> (i) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained *(or contributed to)* by a base period employer or chargeable employer . . . , and
>
> (ii) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 . . . services performed for such employer by the individual after the beginning of the base period . . . affect eligibility for, or increase the amount of, such retirement or retired pay, annuity or other similar periodic payment, and' [Emphasis added.]

In letters dated December 22, 1992, (to T. Nagle) and May 17, 1993, (to J. Humphrey), Ira Gottlieb, a member of the law corporation representing the unions, has proposed that pension offset is only required when the base period employer is the same employer as that with which the employee became pension eligible <u>and</u> that such base period employment resulted in pension eligibility or a pension increase. Mr. Gottlieb further argues that each employer member of a multi-employer unit should be considered as a separate and distinct employer. The following example illustrates the issue.

> An individual works for employer A and employer B, for 20 years, both of whom are members of a multi-employer unit and contributed to the same pension plan. The individual establishes pension eligibility based on employment with A and B.
>
> Some years later, while drawing the pension based on employment with A and B, the same individual secures work with employer C, a member of and contributor to the same multi-employer unit/pension plan to which A and B belong. After being laid off by employer C, the sole base period employer, the individual files a valid claim for unemployment insurance benefits. Contributions by employer C to the pension plan for services performed after the beginning of the base period result in an increase in the individual's pension. Consequently, the entire pension is deducted from the individual's UI benefits.

Mr. Gottlieb contends that because the individual's <u>initial</u> pension eligibility was established by employment with employers A and B, neither of whom are base period employers, UI benefits following separation from employer C are not subject to <u>any</u> offset.

Plaintiffs in several circuit court cases[1] have raised the same argument unsuccessfully and like Mr. Gottlieb, have cited the legislative history to support their argument.

The case Rivera v. Becerra(9th Circuit 1983), discusses in detail the meaning of the 3304(a)(15)(A)(i), and the appropriateness of reverting to legislative history to determine that meaning. On the issue of reverting to legislative history, the court ruled that the meaning of the statute is clear on the face and hence resort to the legislative history is not necessary. The court did not agree with the plaintiff's argument that pension offset was only required when the pension eligible employer and the base period employer are one and the same. Although the pension plan in question in Rivera was a Social Security pension, the court's determination was based on its interpretation of 3304(a)(15)(A)(i), which is applicable to both private and government pensions. The offset applies under section 3304(a)(15)(A)(i) if the base period employer "contributed" to the plan from which the pension benefits are derived. Section 3304(a)(15)(A)(ii) makes a further stipulation for offset of private pension plans that services performed "for such employer by the individual after the beginning of the base period . . . affect eligibility for, or increase the amount of such pension." This requirement is applied equally to both single employer units and multi-employer units.

Clearly in the above example, employer C is a base period employer who had contributed to the plan from which pension benefits are derived and services for such employer (employer C), have resulted in an increase in the pension amount. The 1980 amendments to the federal offset provisions lowered the minimum requirement to require offset for "only those unemployed workers who were collecting unemployment benefits and retirement payments from the same employer." In the above example, offset is required to preclude the individual from drawing UI benefits and the pension (amount of the increase) from employer C. Conversely, if the services performed for employer C did not affect the individual's eligibility for or cause an increase in the amount of the pension, no offset of UI benefits would be required under FUTA.

Offset of only the amount of pension increase based on employment with employer C would appear to be a more equitable alternative to offset of the total amount of the pension. However, as ruled in the Ninth Circuit, by which this office and EDD is bound, the language of the statute does not permit proportional offset. When the conditions of 3304(a)(15)(A)(i & ii) are satisfied the amount of compensation payable to an individual shall be reduced (but not below zero) by an amount equal to the amount of the pension.

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[1] Rivera v. Becerra, (9th Circuit 1983); Peare v. McFarland, (7th Circuit 1984); and Walker v. Donovan, (Eastern District Michigan, Southern Division, 1986)

In summary, it is our opinion that amending EDD policy to discontinue pension offset when the pension amount has been increased based on services performed in the base period, and the base period employer has contributed to a multi-employer pension plan, would raise an issue of conformity with the minimum requirements of Section 3304(a)(15), FUTA.

Questions concerning this information should be referred to Jamie Bachinski at (415) 744-6648.

Sincerely,

Don A. Balcar
Regional Administrator

cc: Ira Gottlieb, TAYLOR, ROTH, BUSH & GEFFNER, A law Corporation

Chairman SHAW. Thank you, Mr. Heston.

Mr. Rangel.

Mr. RANGEL. Thank you.

I want to thank Mr. Heston for taking the time out to testify because we are all aware that so few people who enter your business end up as successful as you have been, and therefore, we need people like you to encourage our young people to know that there is some type of a safety net for them.

I cannot think of anyone that would object to correcting this inequity as it exists, and I cannot think, Mr. Heston, of a piece of legislation that has hit this particular Subcommittee that has been bipartisan in nature, and so I want to welcome that opportunity. Then, if you have some spare time, a few Democratic things I may ask you to join with me on——

Mr. HESTON. That is a fair accomplishment.

Mr. RANGEL [continuing]. In helping some of these young people——

Mr. HESTON. I play many roles.

Mr. RANGEL. Welcome, and it really says a lot for you, knowing the value of your time to actually, as you would play the role, to take care of the lesser among your people.

Mr. HESTON. Well, thank you, Congressman.

If I may add a short addenda, I think an unusual, indeed, possibly unique feature of this problem is the small number of people to which it applies. You are talking about some 700 members of the various guilds I mentioned who would find themselves in this situation, and also to have their pension, as I said, not just reduced by the increase, but the entire pension, it seems clearly indefensible, as the Department of Labor actually agreed, but they said you are going to need legislation.

Thanks to you gentlemen here, we are——

Mr. RANGEL. Mr. Chairman, I understand—well, I know that some pension legislation may be coming to conference, and if it is within the scope, the leadership will make the decision, but I am certain on the outside there would be no objection.

Chairman SHAW. We are looking into that. I think there is a hook in the bill that presently is between the House and the Senate, and we possibly can work something out.

We are also going to have to formulate some legislation to take care of the Illinois situation, which is going to be a little more difficult because I think the administration filed a brief in support of Illinois and since has done a turnaround on it.

Mr. RANGEL. It may be a little more difficult for other reasons as well.

Chairman SHAW. I would like to thank the entire panel for their testimony. It is very insightful testimony. I feel that Mr. Farr and Mr. Upton have really thrown us a softball which we might be able to correct in a suspension. We will look into it.

Has anyone filed this bill on the other side?

Mr. UPTON. I would just note, Mr. Chairman, that both Mr. Farr and myself appeared before the Bipartisan Corrections Day Panel, and they recommended that we move forward and, obviously, go through the appropriate procedure here. Of course, the way that that system works is it does have to be reported out of Committee,

but I think they will look very favorably on not only putting that under suspension, but under a corrections day.

Chairman SHAW. Unless there are some fishhooks that aren't apparent, I can tell you that we will move that very expeditiously, but I think with elections coming up, maybe we can do something before that happens.

Mr. HESTON. And if I may?

Chairman SHAW. Yes, sir.

Mr. HESTON. In terms of our undertaking, we received assurances from Senator Hatch, in the other House——

Chairman SHAW. Yes, sir.

Mr. HESTON [continuing]. That he would be willing to cosponsor from that side, the lower body. I don't know how to put that, the lower body. I didn't say "upper." I said "other."

Chairman SHAW. If you will carry that message over to the Senate you can count on my full cooperation.

I thank all of you, and this hearing is adjourned.

[Whereupon, at 12:37 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

#96-18

STATEMENT OF THE
AMERICAN FEDERATION OF LABOR-
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

FOR THE

SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES
July 11, 1996

The AFL-CIO encourages Congress to fashion a consensus response to unemployment insurance (UI) administrative financing problems. It is our belief that a solution can be reached which brings together labor, employers, federal and state administrators without fundamentally altering the current federal/state relationships. The current devolution proposals, however, can never build that consensus. If anything, by proposing a sweeping overhaul which threatens many ancillary elements of the core system and creates unnecessary uncertainties, these ill-conceived proposals delay the formation of the alliances we need to fix administrative problems.

Regarding the *Pennington* lawsuit, the AFL-CIO believes the right of claimants to a fair and accurate accounting of previous earnings and to payment of benefits in an expeditious manner must be weighed along with state rights to determine program characteristics. The State of Illinois has appealed this decision and has yet to exhaust its legal recourse. We believe the district court -- which is entirely composed of judges appointed by President Reagan -- has rendered a fair and accurate judgement which should not be overturned through legislative action.

The following statement addresses devolution and Pennington in that order.

DEVOLUTION

Pressing Issues Beyond Administrative Finance

The AFL-CIO shares the concerns of all panelists that administrative financing issues must be resolved. Our membership includes both claimants and public sector employees, creating a significant interest in a stable, fully-funded administrative system. However, we urge Congress to take a broader look at the unsatisfactory insurance afforded the nation's unemployed workers through the current federal/state system.

Throughout the 1980s, state and federal legal restrictions on eligibility have reduced the percentage of the unemployed receiving benefits from 75 percent in 1975 to only 36 percent last year. Even accounting for changes in the demographics of the unemployed, the Advisory Council on Unemployment Compensation and numerous independent researchers have noted the important contribution of state legal restrictions in reducing the

percentage of the unemployed who receive benefits.[1]

As the economy produces more low wage jobs and less secure employment, these tightening restrictions threaten the counter-cyclical power of the system and drastically curtail the insurance function of the program. At a time when millions of Americans feel vulnerable and anxious about their economic future, Congressional attention to peripheral notions like devolution is a distressing commentary on the state of political discourse around unemployment insurance. Worse, the Congressional attempt to circumvent the *Pennington* decision, as discussed below, threatens to undermine one positive step toward claimants' rights in the current environment.

What is Devolution?

The idea of "devolution", or sending administrative funding decisions to state jurisdictions, raises fundamental issues that extend far beyond what may at first appear to be a simple technical issue. In a wide range of policies where states are under increasing fiscal pressure -- from training to Medicaid to welfare -- reformers are pressing forward with efforts to expand state-level control over social policy. Devolution of UI administrative funding and policy is part of this broad wave of policy interventions. Indeed, because UI is already so heavily state oriented, we believe the current interest in devolution is merely an attempt to capitalize on a broad policy thrust where smaller administrative simplifications would achieve the same goal.

Plans for UI devolution have been advanced primarily by state administrators in Georgia, New Hampshire, Ohio, and Virginia. Although details vary, the thrust of these proposals is that states should collect and control administrative funds. The implication is that the federal government has too much control of "their" funds and leaves the states perpetually under funded. The proposals try to free additional administrative dollars by diverting program dollars, usually including elimination of the Extended Benefits program. Proposals vary in relation to other federal UI programs, labor market information, and other aspects of UI administration.

Devolution: History

"Devolution" is an idea which comes and goes. It periodically resurfaces and it never happens. In Ways and Means hearings in 1939, the Social Security Board noted

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[1] Bassi, et al. (1996) "The Evolution of Unemployment Insurance," Advisory Council on Unemployment Compensation, Background Papers, Volume III, January; Anderson and Meyer (1994) "Unemployment Insurance Benefits and Takeup Rates," Working Paper 4787, National Bureau of Economic Research; Corson and Nicholson (1988) "An Examination of Declining UI Claims During the 1980s," UI Occasional Paper 88-3, US Department of Labor.

> the suggestion...the Federal Government should collect the entire Federal tax and make grants-in-aid to the States, instead of allowing an offset on the Federal tax.

Since 1939 the boundaries between federal and state activity have been fought over again and again without a significant move toward devolution. No constituency is completely satisfied with the existing mix of roles -- least of all those of us who advocate for claimants -- but no constituency can gain enough allies to change the balance. Devolution is particularly vulnerable in this regard, because its strong allies are comparatively few given the potential impact on the system.

It is difficult to find any sizeable block of support for devolution. Most large, multistate employers don't like the uncertainty that the new proposal introduces. They are not swayed by the illusory promise of easier wage reporting. The fact is, they don't know what systems they will face in 50 unique state tax environments. Even more employers worry about UI funds mingling with other state funds, a practice currently restricted by federal law.[2] Claimant advocates know that a range of programs will be eliminated and they are uncertain about state commitments in the face of interstate competition. Small states worry about funding adequacy.

Advocates of devolution may think they have solutions for each of these criticisms, but a vast reform like they are proposing needs staunch allies and clear benefits. These proposals are unlikely ever to achieve that broad level of confidence.

Is the Current Fund Distribution Unfair?

Devolution proponents argue that the current system should be eliminated in part because of the supposedly unfair distribution of funds both among the states and between the federal government and all states. They point out that only two-thirds of all UI tax dollars are returned to the states. They also point to the high rate of return of tax dollars to some states and low percentage return in others. This perspective obviously disregards the fact that any insurance system will redistribute pooled funds based on differences in risk. It is not sufficient to say that some states get back less than they send to Washington. Reform advocates must show that they get back less than they need to fulfill their obligations to the unemployed. A review of performance in the states which are pushing devolution provides some insight into the source of their low return on funding.

All four of the states which have advocated devolution had a

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[2] These and other employer concerns are well-documented in Employers Unemployment Compensation Council (Michigan) "Discussion Paper on Devolution", January 18, 1996.

lower percentage of the unemployed receiving benefits than the national average; three of the four paid benefits to less than one-fourth of their unemployed. Similarly, the biggest winner in the transfer of administrative funding was Alaska, a state which also leads the nation in percentage of the unemployed receiving benefits. New Hampshire, which pays only one-fourth of its unemployed benefits, gets only about 60 percent of its FUTA payments returned in grants. This suggests that, far from being an issue of inequity, the uneven transfer of funds among states reflects the fact that the unemployed are more likely to receive benefits in some states than in others. New Hampshire, Virginia, Georgia, and Indiana would have higher reimbursement rates if their systems met the needs of more of the unemployed in their states.

National Priorities Still Relevant

In 1935, various program designs were debated for the UI system. Given the rapid expansion of federal authority in the New Deal, the proposal for UI was based on a strategic decision not to push for a national system. Instead, the Social Security Act imposed a federal tax which would be refunded, in part, to states that established UI systems in conformance with a narrow set of federal standards relating to administrative requirements and coverage of selected industries. The federal tax was primarily used to encourage state activity, not to fund a federal program. This approach left eligibility, benefit duration, and benefit levels in state control.

There is another, equally important fact about the use of a federal UI tax to leverage state action. It was quite consciously intended to reduce the role that interstate competition played in thwarting state efforts to establish UI systems. A uniform taxable wage base and tax rate were seen as a level playing field from which states would build their systems. This uniform, national tax for administration was quite consciously part of the federal element of the system.

The current push to expand state control reduces federal input into a system that is already dominated by state interests. States currently control decisions about who receives benefits, how long they will receive benefits, how much they will receive, whether the state will adopt alternate triggers for Extended Benefits, and what level of experience rating their taxes will reflect. Although states might prefer to have complete control over every aspect of the system, we believe the modest authority which remains in federal hands through administrative financing plays an important, if small, role in maintaining system integrity. Nationally important recent initiatives around quality control, demonstrations, and research are particularly threatened.

FUTA Funds Diverted from Employment Service Programs

If there is any consensus among employers and the labor movement regarding UI it is that FUTA funds should only be used

for unemployment-related purposes. Employers and labor have been willing to make a few noteworthy exceptions to this rule by diverting some UI funds into training accounts in a small number of states. These programs are good examples of exceptions that prove the rule; they reflect intense bargaining among interests and include significant program oversight by joint labor-management bodies. They are extremely controversial, and both labor and employers tend to rally around the concept of keeping the UI trust funds as a trust for the unemployed.

There is widespread concern that devolving administrative funds to the states will promote a merger of employment-related funds with other funds. In the process, the interests and concerns that labor and business share will be more difficult to realize. This concern is particularly acute given current proposals to block grant many other social programs and the downward pressure on federal funding.

There is another troubling aspect to this merging of funds. Again, the origins of UI financing are instructive in this regard. As early as 1939, the Social Security Board voiced concern about state control leading to political patronage. The Social Security Act established federal oversight and merit employment systems precisely to avoid expanding patronage and making the system vulnerable to corruption. The rush to devolve UI administration and every other social policy reopens this critical debate in American politics. We are deeply concerned that devolution of administrative funds will result in a new breed of patronage as private firms and political friends vie for these funds without sufficient federal oversight or merit employment requirements.

Threat to Insurance Functions

Secure administrative financing is essential to fulfilling the insurance function of UI. Devolution poses a potential threat to social insurance in two senses. First, the essence of social insurance is pooled risk. A devolved administrative financing system narrows the pool of available funds for administrative uncertainties. Economic downturns are never evenly distributed across the states. The risks facing administrative funding should be more broadly distributed to acknowledge this.

Second, downward pressure on administrative funding implies downward pressure on program performance. For example, the cost of administering a benefits denial is almost certainly lower than the cost of administering a successful claim for benefits. Any administrative financing system should acknowledge the higher cost associated with case management versus disqualifications. We are concerned that downward pressure on administrative funding will lead to unfair restrictions on access to the system. Similarly, small states and less populous state will almost certainly have to raise employer taxes following devolution. All of the states that had a 90 percent or better return of FUTA funds in grants had small tax bases: Alaska, Idaho, Maine, Montana, North Dakota, Rhode Island, Vermont, Wyoming.

Loan Fund an Important Current Feature

A specific insurance feature of the current system which must be retained is the loan fund. Under current law, a portion of FUTA taxes goes into a Federal Unemployment Account (FUA) which makes loans to insolvent state trust funds. States currently repay these loans with interest. This fund is a vital part of the national commitment to social insurance. Any devolution proposal which threatens its integrity should be rejected.

Extended Benefits Program Issues

Most proposal for devolution include elimination of the Extended Benefits program. Such proposals go far beyond the supposed technical fix that advocates claim they are making through devolution.

The AFL-CIO has long been a critic of the existing EB program, but we believe the program should be improved and not eliminated. It is noteworthy that the Advisory Council on Unemployment Compensation devoted all of its 1994 recommendations to this program. We concur with their recommendations in this area, particularly the use of the state's seasonally adjusted total unemployment rate as an EB trigger mechanism. Since 1.3 million unemployed workers were without work for 27 weeks or more last year, proposals to eliminate the EB program, rather than strengthen it, should be rejected.

Administrative Funding Reform Possible Without Devolution

We agree that some aspects of the current administrative funding structure should be reformed. It is possible to shape a reform agenda that brings together labor, employers, and administrators around common concerns. An acceptable reform proposal must promote a better linkage between work load and available funding. We believe this can be achieved within the existing Department of Labor effort around the Administrative Financing Initiative. Any reform must encourage innovation and research in the national interest as well as cover current expenditures. It should provide a secure funding base for unexpected economic downturns. It should address unnecessary restrictions on the movement of funds within the Employment Service, though not out of the Employment Service. It should promote simplification of employer paperwork without sacrificing important labor market information.

PENNINGTON VS ILLINOIS

Unemployment Insurance and the Low Wage Labor Market

As mentioned at the outset, the AFL-CIO is particularly concerned that restrictions in state UI programs prevent too many of the unemployed from receiving benefits. Within the range of

barriers put in place by state programs, monetary eligibility requirements disproportionately affect low wage workers. The reduced purchasing power of displaced, low income workers is a significant public policy issue which warrants national attention.

Research funded by the non-partisan National Commission for Employment Policy last year examined the impact of state monetary eligibility requirements on UI recipiency rates for various population groups.[3] Their research essentially duplicated the eligibility screening process which unemployed individuals face in each UI jurisdiction. They used the earnings history of individuals in the Survey of Income and Program Participation to estimate the number of individuals rendered ineligible for UI at each step in eligibility determination.

Among their findings were: (1) 34 percent of women and 15 percent of men were excluded from benefits due to monetary eligibility issues, (2) women are twice as likely as men to fail state requirements for high quarter earnings, and (3) only nine percent of all unemployed workers who worked part-time received benefits. These findings suggest that state monetary eligibility requirements, particularly for high quarter earnings, pose a significant hurdle for the unemployed seeking insurance benefits. The impact of high quarter requirements is exacerbated where states delay counting the most recent quarter of earnings, a quarter which may prove essential to eligibility. The Pennington case thus represents a small step toward rectifying the vast disparity of treatment which the unemployed face under current state practice in most states.

The *Pennington* Case

In *Luella Pennington vs Lynn Doherty, Director of the Illinois Department of Employment Security*, 22F.3rd 1376 (7th Cir. 1994) the Seventh Circuit court found that federal timeliness requirements (the so-called "when due" clause) of the Social Security Act were violated because Illinois makes eligible workers wait up to six months before they file a claim in order to allow time for processing the most recent quarter of earnings at the time of layoff. The U.S. Supreme Court denied the Illinois appeal. On remand, the U.S. District Court ordered Illinois "to adopt an alternative within a reasonable time" to expedite accounting for a worker's most recent earnings. The state is not currently paying anyone benefits under the required change. Illinois has filed an appeal.

Claimants' Rights and States' Rights

Pennington simply requires a state to include the most recent earnings in calculating benefit eligibility. Illinois

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[3] Yoon, Spalter-Roth, Baldwin (1995), "Unemployment Insurance: Barriers to Access for Women and Part-Time Workers," National Commission for Employment Policy.

suggests that the state right to set eligibility is paramount, claiming 60 years of history. Over those same 60 years, however, the federal government has had the right to insist that benefits be paid in a timely manner (under the "when due" clause) and has exercised that right. In *Pennington*, the Republican-appointed US Court of Appeals, Seventh Circuit, ruled that waiting up to six months for reported wages was a violation of timeliness and they ruled that it was administratively feasible to count most recent earnings. Illinois can and should accurately count earnings. They should not come to Congress to deny this responsibility.

Eight States Have Voluntarily Passed Moveable Base Legislation

Eight state have voluntarily passed legislation to do what Illinois claims it cannot accomplish. In Maine, Massachusetts, New Jersey, Ohio, Rhode Island, Vermont, and Washington, states use a base period which includes earnings in the most recent quarter. Michigan has adopted a flexible base period effective one year from now. With so many states successfully adopting a moveable base period, it is not surprising that Illinois has thus far been unable to convince the court that it is not administratively feasible. We urge Congress to avoid passing legislation which will impede claimants' rights to what has been repeatedly proven feasible.

Avoiding Welfare Through Fair Accounting

Opponents of *Pennington* claim that it makes UI more like welfare. Apparently, they believe any effort to include more of the unemployed in the program will necessarily involve including the "undeserving". They couldn't be more wrong. We believe the opposite is true. *Pennington* requires Illinois to make a timely, accurate accounting a worker's employment history. By more accurately measuring labor force attachment, *Pennington* requires Illinois to pay UI to unemployed **workers**. Ironically, without this administrative fix, many unemployed workers will be denied benefits and be more likely to receive welfare instead.

The U.S. labor market is increasingly producing low wage, contingent jobs. Yet state eligibility criteria continue to reflect past history, demanding high prior earnings and stable employment. We believe significant change is needed to bring state UI systems in line with existing labor market trends. Only by adopting reforms such as the moveable base period can UI eligibility criteria accurately reflect an individual's attachment to the new labor market.

CLOSING REMARKS

The U.S. unemployment insurance system is in dire need of reform. Too few of the unemployed receive too little in benefits for too short a time. In addition, the current administrative financing system keeps the supporting infrastructure of the system starved for funds. This situation is problematic enough given the current, lengthy economic recovery. But this recovery

will not last forever. We are deeply concerned that the next economic downturn will be confronted with insufficient administrative funds and a state-based system that is far too restrictive to provide the necessary counter-cyclical demand. We see an overwhelming need to return the system to its founding principles -- an insurance system help the unemployed weather economic misfortune, a national commitment to smoothing the crashing waves of economic uncertainty.

GOVERNOR PETE WILSON

Statement of the Honorable
PETE WILSON
Governor, State of California

before the
House Ways and Means Committee
Subcommittee on Human Resources

July 11, 1996

Mr. Chairman and Members of the Subcommittee, as you consider selected unemployment insurance issues I would like to bring to your attention a situation that has arisen in California involving the payment of unemployment benefits to criminals upon release from prison. Immediate action is required by Congress to prevent the blatant misuse of taxpayer dollars.

Pursuant to the passage of a ballot initiative by California voters in 1990, the State of California established the Joint Venture Program in the state prison system. Under this program, private businesses may contract with the California Department of Corrections to hire inmates to produce, on the grounds of state prisons, various goods and services for sale. Similar programs have also been established in several other states.

The Joint Venture Program provides an opportunity for inmates to learn important work skills and generates revenues and savings to the state and federal governments. Up to eighty percent of an inmate's income is subject to: federal, state and local taxes; withholding for support of the prisoner's family; payment of restitution to crime victims; and reimbursement to the state for the cost of room and board.

The Joint Venture Program has been very successful. However, this partnership with the private sector has created an unintended consequence. Employers participating in the Joint Venture Program must pay unemployment insurance taxes for the inmates they employ through the program. This makes the inmate eligible for unemployment payments when they are paroled or released from prison. I am sure you would agree that the unemployment insurance program was never intended to be an ex-convict support program.

In an attempt to resolve this issue, the California Legislature passed and I signed a bill, S.B. 103, to place on the ballot an initiative to deny unemployment benefits to inmates upon their release from prison. The ballot initiative, Proposition 194, was overwhelmingly passed by California voters in March 1996.

This should have been the end of the story, but, unfortunately, it was not.

The U.S. Department of Labor has threatened to deny California companies $1.7 billion in unemployment insurance tax credits if the State of California implements Proposition 194. One option offered by the U.S. Department of Labor to avoid this action is for the State of California to make the inmates employees of the State. Not only is this option an insult to the hardworking California correctional staff, it is unacceptable to California taxpayers.

To prevent U.S. Department of Labor sanctions and ensure that criminals do not qualify for unemployment benefits upon release from prison, I support legislation introduced by

Congressman Bill Thomas, H.R. 3858. This bill would exempt services performed by inmates who participate in the Joint Venture Program and similar programs in other states from unemployment taxes.

Inmates who work in the prison laundry or kitchen or cabinet shop are already exempt from unemployment taxes under current law. Congressman Thomas' bill would merely extend that exemption to inmates who work in these relatively new private sector arrangements.

California voters have already issued a clear statement that they do not want their tax dollars used to pay unemployment benefits to inmates released from prison. I urge the subcommittee to act quickly to resolve this issue by passing Congressman Thomas' bill when it considers unemployment insurance reforms.

EMPLOYERS' UNEMPLOYMENT COMPENSATION COUNCIL
25815 Northwestern Hwy.
Southfield, Michigan 48075-7713

MICHIGAN

Marlene D. Jobe
Executive Director
(810)354-7916

DISCUSSION PAPER ON DEVOLUTION

BACKGROUND

All states enacted Unemployment Insurance (UI) laws in the mid-1930's as a result of a Congressional mandate passed in the Social Security Act. Over the years, this federal-state program has contributed to economic stability in the country by paying benefits to unemployed workers. For more than 60 years, this federal-state partnership has been amended and refined and, generally, has worked well.

Since its inception, the cost of administrating state Employment Security (ES) programs has been funded by an employer paid federal payroll tax. This Federal Unemployment Tax Act (FUTA) tax is collected by the IRS and deposited in the U.S. Treasury. The money is allocated to three separate federal ES accounts. As of the end of fiscal year 1995, the three accounts contained the following amounts:

	$ Billions
Employment Security Administration Account (ESAA)	2.40
Extended Unemployment Compensation Account (EUCA)	2.22
Federal Unemployment Account (FUA)	7.42
Total	12.04

ESAA pays for the administrative costs of running state ES programs. The allocation of administrative funding to the states is the responsibility of the U.S. Department of Labor (USDOL). EUCA pays for the 50% federal share of the Extended Unemployment Benefit Program. FUA is the account from which states can borrow funds to pay unemployment benefits if their state trust fund becomes insolvent.

The FUTA tax does not pay for the cost of state unemployment benefits to unemployed workers. These costs are funded by employer paid experience rated state taxes. The proceeds of the state taxes are also forwarded to the federal treasury and drawn down by each state, as needed, to pay benefits to unemployed workers.

FUTA requires employers to pay a gross federal payroll tax of 6.0% on the first $7,000 of wages paid annually to each employee. If the state unemployment insurance law conforms with federal requirements, employers are eligible for a tax credit of 5.4%, or 90% of the FUTA tax. Currently, employers in all states receive the tax credit. Since 1976, employers have paid an additional 0.2% temporary FUTA surtax. This surtax is now scheduled to expire on January 1, 1999 after having been extended several times by the Congress. Consequently, the net FUTA tax is 0.8%, or a maximum of $56 per employee.

There are four (4) proposals[1] to move the responsibility for the cost of administering state ES agencies from the federal government to the states. The concept, known as "Devolution", has been discussed and debated in past years, but appears to be gaining momentum and support. Devolution seems consistent with other federal initiatives to move the responsibility of programs from the federal government to the states. The impetus to devolve the responsibility for ES administrative costs to the states appears to be the result of several concerns, including the following:

[1] Specific proposals are from the states of Georgia, New Hampshire, Ohio and Virginia.

- Many ES administrators feel that allocations to state ES agencies by the USDOL are not sufficient to cover the administrative costs. A number of states have had to enact additional employer paid state taxes to cover the shortfall. State ES administrators argue that the formula, used by the USDOL to fund the states, is outmoded.

- ES administrators feel that administrative fund allocations for some ES programs have onerous reporting requirements and are inflexible as to the use of the funds. That is, the states are not permitted to move funds as needed for efficient administration.

- State ES agencies do not receive all of the FUTA taxes paid by employers in their state. This is most evident in periods of low unemployment, as is currently the case.

DEVOLUTION PROPOSALS

The Devolution proposals generally transfer to the states the responsibility for collecting and controlling administrative funds. The proposals differ as to the handling of currently existing funds held in the three federal accounts. All of the proposals require revenue from these administrative taxes to be deposited in the U.S. Treasury.

EMPLOYER CONCERNS

Some employers support the Devolution concept. However, several concerns need to be addressed and may argue against the transfer of the responsibility to the states.

1) Presently, FUTA taxes are earmarked for ES programs only. Employers are concerned about the possibility of mixing state administrative ES revenue with funds for non-ES programs.

2) The taxable wage base in 39 states exceeds the $7000 FUTA wage base. Employers are concerned that the FUTA "net tax" of 0.8% (including the temporary FUTA surtax) will be applied by states to their currently existing state taxable wage base. This would greatly increase employer taxes.

3) Interstate claims and multi-state coordination of ES programs need to be maintained. There is a concern that the costs to maintain this coordination will still require a federal tax.

4) There needs to be a mechanism which allows states to borrow funds from the Federal Treasury if state UI benefit Trust Funds become insolvent. The FUTA Federal Unemployment Account is the loan fund from which states borrow.

5) The Devolution proposals eliminate the "insurance" aspects of the federal-state partnership.

6) Most of the Devolution proposals eliminate the Federal-State Extended Benefit (EB) Program and leave the existence of this program to the discretion of each state. The EB Program provides additional weekly benefits during periods of high unemployment and have been some help in stabilizing the state and national economy.

7) While Congress is returning the responsibility of a number of programs to the states, the federal-state UI program is a creation of the Congress, not one which had its roots in the states and was taken over by the federal government. The continued existence of an interstate UI system has national economic implications.

ANOTHER ALTERNATIVE

While devolution of ES administrative financing to the states is supported by some employers and ES administrators, another alternative should be considered.

The inadequate funding problem expressed by state administrators and employers is a valid concern. However, this concern can be addressed within the current system. The methodology for providing administrative funding to states needs to be refined and updated. Policy regarding the movement of funds from one ES program to another needs to be changed to permit more efficient use of administrative funds.

The federal partners have considerable expertise. Their guidance and oversight of state programs has allowed the development of a number of new initiatives (state demonstration projects) which have resulted in their expansion to other states. Funding for these demonstration projects would be lost if devolution occurred.

The current high level of funds in the FUTA accounts should be re-examined. There is more than sufficient funds available to sustain the needs for which specific ES funds were designed. The Congress should reduce FUTA taxes, including the elimination of the 0.2% FUTA temporary surtax.

Statement of the
National Employment Law Project
& the Employment Task Force to the
U.S. House of Representatives
Ways & Means Committee
Subcommittee on Human Resources

On behalf of the National Employment Law Project (NELP) and the Employment Task Force (ETF), we are testifying in opposition to the bill sponsored by Congressman Philip M. Crane (Congressional Record, dated July 11, 1996), to legislatively overrule the decision in *Pennington v. Didrickson*, 22 F.3d 1376 (7th Cir. 1994), *cert. denied*, 115 S.Ct. 613 (1994) (*Pennington I*). After a decision on the merits by the district court, the *Pennington* case is again before the U.S. Court of Appeals for the Seventh Circuit (*Pennington II*) as a result of an appeal filed by the defendant, Director of the Illinois Department of Employment Security.

NELP is a national advocacy organization and non-profit law firm that represents the interests of low-wage workers, the working poor and the unemployed. For over 25 years, NELP has been actively involved in federal and state policy advocacy and court challenges to expand access to the unemployment compensation system. With respect to state legislation specifically, NELP recently authored a report entitled, *Women, Low-Wage Workers and the Unemployment Compensation System: State Legislative Models for Change*, and has authored numerous published articles on the unemployment compensation program. NELP also provides extensive technical assistance, advice and training to promote access to the unemployment compensation system. The Employment Task Force (ETF) is a national network of over 250 advocates who have a special expertise in the unemployment compensation system representing low-wage and unemployed workers.

Based on our background in the operation of the unemployment program, and its daily impact on the unemployed, we oppose any legislation to legislatively overrule the *Pennington I* case for the following reasons:

- The *Pennington I* Decision Upholds 60 Years of Established Law Interpreting the Social Security Act to Prevent the Hardship Caused by Delayed Payment of Benefits

- The *Pennington* Legislation, if Enacted, Would Continue the Dramatic Decline in Workers' Access Unemployment Benefits

- Counting Most Recent Earnings When Necessary, as Provided by the Movable Base Period, Supports Low-Wage Workers, Construction Workers, and other Neglected Goups

- Eight States Have Enacted a Movable Base Period, Establishing the Feasibility of its Administration

- The Movable Base Period Has Broad Bi-Partisan Support in the States

- To Overrule the *Pennington* Case by Legislation, While the Appeal is Still Pending, Would Undermine the Judicial Process

The *Pennington I* Decision Upholds 60 Years
Established Law Interpreting the Social Security Act
to Prevent the Hardship Caused by Delayed Payment of Benefits

The federal requirement that states pay benefits in a timely fashion, as codified by the "when due" clause of the Social Security Act (42 U.S.C. section 503(a)(3)), is one of the very few restrictions imposed on the states in the operation of the federal-state unemployment system. The *Pennington I* decision correctly interprets this limited federal obligation on the states following a long line of cases and the evolving standard of what is "administratively feasible", consistent with the federal regulations interpreting the statute.

Under the Illinois law, workers who need their most recent wages to qualify for benefits must instead wait 3 to 6 months until those wages make their way into the state's computer system. As a result, when they first apply for benefits, they are told they have to reapply months later. This is precisely the kind of unreasonable delay that the "when due" clause was intended to prohibit, as the appeals court clearly held in *Pennington I*. Thus, *Pennington* simply requires a state to use the most recent earnings in calculating eligibility for benefits. Illinois has not lost its ability to set its own monetary eligibility standard. It has only lost its ability to make workers with earnings over that standard wait for weeks or months before they can recover their benefits.

Indeed, *Pennington I* is a natural extension of a long line of cases interpreting the "when due" clause, including the Supreme Court's decision in *California Human Resources Dept. v. Java*, 402 U.S. 121, 133 (1971). In *Java*, for example, the Court did not consider simply whether the law requires that unemployment benefits be processed in a timely fashion, and the defendant's would argue. As a result, the Court struck down the practice, a policy decision of the state of California, to withhold benefits while appeals filed by an employer were pending. Similarly, in *Pennington I*, the court found that the "when due" clause was intended to protect against the delay caused by a policy decision to withhold payment of benefits. Moreover, what is "administratively feasible", the standard of the regulation interpreting the "when due" clause, necessarily changes over time. Thus, given changes in technology allowing for more prompt processing of wage records submitted by employers, the requirements of the "when due" clause must evolve as well, as the district court concluded in the *Pennington* case.

Delaying receipt of benefits has significant consequences, especially for low-wage workers who are often forced to rely instead on public assistance. For example, a study done in New York of workers who exhausted their unemployment benefits found that 26 percent eventually ended up on public assistance. As described in the *Java* case, which reviewed the legislative history of the "when due" clause, "[p]aying compensation to an unemployed worker promptly after an initial determination of eligibility accomplishes the congressional purposes of avoiding resort to welfare and stabilizing consumer demands; delaying compensation until months have elapsed defeats these purposes." If the State chooses to, it remains free under the *Pennington I* decision to change basic eligibility requirements, by increasing the earnings levels or reducing benefit levels, but not by slowing payment of benefits simply because the individual's most recent earnings are not yet registered in the State's wage record system.

Finally, the argument advanced at the hearing on the proposed legislation, that the court in this case deviated "180 degrees" from 60 years of history interpreting the "when due" clause, is pure hyperbole. To the contrary, the appeals court panel that decided the *Pennington I* case was as judicially conservative as any panel that has ever been assembled to hear a case. Indeed, each of the three judges on the panel was appointed to the bench by President Reagan (the district court judge as well was a Reagan appointee). The appeals court thus painstakingly followed the letter and spirit of the 1935 Social Security Act in applying the "when due" clause to this case. It is worth noting as well that

the Advisory Council on Unemployment Compensation (ACUC), a bi-partisan commission chaired by President's Bush's appointee, Janet Norwood, also concluded that requiring the movable base period "is consistent with the legislative requirement that states ensure full payment of Unemployment Insurance when due."

The *Pennington* Legislation, if Enacted,
Would Continue the Dramatic
Decline in Workers' Access Unemployment Benefits

Before addressing the proposed *Pennington* legislation in further detail, it is important to focus on the major issues that plague the program, as recently documented by the Advisory Council on Unemployment Compensation, which was specifically charged with reevaluating the effectiveness of the program. Most important, the ACUC lamented the dramatic decline in the rates that unemployed workers have been able to access unemployment benefits due, in part, to increased limits on coverage in federal and state laws. The *Pennington* legislation, if enacted, would conspicuously ignore the recommendations of the ACUC, and continue the disturbing trend in federal and state law limiting access to the unemployment benefits.

In the 38 years from 1946 to 1984, the percentage of the unemployed receiving benefits dropped below 40 percent only once. In 1975, it reached a high of 76 percent. Since 1984, it has dropped consistently below 40 percent, averaging 33 percent between 1984 and 1989. In 1990, the year the recession began, it stood at only 37 percent, much lower than any previous recession year. In June 1996, the ratio of the unemployed versus those who receive unemployment benefits stood at 33 percent, with wide variations from state to state (ranging from a high of 65 percent in Rhode Island to a low of 17.6 percent in Virginia, according to 1995 data). This trend poses a serious risk to the two main functions of the program: 1) to replace worker earnings while they look for new work; and 2) to stimulate and support the economy during periods of high unemployment.

As documented by a recent report of the National Commission for Employment Policy, women, part-time workers, and low-wage workers are also disproportionately excluded from recovering benefits. For example, prior earnings requirements exclude 34 percent of women versus 15 percent of men who apply for benefits. Indeed, women now account for 46 percent of the labor force, 44 percent of the unemployed, but only 40 percent of unemployment compensation recipients. Almost four times as many part-time workers than full-time workers fail to meet the prior earnings requirements. Finally, state monetary eligibility requirements, based on earnings levels rather than hours worked, conspicuously discriminate against low-wage workers. For example, a full-year worker earning the minimum wage and working at least 10 hours per week will qualify for benefits in only 17 states. By contrast, a full-year worker earning $10 an hour and working 10 hours a week will qualify for benefits in 47 states.

As a result of these disturbing developments, Congress created a bipartisan commission in 1992, the Advisory Council on Unemployment Compensation (ACUC), charged with reevaluating the effectiveness of the unemployment system at the state and federal levels. Three years and three reports later, the verdict from the ACUC came in loud and clear -- the unemployment system is fundamentally flawed and in dire need of repair. Significantly, the ACUC concluded that low-wage, temporary and part-time workers, who are disproportionately women, were the hardest hit by the failures of the current system. Ironically, this also occurs at a time when the low-wage workforce has been growing and welfare reform is forcing more and more women workers with young children into the labor market.

Counting Most Recent Earnings When Necessary,
as Provided by the Movable Base Period, Supports
Low-Wage Workers, Construction Workers & Other Neglected Group

The "movable base period" (MBP), as exists in eight states, permits the use of earnings in more recent quarters, when necessary in those cases where the claimant has insufficient earnings using the first four of the last five calender quarters.

As documented in the Urban Institute report prepared for U.S. Department of Labor, the MBP benefits several growing segments of the workforce that have historically been conspicuously excluded from coverage, including low-wage, part-time workers, intermittent and seasonal workers. Building construction showed the most significant gains of any industry under the MBP, with a 35 percent increase in coverage over other industries in those states that operate a MBP. Specifically, in the states studied, 8.2 percent of all claimants received benefits as a result of the MBP, compared to 11.4 percent of claimants who worked in building construction. Nationally, the estimates are that the movable base period increases eligibility by 6 to 8 percent (payouts increase by 4 to 6 percent).

Citing the concern that low-wage workers and part-time workers with substantial labor force attachment are unfairly being denied unemployment benefits, the ACUC thus recommended unanimously that "[a]ll states should use a movable base period in cases in which its use would qualify an Unemployment Insurance claimant to meet the state's monetary eligibility requirements."

Eight States Have Enacted a Movable Base Period,
Establishing the Feasibility of its Administration

Since 1988, movable base period legislation has been enacted in eight states (Maine, Massachusetts, Michigan (as of July 1997), New Jersey, Ohio, Rhode Island, Washington, Vermont). This list includes four of the ten states with the highest level of claims activity (Michigan, New Jersey, Ohio, Washington), thus accounting for 20 percent of nation's unemployment claims. If these states can operate the ABP without causing a collapse in the system or an outcry in opposition, it is fair to say that the consequences of administration are not prohibitive.

As the ACUC noted in its recommendation that the states adopt the movable base period, "advances in technology have made it feasible for all states to use the [movable base period] . . . ." The Urban Institute report makes this point as well, citing numerous strategies to reduce the costs of administration, such as speeding up the processing of wage reports already submitted by employers rather than the far more expensive approach, upon which the Illinois overestimates are based, of issuing individual requests of employers of wage information. In addition, as the ACUC concluded, a large proportion of those who are determined eligible using a movable base period would become eligible eventually, thus the savings involved in not processing future claims must be considered. Finally, as the ACUC also found, some increased costs in administration of the unemployment claims are clearly offset by states costs involved in processing and payment of means-tested benefits, such as Aid to Families with Dependent Children (AFDC) and Food Stamps.

The Movable Base Period
Has Broad Bi-Partisan Support in the States

Contrary to the perception promoted by the Illinois defendants, the MBP has the support of Republicans and Democrats, including President's Bush chair to the Advisory Council on Unemployment Compensation, industry representatives on the commission, and the Governors of New Jersey and New York.

The ACUC, chaired by President Bush's appointee, recommended that the states adopt the movable base period in no uncertain terms. Most recently, New Jersey did so in late 1995. The legislation passed both houses of the New Jersey Legislature, which are Republican controlled (Assembly vote: 77-0; Senate vote: 31-7), and was signed by Governor Whitman with substantial support of workers in the construction trades and other industries. This legislative session, Governor Pataki introduced a bill adopting the MBP in New York, which passed the Republican-controlled Senate and awaits action by the Assembly. Indeed, of all the states that have adopted the MBP, the New Jersey and New York legislation is among the most beneficial to claimants, covering not only the wages earned in the most recent completed calendar quarter but also the wages earned in the quarter in which the claimant filed for benefits not yet completed.

To Overrule the *Pennington* Case by Legislation,
While the Appeal is Still Pending,
Would Undermine the Judicial Process

Finally, it is an affront to the judicial process, not to mention an inefficient use of the limited time and resources of the U.S. Congress, to consider legislation to overrule the *Pennington I* case while the appeal is still pending before the federal courts. It would clearly set a dangerous precedent for Congress to step in at this point in the proceedings and take away the plaintiffs fundamental right to their day in court to prove and defend the case on the law and the merits.

On July 10, the day before the hearing before the Ways and Means Committee, Subcommittee on Human Resources, the state of Illinois filed a 48-page brief before the U.S. Court of Appeals for the Seventh Circuit, arguing for reversal of the district court's decision enjoining the state's system. Indeed, the defendants go to great lengths in their appeal brief to argue that the appeal court should review the trial court's decision "de novo"; an independent review of the law and facts which, if decided in favor of the defendants, would essentially render the controversy moot. Moreover, it is worth noting that *Pennington* case is still the only federal court decision on this issue, explaining why the U.S. Supreme Court declined to review the first appeal. Accordingly, in the interests of the plaintiffs' right to judicial review in the case and sensitive balance between the role of the federal courts and Congress, the controversy is one that should first be resolved by the federal courts.

Exorcising the Devil from DEVOLUTION

Devolution Need Not Reduce Federal Oversight

Devolution, allowing the states (instead of the federal government) to tax employers to pay for the administration of their own state jobless benefit programs, has spurred some important concerns. Many, including the national Advisory Council on Unemployment Compensation, have voiced the opinion that without federal oversight some states might severely cut back on their unemployment compensation programs. While most of the devolution proposals call for less federal involvement, under devolution, there could be just as much federal control as now exists.

Currently, the Federal Unemployment Tax Act (FUTA) requires employers to annually pay a basic tax rate of 6.0% (plus a 0.2% surtax) on the first $7,000 of each employee's wages. However, if a state's unemployment program meets certain federal requirements, then the employers in that state are granted a 90% reduction in the basic rate. This brings the net FUTA tax down to 0.6% (plus the 0.2% surtax). By asserting control over whether the states qualify for the 90% offset credit, the federal government effectively maintains oversight of the state unemployment compensation programs. The federal government also controls the purse strings on the amount of administrative funding granted to the states (from annual FUTA tax collections). Under devolution, the states (instead of the federal government) would collect the administrative taxes.

Devolution would not require that the federal government be eliminated from the process. The 90% offset credit which currently exists on FUTA taxes would simply be increased to a 100% offset credit. This means that as long as states conform to federal requirements the entire FUTA tax would be offset. This would effectively end the FUTA tax for as long as states remain in conformity.

If states failed to conform to federal requirements, their employers would lose all, or part, of the offset credit. Employers in those states would then suddenly be faced with paying not only their states' new administrative taxes but up to an additional 6.0% FUTA tax on the first $7,000 of each worker's wages. (The 0.2% surtax would presumably end.) Faced with such massive tax ramifications, employers would have the same strong motivation to make their states conform as presently exists.

Some have voiced the concern that devolution could adversely impact the six jurisdictions (Alaska, Virgin Islands, North Dakota, Wyoming, Rhode Island and Montana) that now receive more back in federal subsidies than their employers pay in FUTA taxes. How would these states get enough funding to run their programs? Wouldn't their new state administrative taxes have to be increased beyond what their employers are currently paying in FUTA taxes? In order to address this problem, the devolution proposals allow these states to continue to receive subsidies for several years during which time these jurisdictions would, hopefully, learn to live within their own resources. However, even if it were necessary for the other jurisdictions to continue to support these states indefinitely, they would collectively need to set aside only a small pittance ($25.7 million) compared to the $2.2 billion they are currently being shortchanged on FUTA dollars by the Washington D.C. bureaucracy.

Another argument sometimes given in favor of retaining the current system is that the FUTA tax allows the federal government to set aside funds for borrowing by states when their jobless benefit programs go bankrupt.

This argument might have been valid when the states could obtain *interest free* loans; however, now they must pay interest just like any other borrower. In addition, the federal government has penalized some states through disallowing part of the FUTA offset credit when states are delinquent in repaying their federal loans. As a consequence, many states already go through private sources for funds.

Perhaps the biggest challenge to passing effective legislation to devolve the administrative cost of state unemployment programs to the states is finding other savings to compensate for the *perceived* loss of the FUTA surplus by the federal government. The Congressional Budget Office (CBO) will likely score devolution as a net loss of funding. In actuality, devolution will end up as a substantial savings for most jurisdictions. Because the responsibility for funding state administration would be *devolved* to the states and the states' unemployment trust funds would continue to be banked in Washington D.C., a more realistic scoring would be that devolution is *revenue neutral*.

Unfortunately, the current political climate, spawned by a substantial federal budget deficit, may favor allowing the federal government to continue overcharging employers for the administration of their state unemployment programs. The table on the following page shows a clear imbalance in the way FUTA funds are currently being dispersed. Most states have been conspicuously shortchanged by the federal government's uneven return of their employers' FUTA taxes. Many states have even been forced to add administrative taxes to their state unemployment tax rate schedules. Employers in these states are paying for program administration twice–first through the FUTA tax and then through a separate state administrative tax.

The states receive back an average of just over 60% of the money that the federal government collects through the FUTA tax. The rest of the money is retained in Washington D.C. where it helps to counteract the budget deficit. Because most state unemployment agencies are accustomed to working with much less than their employers have been paying in FUTA taxes, providing a 100% offset against the federal tax would allow most states to replace the FUTA tax with substantially lower state administrative taxes. ©

Larry C. Clark is Vice President of Information Management for *The Gibbens Co., Inc.*, a national employee-owned firm which specializes in unemployment claims management. Mr. Clark is a member of the Board of *the National Foundation for Unemployment Compensation & Workers' Compensation.* He is Vice President of the *Association of Unemployment Tax Organizations.* Prior to his twenty-four year employment duty with Gibbens Company, Mr. Clark worked as an eligibility adjudicator and trainer for the *California Department of Human Resources Development* (now the Employment Development Department).

GIBBENS COMPANY

How many of their employer's FUTA dollars do the states get back?

Jurisdiction	FUTA Grants	FUTA Taxes	Grants/ Taxes	RANK	Jurisdiction	FUTA Grants	FUTA Taxes	Grants/ Taxes	RANK
Alaska	$28.8	$11.1	260.5%*	1	New Hampshire	$14.7	$24.5	60.0%	28
Virgin Islands	$9.2	$1.6	577.6%	2	Delaware	$10.4	$17.5	59.4%	29
North Dakota	$13.8	$11.0	126.0%	3	Arkansas	$27.4	$46.9	58.4%	30
Wyoming	$10.8	$9.0	121.9%	4	Illinois	$153.7	$270.7	56.8%	31
Rhode Island	$21.9	$19.3	109.4%	5	Oklahoma	$31.5	$57.3	55.0%	32
Montana	$13.7	$13.3	103.0%	6	Nebraska	$19.0	$34.6	54.9%	33
Idaho	$20.7	$21.4	96.7%	7	Wisconsin	$64.9	$119.5	54.3%	34
Maine	$22.2	$23.1	96.1%	8	Missouri	$60.9	$116.9	52.1%	35
Vermont	$10.6	$11.7	90.6%	9	Colorado	$44.7	$86.0	52.0%	36
Connecticut	$65.8	$74.3	88.6%	10	Mississippi	$25.4	$48.9	51.9%	37
Puerto Rico	$28.8	$33.1	87.0%	11	Alabama	$41.5	$82.8	50.1%	38
Washington	$94.6	$111.3	85.0%	12	So. Carolina	$36.6	$73.4	49.9%	39
Dist. of Columbia	$15.7	$18.5	84.9%	13	Louisiana	$38.1	$78.1	48.8%	40
California	$539.2	$655.5	82.3%	14	Iowa	$28.7	$59.4	48.3%	41
South Dakota	$10.6	$13.9	76.3%	15	Minnesota	$52.9	$111.2	47.6%	42
Utah	$29.2	$38.6	75.6%	16	Kentucky	$34.9	$73.8	47.3%	43
Oregon	$48.7	$65.6	74.2%	17	Kansas	$25.5	$54.3	47.0%	44
Pennsylvania	$173.7	$245.7	70.7%	18	Arizona	$39.4	$85.9	45.9%	45
Hawaii	$18.1	$25.7	70.4%	19	Texas	$172.0	$381.7	45.1%	46
Michigan	$142.8	$204.2	69.9%	20	Georgia	$68.2	$160.2	42.6%	47
New York	$248.4	$355.3	69.9%	21	Ohio	$105.7	$249.0	42.4%	48
Maryland	$69.0	$99.1	69.6%	22	Virginia	$60.0	$142.6	42.1%	49
New Jersey	$117.0	$168.2	69.6%	23	Florida	$116.7	$290.7	40.1%	50
West Virginia	$19.9	$29.4	67.7%	24	No. Carolina	$63.6	$165.3	38.5%	51
New Mexico	$18.9	$28.0	67.5%	25	Tennessee	$43.8	$113.9	38.5%	52
Nevada	$25.2	$39.0	64.6%	26	Indiana	$48.5	$129.3	37.5%	53
Massachusetts	$87.8	$136.1	64.5%	27	TOTALS	$3,327.8	$5,538.6	60.1%	

Jurisdictions are ranked by percentage of FUTA taxes returned in the form of federal administrative grants. Dollars shown are in millions. Totals may not add up due to rounding. These are the latest figures available and apply to Federal FY '94. The source of this information is the U.S. Department of Labor. The six highlighted jurisdictions are the only ones which received more back from the federal government than they paid under the Federal Unemployment Tax Act (FUTA). As you can see from the totals, the federal government retained over $2,210,800,000. This is a compelling argument for devolving the expense of administration of unemployment insurance programs away from the federal government and giving it to the states.

STATEMENT OF JOHN DODDS, PAUL LODICO AND BARNEY OURSLER PHILADELPHIA UNEMPLOYMENT PROJECT MON VALLEY UNEMPLOYED COMMITTEE BEFORE THE COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON HUMAN RESOURCES U.S. HOUSE OF REPRESENTATIVES ON THE SUBJECT OF UNEMPLOYMENT INSURANCE ISSUES

July 25, 1996

Mr. Chairperson and Members of the Subcommittee on Human Resources. We are John Dodds, Director of the Philadelphia Unemployment Project, from Philadelphia, Pennsylvania, and Barney Oursler and Paul Lodico, Directors of the Mon Valley Unemployed Committee, located in Western Pennsylvania. Both the Philadelphia Unemployment Project and Mon Valley Unemployed Committee are membership organizations which provide advice and assistance to large numbers of unemployed individuals in our respective communities. We also participate in advocacy efforts on behalf of the unemployed at the local, state, and national levels. We would like to thank the Committee for providing us with the opportunity to present to you our views as to why Congressional action would be inappropriate to reverse the 7th Circuit decision in Pennington v. Didrickson. That decision interpreted the "when due" requirement in the Social Security Act, which requires the payment of benefits as soon as "administratively feasible", to mandate the use of a base period counting recent wages.

Several people who run state unemployment agencies have complained to you as to why this decision burdens them. We think the focus should more appropriately be upon the burden faced by unemployed workers who have to endure waits of up to six months for unemployment benefits that they have earned but cannot access because the state prefers not to count the wages earned in the four to six month period immediately before the loss of their jobs.

The use of a base period which counts the wages in the four to six month period immediately preceding job loss is sometimes referred to as an "alternative base period" or "ABP". Those who would be benefited by the use of an ABP eventually become eligible without it if they wait long enough. The ABP does not create any new eligibility criteria. These people have already earned enough to meet the state's eligibility standards, and they have lost their jobs through no fault of their own. Their wage profile will look exactly the same when they qualify for benefits as it did when they applied. The four to six month wait for benefits, however, can have drastic effects upon the worker and his or her family.

The stories of M.B. and R.P. are typical. M.B. worked in an ambulance garage in Philadelphia. M.B. had been on welfare, and had gone to school to become an Emergency Medical Technician. It was the kind of job she had always wanted. Unfortunately, she was subjected to overt sexual harassment on the job. Nevertheless, she stayed until she was fired with a flimsy explanation and was replaced by a man. M.B. had worked long enough to have sufficient earnings under Pennsylvania's financial eligibility criteria. However, she needed to count her most recent wages before she could have access to her benefits. Like many people terminated under false pretenses, M.B. could not find other work, despite her efforts to do so. She had no choice but to return to welfare. She eventually lost her apartment, since even with welfare, she could not pay her rent. The last time M.B. was heard from, she was living in a city shelter.

R.P. is a young mother with two toddlers. She needed to stop working to care for them while they were small. She re-entered the workforce in December of 1995, working as a cashier at a check-cashing agency in Philadelphia. She worked hard, but was fired by an unscrupulous employer with little regard for the wage payment laws. This occurred in July of 1996. During her employment R.P. earned enough to be eligible for benefits under the unemployment compensation program. However, despite the fact that she is currently unemployed and in need

of that money to support herself and her three and four year old children, she has been told that she cannot gain access to it until October. She does not know how she is going to make ends meet until then, if she is unable to secure another job. Since she cannot expect a decent reference from her employer (who is also refusing to pay her some of the wages he owes her), her job prospects are not good.

The goals of the unemployment compensation system can never be met if people like M.B. and R.P., who have met the states' eligibility criteria and who become unemployed through no fault of their own, are denied timely access to the benefits which were intended to help them get back on their feet. Unemployment compensation was intended to assist the unemployed worker to meet his financial obligations while he was unemployed so that he could spend his energies looking for new employment. In designing the program Congress also recognized that the impact of unemployment extends beyond the unemployed individual into the local economy. The lesson painfully brought to public consciousness during the depression was that people out of work have no money to spend, depleting the market for goods and services being produced in other sections of the economy, and risking further unemployment as businesses downsize to reflect the decreased demand. Congress intended both to insure unemployed workers and to minimize the ripple effect that unemployment has upon the entire community.

Neither the goal of helping the unemployed person to remain self-sufficient nor the goal of stabilizing the economy during periods of unemployment can be accomplished unless unemployment compensation finds its way into the unemployed workers' pocket as soon as possible after unemployment occurs. The timing of the payments is as important as the money itself.

The base period like the one attacked in Pennington has draconian consequences for low wage workers and other workers, such as those in the building trades, who are genuinely attached to the work force, but because of their pattern of wage collection are unable to have access to unemployment benefits when they most need them. Low wage workers must work longer than others in order to acquire enough base wages to be eligible for the unemployment compensation program. They are the least likely to have savings or other private resources to tide them over while they wait for their benefits to become available. They typically work in jobs which provide little or nothing in the way of benefits or severance allowances, or any protection at all from arbitrary dismissal. For many, the acquisition of a low wage job was their ticket away from welfare dependency. Sudden unemployment with no access to the unemployment compensation benefits they have earned often leaves them with no recourse other than to go back on welfare, a step which has dramatic psychological as well as economic consequences for themselves and their families.

The base period considered by the Court in Pennington is used in many states across the country. This is a historical legacy which emanated from administrative need during the 1930's. Clearly at that point in time, long before computers and other technology, states in fact needed a fair amount of time to secure wage records from employers and record them into the system (most likely by hand). The definition of the base year as the first four of the last five completed calendar quarters was adopted not because of its usefulness in paying benefits as soon as possible, and not because it somehow measured a person's attachment to the work force, but because it was unrealistic to acquire and input the necessary information any faster.

"Administrative feasibility" is a flexible concept. A bureaucratic desire to do things the way they have always been done should not be permitted to undermine the economic security of the unemployed. It is clearly administratively feasible to access recent wage information with far greater speed today than it was in 1935. That being the case, there is no justification for making people who need to rely upon their more recent wages in order to access the system, to wait for up to six months in some cases before benefits can be paid. By requiring them to wait, the unemployment program is actually working against itself. It magnifies, rather than reduces, the impact of unemployment upon the workers, their families, and their communities. It frequently pressures people onto public assistance to meet

their basic needs. This is directly contrary to the public's interest in minimizing utilization of our country's welfare programs, and attenuates, rather than strengthens, the person's attachment to the workforce.

Both M.B. and R.P. have been unnecessarily victimized by the system which should have been there to help them overcome the obstacles which almost always accompany unemployment, particularly for low wage workers. They are not alone. Thousands of similar stories are being written every day as the American workforce replaces many of its high paying manufacturing jobs with low-wage, no benefit service jobs. Job security for a major segment of our population is a thing of the past, even in industries which were once thought to provide lifetime employment opportunities. It is ironic that at a time when industries nationwide are adopting newer technologies in order to enhance profits and in many cases, reduce the need for employees, the unemployment compensation system is tied to a pre-technology mode of operation which prevents workers from accessing benefits they have earned. Congress should not condone such a mindset on the part of state unemployment compensation authorities.

STATEMENT ON BEHALF OF MRS. LUELLA PENNINGTON AND THE PENNINGTON CLASS OPPOSING LEGISLATION TO REVERSE PENNINGTON V. DIDRICKSON

Introduction

On behalf of Mrs. Luella Pennington and the plaintiff class in Pennington v. Didrickson, 22 F.3d 1376 (1994), we are responding to the June 28, 1996 advisory issued by the Ways and Means Committee's Subcommittee on Human Resources (the "Subcommittee") concerning the proposed legislation to overturn the Pennington decision.

Since 1938, section 303(a)(1) of the Social Security Act has required that states' unemployment insurance laws provide for "methods of administration ... reasonably calculated to insure full payment of unemployment compensation when due." 42 U.S.C. § 503(a)(1) (the "when due clause"). At least since the Supreme Court's 1971 decision in California Department of Human Resources Development v. Java, 402 U.S. 121, the when due clause has been interpreted to "require that a State [unemployment insurance] law include provision for such methods of administration as will reasonabl[y] insure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible." 20 C.F.R. § 640.3(a); Java, 402 U.S. at 130-33.

The "base period" in any state's unemployment insurance program is the time period within which claimants must have earned sufficient wages to qualify for benefits. As defined in section 237 of the Illinois Unemployment Insurance Act, 820 ILCS 405/237, Illinois's base period is comprised of the "the first four of the last five completed calendar quarters immediately preceding the benefit year" ("Illinois' base period"). Accordingly, Illinois' base period skips any wages earned by a claimant in both the calendar quarter in which he files his claim (the "filing quarter"), because that is not a "completed" quarter, and the preceding calendar quarter (the "lag quarter"), because that is the fifth of the five completed calendar quarters prior to the benefit year. Consequently, when Illinois determines whether a claimant has sufficient qualifying wages, it disregards any wages earned in both the filing and the lag quarters (the "lag period").

In Pennington, the Court of Appeals for the Seventh Circuit held "that section 237 is an administrative provision and, as such, is subject to the timeliness requirements of the 'when due' clause." 22 F.3d at 1387. The legislation's proponents, including Ms. Loleta Didrickson, who was the defendant in the litigation through much of its history, decry the Pennington decision. But they do so without ever discussing its reasoning. Indeed, Commissioner Richardson concedes that the proponents have appealed to Congress in the hopes of being heard by a forum that will not be restrained by an "intellectual exercise." Statement by Andrew N. Richardson ("Richardson Stmt.") at 3. In contrast, we urge Congress to read not only the Pennington decision, but also Java and its other progeny, and to consider the courts' reasoning and the legislative history underlying the when due clause. We believe that after intellectually honest reflection, Congress will agree that the Pennington decision assures prompt payment of unemployment insurance benefits in furtherance of a public policy that was embodied in the nation's unemployment insurance program at its inception because it is central to its purpose.

I. Illinois' Base Period Definition Is An Administrative Method, Not An Eligibility Criterion

A. Because the when due clause governs only the states' "methods of administration" of unemployment insurance programs, "applicable Federal laws provide no authority for the Secretary of Labor to determine the eligibility of individuals under a State law." 20 C.F.R. § 640.1(a)(2); see Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 482-87 (1977). The proponents rely heavily on this principle. See e.g., Didrickson Stmt. at 2. As the court of appeals noted, however, the "truism [that the when

due clause governs administrative methods but not eligibility criteria] simply begs the question and, consequently contributes nothing to the inquiry before us." 22 F.3d at 1382.

What is required, of course, is to determine whether Illinois' base period is an administrative method or an eligibility criteria. An eligibility provision "define[s] the class of persons eligible for benefits." Hodory, 431 U.S. at 486-87. In an effort to suggest that a lag period is necessary to determine eligibility, the proponents characterize the Pennington claimants as those who "[a]re not monetarily eligible for unemployment benefits." Richardson Stmt. at 1. But that is not so. In fact, the Pennington claimants are, by definition, only claimants who have earned sufficient wages to qualify for benefits. 22 F.3d at 1385.

Moreover, the lag period does not exclude claimants from eligibility; it just delays the time at which the state will consider a claimant's most recent wages in determining his or her eligibility. To argue the contrary, the proponents ignore the single most important fact about the operation of the Illinois base period: that the Pennington claimants become eligible for benefits by doing nothing more than waiting until sufficient time has passed to file a second claim, since wages that are initially disregarded because they fall in a claimant's lag period, become qualifying wages by the passage of enough time so that they fall within the first four of the last five completed calendar quarters prior to the filing of the later-filed claim. Pennington, 22 F.3d at 1385.

Thus, although Illinois' base period delays the time at which the state will count a claimant's most recent wages toward eligibility, it does not prevent a claimant from using those same wages so long as he waits a sufficiently long time before filing a claim. Causing a claimant to wait to receive benefits, however, is just what the when due clause was designed to prevent. Java, 402 U.S. at 131-33.

B. The legislation's proponents also urge that Illinois' base period "ensures that unemployment insurance will be available for workers with a genuine attachment to the labor force, but not necessarily for those with only a marginal connection." Testimony of Loleta A. Didrickson ("Didrickson Stmt.") at 1; see id ("Employers ... should not bear the burden for individuals with little or no attachment to the world of work"). In fact, however, exactly the opposite is true: the lag period "causes ... [claimants] with relatively strong attachment to the work force to wait until that attachment has weakened before they can receive benefits." 22 F.3d at 1385. Thus, the contention that Illinois' base period restricts payment of benefits to claimants with stronger workforce attachment is not just wrong; it is perverse.

C. Furthermore, the proponents have repeatedly conceded that the purpose of Illinois' base period is solely administrative, not substantive. For instance, in the Pennington litigation itself, Illinois repeatedly admitted that the lag period "is necessary because some time is required for employers to report wages and for the [state agency] to make that information available in the local [unemployment insurance] offices where claims are first taken and adjudicated." 22 F.3d at 1387. And in his submission to the Subcommittee, Mr. Richardson concedes that whether states can shorten their lag periods is dependent solely on whether "technology permits states to collect and process wage information more quickly." Richardson Stmt. at 3. These concessions confirm what the court of appeals found: that Illinois' base period is "an administrative method employed to accommodate the time needs of a wage record [data collection] system. In a world of high-speed information exchange, the lag quarter would not exist; yet an eligibility requirement like the 'voluntary leaving' provision [which disqualifies claimants who leave work without good cause attributable to the employer] would." 22 F.3d at 1387.

II. The Pennington Decision Is Not Only Consistent With, But Required By The Historic Interpretation Of The When Due Clause

A. The legislation's proponents argue that Pennington "represents a 180-degree departure from the manner in which both the federal government and states have construed the Social Security Act, since the statute's enactment more than 60 years ago." Didrickson Stmt. at 1. They contend that this deviation from the historical interpretation of the when due clause was wrought by activist federal judges intent on usurping the legislature's "policy making authority", Didrickson Stmt. at 1, through "judicial fiat." Statement of Hon. Philip M. Crane, 142 Cong.Rec. ___ (July 11, 1996). In fact, however, like the district judge who decided the case, the three court of appeals' judges were all appointed by President Reagan. Moreover, the Pennington decision itself confirms that they are judicial conservatives.

For example, the proponents argue that "[t]he United States Supreme Court has held that the Social Security Act was intended to recognize the importance of each state establishing its own eligibility criteria for unemployment insurance." Didrickson Stmt. at 2. But that, too, just begs the question of whether Illinois' base period is an eligibility criteria or an administrative method. Moreover, the Pennington court's conclusion that Illinois' base period is an administrative provision, not an eligibility criteria, is not only consistent with Supreme Court precedent, it is required by two unanimous Supreme Court cases: California Department of Human Resources Development v. Java, 402 U.S. 121 (1971) and Fusari v. Steinberg, 419 U.S. 379 (1975). See 22 F.3d at 1386.

In Java, the Court considered the legality of a provision that suspended payment of benefits to any claimant who had won an initial determination, during the pendency of any appeal by the claimant's former employer. 402 U.S. at 122. Though the case concerned California's unemployment insurance code, the statutory provision at issue was used in 48 states. See Appendix to Appellants' Brief in Java, No. 507 (U.S. Sup. Ct. 1970) at 69-70. Nonetheless, in a unanimous opinion, the Court held that the provision violated the when due clause because "'when due' was intended to mean at the earliest stage of unemployment that payments were administratively feasible." Id. at 131.

After a thorough review of the Congressional history that led to enactment of the when due clause, Chief Justice Burger concluded that the when due clause was designed to provide prompt wage replacement to displaced workers both "to tide them[] over, until they get back to their old work or find other employment, without having to resort to relief", 402 U.S. at 131 (quoting HR Rep No. 615, 74th Cong, 1st Sess, 7 (1935)), and to "exert[] an influence upon the stabilization of industry." Id. at 132.

This history of when due jurisprudence belies the proponents' argument that Pennington represents judicial encroachment on legislative prerogatives. After all, the when due clause is itself a legislative enactment. And one with the backing of the Constitution's Supremacy Clause. U.S. Const., art. VI, cl. 2. It is, therefore, entirely appropriate for the federal courts to enforce the when due clause. Indeed, one cannot help but feel that the proponents disparage the federal courts so vigorously because they resent the fact that unemployed Americans went to the federal courts to enforce their rights against state policy that violates federal law. But just as the Java Court struck down a state's administrative provision because it delayed payment of unemployment insurance in violation of the timeliness demanded by the when due clause, the Pennington court concluded that Illinois' base period is an administrative provision that delays payment to eligible claimants.

B. The proponents contend, however, that "since the establishment of the unemployment insurance system, the Labor Department ... has considered a base period of the first four of the last five quarters to be consistent with the clause and, in fact, has suggested that the states use such a base period." Didrickson Stmt. at 2. That, too, is simply wrong. To the contrary, in 1962, the Secretary of Labor issued a policy statement urging states to keep their lag periods "as short as possible", Unemployment Insurance Legislative Policy: Recommendations for State Legislation, 1962, thus confirming not only that lag periods should not unnecessarily delay payment of benefits, but also that the Secretary has historically treated base periods as administrative methods, which are subject to his regulatory authority, rather than eligibility criteria, as to which he has no such authority. See Pennington, 22 F.3d at 1384.

The legislation's proponents rely on draft bills issued by the Secretary of Labor in 1932 and 1950, one of which includes a base period definition like the one used in Illinois. From these draft bills, the proponents contend that "[t]hroughout the history of the unemployment insurance program, determining the period that constitutes the base period for unemployment insurance claims purposes has been one of many eligibility criteria that federal law left to the states." Richardson Stmt. at 2; see also Crane Stmt. (Pennington is "diametrically opposed to the common practice recognized as lawful and legitimate for decades").

As the court of appeals noted, however, the "draft bills do not ... directly address the issue here: whether the lag period arrangement can be termed a matter of eligibility as opposed to a matter of administration." 22 F.3d at 1384. The court therefore concluded that:

> the mere fact that the draft bills take notice of a lag period similar to the ... [Illinois base period] does not indicate that the lag period is in compliance with the 'when due' clause or the corresponding regulations. A state must pay unemployment benefits 'with the greatest promptness that is administratively feasible.' 29 C.F.R. §640.3(a). Needless to say, what was 'administratively feasible' when the draft bills were written - 1937, 1950, and 1962 - is much different from what is administratively feasible in today's technologically advanced world. Id. at n. 6.

C. Recent history also belies the proponents' contention that long lag periods are acceptable. Congress recently empaneled the Advisory Council on Unemployment Compensation ("Advisory Council") to study the nation's unemployment insurance program. See P.L. 102-164. The Council was chaired by Dr. Janet L. Norwood, who was Commissioner of the Bureau of Labor Statistics and is a senior fellow at The Urban Institute. In its February 1995 report to the President and Congress, the Advisory Council recommended that "[a]ll states should use a movable base period in cases in which its use would qualify an Unemployment Insurance claimant to meet the state's monetary eligibility requirements." Unemployment Insurance in the United States: Benefits, Financing, Coverage, Advisory Council on Unemployment Compensation, Feb. 1995 at 17. The proponents thus ask Congress to reject a policy suggested to it by the very body Congress empaneled to provide precisely such advice.

D. Ms. Didrickson also argues that "[i]n the 1970's Congress itself expressly recognized and took no issue with the states' widespread use of base periods consisting of the first four of the last five quarters." Didrickson Stmt. at 2. But Congress dealt with base periods only in its enactment of 26 U.S.C. § 3304(a)(7), which was designed to control for a wholly separate problem of "double dipping" by those claimants who try to reuse wages for second claims. Accordingly, the court of appeals determined that § 3304(a)(7) "had nothing to do with the operation of the 'when due' clause and certainly did not address the issue of whether the type of base periods used in the Illinois statute violated that clause." 22 F.3d at 1383.

III. The Use Of An Alternative Movable Base Period Will Neither Increase The Risk Of Fraud Nor Substantially Increase The Costs Of Operating The Unemployment Insurance Program

A. The proponents also argue that Illinois' base period "streamlines administration and minimizes the risk of fraud" because it allows for verification of a claimant's wages, Didrickson Stmt. at 1, whereas use of an alternative movable base period "would entail either essentially taking a claimant's word for it as to the amount of [his most recent] earnings, thereby increasing the risk of fraud, or requiring additional reporting from employers to verify the earnings, thereby imposing new 'paperwork burdens.'" Id. at 3.

In fact, however, the testimony in Pennington confirms that a movable base period can be most easily designed by using the very same wage data - collected and processed in precisely the same way - that Illinois does now. The only difference would be that, instead of enforcing a mandatory delay on using a claimant's recent wage data, the state would assess eligibility based on those wages as soon as they were reported by the former employer and processed onto the state's data base, for any claimant who needed his more recent wages to qualify for benefits. But since exactly the same wage data would be collected in exactly the same way, a movable base period would neither require reliance on claimants' statements as to what their wages had been, nor impose new paperwork burdens on employers or the state.

B. The proponents also argue, however, that the Pennington decision "could have a costly impact upon employers and state government[s] ... and aggravate the federal deficit by hundred's of million's of dollars." Didrickson Stmt. at 1. She estimates administrative costs in Illinois at $ 12 - $ 15 million in one-time costs and $ 2.5 million in yearly operating expenses. Id. at 2-3. She estimates trust fund outlays of 1.5%, but also notes one study that, she claims, indicates that alternate base periods could raise state trust fund outlays by 4 to 6%. Id. at 2-3. From these estimates, she contends that trust fund outlays for a movable base period would be between $ 180 million to 750 million over 8 years, or $ 22.5 million to $ 93.75 million per year which, she claims, would trigger automatic tax increases. Id. She concludes from all these figures that the Pennington decision will "cause nationwide disruption in the various states' unemployment compensation system." Id.

None of this is realistic. First, as accurately described by the court of appeals, the claimants' evidence supports a narrowly-based challenge to the section 237-type base period; not a challenge based on any alternative base period that any litigant might conceive. 22 F.3d at 1380 n. 3. Furthermore, seven states (Maine, Massachusetts, New Jersey, Ohio, Rhode Island, Vermont and Washington state) already use movable base periods and Michigan and New York will begin doing so soon. Yet the sky has not fallen in any of those states. Indeed, the Advisory Council concluded "that advances in technology have made it feasible for all states to use the most recently completed quarter when determining benefit eligibility." Unemployment Insurance in the United States:

Benefits, Financing, Coverage, Advisory Council on Unemployment Compensation, Feb. 1995 at 16.

Moreover, the provision that the Supreme Court struck down in Java was used in 48 states. See Appendix to Appellants' Brief in Java, No. 507 (U.S. Sup. Ct. 1970) at 69-70. Yet the proponents offer no evidence that compliance with Java disrupted the nation's unemployment insurance program at all.

C. Ms. Didrickson's cost figures are enormously inflated. For example, her estimates of administrative costs include unnecessary additional costs for a wage request system to obtain wage data before it is reported in the normal manner. The evidence at trial confirmed that if Illinois did pay to add a wage request component to a movable base period, that alternative would be "administratively feasible" in the sense that, if there was no cheaper alternative, the costs of those systems would be worth the benefits they would generate to the claimants. But, in Illinois, the marginal benefits of adding a wage request component is too small to justify its greater expense over the alternative of simply using the most recent wage data when it is reported in the usual course. Thus, while IDES could enhance a movable base period system marginally by incorporating a wage request component, the when due clause does not require that it do so.

Ms. Didrickson estimates also include costs for a "reachback" component to find claimants who were previously denied benefits. But the Eleventh Amendment to the U.S. Constitution, U.S. Const., amend. XI, prohibits the courts from ordering any such relief. See Paschal v. Jackson, 936 F.2d 940 (7th Cir. 1991).

Illinois' insistence on calculating the costs of a movable base period by including a wage request and a "reachback" component is designed merely to inflate the "costs" of a movable base period. The following table compares Illinois' cost estimates with those components included and the same estimates with those components eliminated:

	Estimate With Wage Request and "Reachback"	Estimate Without Wage Request and "Reachback"
Conversion Costs		
Non-computer	$ 4.1 million	$ 411,260
Computer	$ 9.3 million	$ 5.8 million
TOTAL	$ 13.3 million	$ 6.2 million
Operating costs	$ 2.8 million	$ 400,000

The table confirms that, if the costs of a wage request and a "reachback" component are eliminated, Illinois' estimates of the conversion costs would drop $ 7.1 million, from $ 13.3 million to $ 6.2 million, and its estimate of the yearly operating costs would drop $ 2.4 million, from $ 2.8 to $ 400,000.

D. As for trust fund outlays, the evidence at trial confirmed that a movable base period in effect in Illinois during 1986 would have paid a substantial proportion of about 23,000 additional claimants approximately 13.6 million additional dollars, and approximately 13,000 claimants would have been paid benefits sooner. In 1994, the Director of the Illinois Department of Employment Security estimated that the additional benefits paid to claimants would be about $ 30 - $ 40 million a year. See Director Doherty's letter of July 7, 1994.

Ms. Didrickson's newest "high side" estimate is $ 93.75 million per year. But that assumes that, because the percentage of claimants who receive benefits would increase by 6 - 8% if the state used a movable base period, the trust fund outlays would also increase that much. That assumption is unquestionably wrong since the vast majority of claimants who would be benefitted by a movable base period are those who would receive at or near the minimum benefit amount.

Moreover, while the applicable federal statutes give the states wide latitude to assure the solvency of the trust fund by setting their own benefit amounts, tax rates and eligibility requirements, the when due clause is one of the few federal limits on the states' discretion. By assuring that states do not adopt methods of administration that unreasonably delay the payment of benefits, the when due clause enforces the congressional purpose of prompt payment to tide workers over during periods of unemployment and to prevent the deepening of recessions. Java, 402 U.S. at 130-33. Accordingly, a state may not justify a violation of the when due clause by claiming that it had to delay payment of benefits to maintain its trust fund balance. See id., 402 U.S. at 129-33.

The when due clause's assurance that states will honor the claimants' interest in prompt payment of benefits necessarily means greater outlays from the trust fund. But the nation's unemployment insurance program exists solely to provide prompt assistance to eligible claimants during periods of unemployment. Thus, to complain that the states are obligated to pay benefits promptly from the trust fund is to complain of the very purpose of the unemployment insurance system itself.

E. For the same reason, the tax consequences for employers is not a cogent reason for abandoning the when due policy. For many years, employers have not had to finance unemployment insurance to pay benefits to the Pennington claimants. Employers have therefore been permitted to escape that part of the excise tax they were supposed to pay for use of the nation's labor supply.

Indeed, a study by the U.S. Department of Labor, using data from Illinois, concludes that some employers obtain a form of subsidy by laying off workers while their wages are still within the lag period, thereby avoiding the charge associated with those workers' unemployment insurance claims. Unemployment Insurance and Employer Layoffs, Occasional Paper 93-1, U.S. Dept. of Labor (1993). The researchers estimated that "27 percent of all (UI chargeable) layoffs for a 4-5 quarter period were free layoffs to the firms initiating the layoffs ... [and that] the percentage of layoffs that are free varies from only 13 percent for the largest firms to 39 percent for construction firms." Id. at xiv. Moreover, they concluded that "this UI subsidy actually tends to destabilize rather than stabilize employment." Id. at 3.

The General Accounting Office ("GAO") agrees. A 1993 GAO report to the Chairman of the Senate Committee on Finance concerned the reasons why the percentage of unemployed workers who receive unemployment insurance benefits has declined. Unemployment Insurance: Program's Ability to Meet Objectives Jeopardized, GAO/HRD-93-107 (Sept. 1993). In that report, which was based on data from Illinois, the GAO noted that "[s]tate officials ... said some employers control employee work schedules and earnings to ensure that they do not meet the qualifying requirements." GAO Report at 5.

The unemployment insurance tax is a fair excise on employers' use of the nation's labor supply. We ought not undermine a 60-year old policy of paying prompt unemployment insurance benefits to eligible workers because some employers who hire the nation's most vulnerable workers prefer not to pay their fair part of the costs of unemployment when they lay those workers off.

IV. The Percentage Of Unemployed Americans Who Receive Unemployment Insurance Benefits Is At An Historic Low, Making This A Particularly Inappropriate Time To Undermine The Protection Of The When Due Clause

The 74th Congress enacted the when due clause to assure that unemployed Americans like Mrs. Pennington receive prompt replacement of lost wages during periods of unemployment. See Java, 402 U.S. at 130-33. The term of the 104th Congress is a particularly inauspicious time to undermine that policy. In its 1993 report to the Chairman of the Senate Committee on Finance, the GAO confirmed that the percentage of unemployed workers who receive unemployment insurance benefits has declined to historic lows of less than 40%. Unemployment Insurance: Program's Ability to Meet Objectives Jeopardized, GAO/HRD-93-107 (Sept. 1993).

Moreover, in its 1996 report to Congress, the Advisory Council confirmed the GAO's conclusion, finding that, in 1995, 14 states paid unemployment insurance to a quarter or fewer of their unemployed workers, and that Illinois paid only 37.2% of its unemployed. Defining Federal And State Roles in Unemployment Insurance, A Report to the President and Congress, Advisory Council on Unemployment Compensation, Jan. 1996; see Table 4-2 "Ratio Of Unemployment Insurance Claimants To Total Unemployment, By State, 1995."

A recent study concludes that "[t]he presence of an alternative [movable] base period raises the number of monetarily eligible claimants by 6 to 8 percent." Vroman, Wayne, The Alternative Base Period in Unemployment Insurance: Final Report, Jan. 31, 1995. Thus, the Pennington decision offers some reversal of the precipitous drop in the rate of unemployment insurance recipiency. And the GAO has confirmed that "[t]he receipt of [unemployment insurance] benefits [is] an important factor in keeping unemployed workers above the poverty level." GAO Report at 5.

Statement of the Hon. Bill Thomas
Subcommittee on Human Resources
Concerning Unemployment Benefits
July 19, 1996

Mr. Chairman, recent communications between the Department of Labor and California show we have another problem to correct in restoring power to the States. Bluntly, the Department is saying California has to pay unemployment benefits to certain criminals being released from prison. If we are to give states the flexibility they need to deal with criminal behavior and to return prisoners to society with skills they can use in honest employment, we need to correct this aggregious case of elevating form over substance.

As the Subcommittee is aware, current federal law requires employers to pay federal employment (FUTA) taxes on work performed by their employees. This includes prison inmates who work for private companies through innovative work programs established in several states, including California. Today, some 200 people in California prisons are employed in jobs provided under agreements between the state and private businesses. However, FUTA taxes do not have to be paid for work by prisoners employed in prison operations such as the laundry or cabinet shop.

Since FUTA taxes are paid on behalf of some prisoners, the U.S. Department of Labor has ruled that these prisoners must be paid unemployment benefits upon their release from their "job"--essentially, when they are released from prison. Failure to comply is serious: California employers, for example would lose tax credits worth $1.7 billion for FUTA taxes they pay on other workers if the California program is disqualified.

Why does Labor take this position? The federal unemployment insurance program only permits denial of employment benefits in three cases: if the worker's income exceeds certain limits; the claim is fraudulent; or the employee was fired for misconduct. Since prisoners lose their jobs when paroled or released from prison, they do not fit the exceptions.

California voters established the Joint Venture Program in 1990, creating a private work program for prison inmates. Criminals' wages are used to compensate victims, offset incarceration costs, and set aside funds (20%) for the inmate's support upon his or her release from prison. In 1996, California voters overwhelmingly passed an initiative (Proposition 194) that denies unemployment benefits to criminals participating in the Joint Venture Program.

The Department of Labor decision would force Californians either to pay out unemployment benefits to released prisoners or to eliminate a program that has been successful in helping criminals transition back into the workforce. Allowing employees to lose $1.7 billion in credits for taxes they pay on the services of ordinary working people is not an option, needless to say.

Legislation I have introduced, H.R. 3858, would change the law to treat all prison inmates who participate in work programs the same: their services would be exempt from the FUTA tax. This would effectively deny unemployment benefits to released prisoners and prohibit the Department of Labor from placing such a ridiculous requirement on the states. The bill's enactment would give states an additional tool to use in trying to reform criminal behavior and I hope my colleagues will agree to its adoption in the near future.

COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen
Governor

FOR THE RECORD

STATEMENT OF GOVERNOR GEORGE ALLEN
TO THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HUMAN RESOURCES
JULY 11, 1996

DEVOLUTION OF THE EMPLOYMENT SECURITY SYSTEM

Mr. Chairman and Members of the Subcommittee:

Since my election as Governor of the Commonwealth of Virginia in 1993, I have sought not only to preserve but to enhance the prerogatives of states and the people within our federal system. I believe that transferring the administration and financing of the employment security system to the states would do just that.

OTHER GOVERNORS CONCUR

I am not the only governor to believe that the states should be empowered to finance and manage their own employment security systems. When I presented my proposal to devolve the employment security system to the National Governors' Association Economic Development and Commerce Committee in February, the governors voted unanimously to pursue this issue.

The reforms I proposed could cut payroll taxes in most states, reduce burdensome paperwork, and improve services for workers.

BACKGROUND

The nation's employment security system includes unemployment insurance, employment service, and labor market information programs.

Employers pay two taxes to support the current system. The Internal Revenue Service (IRS) collects a federal payroll tax under the Federal Unemployment Tax Act (FUTA) to finance program administration. State employment security agencies collect a state payroll tax to fund unemployment benefits.

The revenues from both federal and state taxes are deposited in various accounts in the Federal Unemployment Trust Fund (UTF) and can be used only for administering the employment security system and paying benefits.

PROPOSED REFORMS

The changing nature of employment and the workforce make the employment security system more important than ever to employers and jobseekers, yet there are inefficiencies which should be addressed.

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- **America's businesses are burdened by having to file *two, separate* reports and pay *two, separate* taxes to *two* government entities.** The FUTA paperwork burden alone costs U.S. employers an estimated $291 million each year.

- **Many states' employers pay unnecessarily high federal unemployment taxes.** Of the 53 states and jurisdictions, employers in 47 paid more in federal unemployment taxes than their states received in 1994, the last year for which figures are available.

- **All available funds for states to run the employment security system are not appropriated by Congress and appropriations continue to decline.** According to U.S. Department of Labor projections, in Fiscal Year 1995 only 61 percent--or $3.47 billion of $5.7 billion in revenues--was appropriated for state administration of the employment security system. Yet, the House Appropriations Committee, in its FY 1997 Labor-Health and Human Services-Education funding bill cut $38 million from the FY 1996 level for state employment services and more than $200 million from the Administration's estimate of the funds needed to serve those entitled to unemployment benefits in FY 1997.

The following are the key elements of my devolution proposal:

- **Maintain a national employment security system but eliminate the burdensome federal mandates which cause inefficiencies and impose increased costs to the states.** Federal oversight should be limited to ensuring that state laws and policies conform to the basic requirements that would be retained in FUTA, to provide a public employment service and an unemployment insurance system.

- **Effectively eliminate the collection of the FUTA tax by increasing the offset credit for states from 90 percent to 100 percent as long as they conform to basic, national requirements. Taxing authority for administrative purposes would be transferred to the states.** Each state would determine and collect taxes to finance its employment security system. For employers, this positive reform would mean elimination of the current 0.2 percent surtax, a savings of $1.4 billion per year, and relief from the costly burden of filing two different sets of forms.

- **Hold harmless, at least for a transition period, those few states that now receive more in federal grants than their employers pay in taxes.** Funds from the current administrative account in the trust fund could be used to supplement the unemployment taxes paid in these states for at least five years.

- **Deposit state funds collected for benefits and administration in the UTF, which would remain in the federal budget.** Changes to the employment security system may affect the budget deficit and require offsets; however, this would minimize the impact.

CONCLUSION

Devolution of the employment security system is a good idea whose time has come. Funding for unemployment insurance, employment service, and labor market information programs comes from employer-paid taxes which can be used only to support these programs. States should be given the resources and the authority to develop systems responsive to the needs of their workforces and employers. The benefits can include payroll tax cuts in most states, reduced burdensome paperwork, and improved services for workers.

United States House of Representatives
Ways and Means Committee
Subcommittee on Human Resources

July 11, 1996

Testimony on the Transfer of the Administration and Financing of the Unemployment Compensation System to the States

By
Mark Wilson
Rebecca Lukens Fellow in Labor Policy
The Heritage Foundation
Washington, DC 20002

Mr. Chairman, Members of the Committee, thank you for inviting me to testify on the possible transfer of the administration and financing of the Unemployment Compensation System to the states. Unfortunately, prior commitments precluded me from appearing before the committee today. Please accept my written testimony and enter it into the record.

It should be noted that the following testimony is my own view and does not necessarily reflect that of The Heritage Foundation.

I. BRIEF OVERVIEW OF UNEMPLOYMENT COMPENSATION SYSTEM

The Unemployment Compensation (UC) system has two main objectives. It is to provide temporary and partial wage replacement to recently unemployed workers, and help stabilize the economy during recessions. To accomplish these two objectives the UC system consists of two programs; Unemployment Insurance and the Employment Service (UI/ES). The UC program currently is financed by two separate taxes, with two different tax forms, by two levels of government. A Federal Unemployment Tax (FUTA) of 0.8 percent[1] on the first $7,000 of each employees wages and state unemployment insurance taxes that average 0.9 percent of total

[1] The current 0.8 percent FUTA tax rate has two components: a permanent tax rate of 0.6 percent, and a temporary surtax of 0.2 percent. The surtax was first passed in 1976 to restore depleted state UI accounts and was suppose to expire in 1987. Since 1987, the surtax has been extended four times primarily to fund extended benefit programs and is now suppose to expire in 1998.

wages.[2] The revenue raised by FUTA is designated for Unemployment Insurance (UI) administration and maintaining a system of Employment Service (ES) offices. Portions of FUTA revenues also fund the federal half of the Extended Benefits Program and federal loans to depleted state accounts. State UI tax revenues fund their weekly UI benefit payments and the state half of the Extended Benefit Program. FUTA revenues are deposited in three federal accounts and state UI tax revenues are deposited in 53 state accounts maintained by the federal government (one for each state, D.C., Puerto Rico, and the Virgin Islands). At the end of fiscal year 1995, state accounts in the UI Trust Fund had balances totaling $35.9 billion and the three federal accounts had balances totaling $11.9 billion. Like the Social Security Trust Fund, any positive balance in the UI Trust Fund effectively is used to fund other federal programs for as long as there is the federal budget is running a deficit. General revenues are used to fund federal unemployment benefit programs and allowances such as Trade Adjustment Assistance and NAFTA Transitional Adjustment Assistance.

II. WHY THE UI/ES SHOULD BE TRANSFERRED TO THE STATES

When UC was enacted in 1935, Congress intended it to be a federal-state partnership. The federal government was to set broad parameters for the system, provide adequate and equitable funding for state administration, and oversee state law and operations to ensure compliance and conformity. The states were to be responsible for carrying out the program while complying with all federal laws and regulations, as well as their own state requirements. However, the federal government has used the state conformity process to frequently upset the balance of administrative funding and workloads by dictating that states absorb the costs of administering additional programs.[3] Moreover, the state conformity process has resulted in a "one-size fits all" approach that does not address the needs of individual states, nor provide states with the flexibility to address the needs of individual workers.

Over the past decade, federal budget constraints have had a detrimental effect on the services provided to unemployed workers by the state UI system and ES offices. Even though FUTA revenues collected for UI and ES administration have been more than sufficient, Congress continues to extend the 0.2 percent FUTA surtax on jobs and limit UI and ES administration appropriations.[4] This effectively masks the true size of the federal deficit. The federal government has come to use the UI system as a source of funds for programs that lead to longer

---

[2] The state unemployment insurance tax varies from state to state, is paid by employers and is experience-rated (employers with few layoffs typically have the lowest tax rates). State legislatures determine the tax rate and the taxable wage base. Twelve states limit taxable wages to the federal minimum of $7,000, other states have ceilings raging from $8,000 in eight states, to $25,500 in Hawaii.

[3] Edwin M. Kehl, "Administrative Simplification of Unemployment Compensation Programs," in W. Lee Hansen and James F Byers eds., "Unemployment Insurance: The Second Half-Century,' The University of Wisconsin Press, 1990.

[4] The balance in the Employment Security Administration Account will be $2.4 billion in September 1995. This is $1.01 billion more than the statutory limit. There is also a $7.4 billion balance in the Federal Unemployment Account that has been built up using surplus FUTA payroll taxes. In fiscal year 1995, Congress withheld over $900 million in FUTA revenues.

periods of unemployment for workers[5] and unnecessarily high payroll taxes. This is contrary to the primary purpose of the UI system[6] and reduces real wages.[7]

In fiscal year 1994, employers in 25 states paid far more in FUTA taxes that their states got back (these states received less than 60 percent of their FUTA taxes). In all 46 states received less than their total FUTA taxes paid. As a result, many states' employers are paying unnecessarily high payroll taxes that limits job growth and reduces state services. For example, in FY 1994, employers in Tennessee paid $113.9 million in FUTA taxes but the state received only $43.8 million in FUTA grants to administer their UI/ES program, a loss of $70.1 million. Employers in Florida paid $290.7 million in FUTA taxes but the state received only $116.7 million back from the federal government, a loss of $174 million. All told the federal government collected $5.539 billion in FUTA taxes in FY 1994 and after skimming money off the top for bureaucracy, demonstration projects, it runs the remainder through a maze of formulas and equity adjustments and then returns on average about 60 percent back to the states.

Under the current UC system employers also are burdened by having to make reports and pay two separate taxes (federal and state) for what is essentially one system. It is estimated that the paperwork burden for filing the FUTA tax return costs the nation's employers almost $500 million annually. This burden directly reduces economic development and job growth and could easily be eliminated.

Studies show that states can effectively decrease the duration of unemployment and thereby reduce payroll taxes and increase jobs.[8] The UC program should be reformed to limit the federal role in the system, as Congress originally intended, and to restore responsibility and accountability for the program to the states.

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[5] Lawrence F. Katz and Bruce D. Meyer, "The Impact of the Potential Duration of Unemployment Benefits on the Duration of Unemployment," National Bureau of Economic Research, Working Paper No. 2741, October 1988. This study concluded that extending the duration of UI benefits from 6 months to 1 year will increase the mean duration of unemployment by 4 to 5 weeks. Examples of federal programs that increase the duration of UI benefits are the extended benefit programs and trade adjustment assistance.

[6] In today's economy, the primary purpose of the UI/ES system is to move workers that have permanently lost their jobs into new ones as quickly as possible.

[7] Daniel S. Hamermesh, "New Estimates of the Incidence of Payroll Tax," Southern Economic Journal, Winter 1979. Research on the incidence of taxation has generally concluded that payroll taxes are predominantly, if not completely, borne by labor in the long-run through lower real wages.

[8] Bruce D. Meyer, " Policy Lessons from the U.S. Unemployment Insurance Experiments," National Bureau of Economic Research, Working Paper No. 4197. The willingness and ability of states to explore innovative ways to reduce UI duration is evident from the number of the state UI experiments have been wholly state funded.

III. RECOMMENDATIONS

- **Transfer the financing and funding for the UI system and Employment Service to the states.**

This should include a repeal of the temporary 0.2 percent FUTA surtax and increase the FUTA offset[9] from the current 90 percent to 100 percent if a state conforms with federal law. This will return $1.4 billion per year to employers and stimulate employment and wage growth. The federal Employment Security Administration Account (ESAA) should be phased out. Existing funds in the ESAA could be used for transition costs. Any funds remaining in the ESAA should be allocated to the states' accounts that remain at the federal level.

States should be allowed to collect one UI tax for administration and benefits. Each state would then be responsible, and accountable, to their employers for UI payroll tax dollars and for the administration and effectiveness of the UI/ES system. The combined state tax should remain dedicated to funding the UC system and the states should be prohibited from dipping into their accounts for anything.

- **Repeal the Wagner-Peyser Act and amend FUTA to require states to establish public employment offices in labor market offices designated by state legislatures.**

Each state should have the flexibility to deliver job placement assistance in ways that meet the needs of its employers and job seekers. However, states should ensure reasonable access to services for workers and to register for work all eligible claimants who are not temporarily laid-off. Reform must enable states to explore ways to integrate employment services and reduce the duration of unemployment payments by moving the unemployed into new jobs more quickly. This could include opening up the job placement assistance offered through state ES offices to private competition and other UI innovations.

- **Eliminate the federal extended benefit program and the federal extended unemployment compensation account (EUCA).**

Funds in the EUCA should be transferred to the state UI accounts based upon a state's relative share of covered employment. The 1992 federal amendments that made it easier for states to trigger extended benefits (EB)[10] should be repealed. States should have the responsibility to determine the number of weeks UI benefits are paid. The 1992 change made it easier for states to qualify for extended benefits and gave an incentive for individuals stay on unemployment

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[9] The actual gross FUTA tax rate is 6.2 percent. However, employers in states with federally approved UI programs (all 50 states) may credit 5.4 percent (90 percent FUTA offset) against the 6.2 percent tax rate, making the net FUTA tax rate 0.8 percent.

[10] The 1992 amendment allowed states to trigger EB based on a certain percentage of its total unemployment rate (TUR) instead of its adjusted insured unemployment rate (IUR). The IUR is computed by dividing the number of people claiming UC benefits by the number of people in jobs covered by UC. The TUR is the ratio of all unemployed workers to all workers in the labor force in that State. Eight states (Alaska, Connecticut, Kansas, Maine, Oregon, Rhode Island, Vermont, and Washington) have approved the use of the TUR triggers.

benefits longer even when jobs were available. By basing the trigger for extended benefits on a states' total unemployment rate versus a state's insured unemployment rate, Congress also broadened considerably who can qualify for extended benefits. Those who argued for this change claimed that basing benefits on the insured rate meant that many of the unemployed were not receiving benefits and therefore the program was not working as intended. But, as pointed out at that time by Labor Department officials, this gap between the number of people who were unemployed and those collecting benefits is normal and an intended purpose of the program.[11]

- **Fund the Federal Unemployment Account (FUA) that is used to loan money to insolvent state UI accounts with either general revenues or a state fee.**

Funds in the FUA come from a portion of the FUTA payroll tax on jobs.[12] The federal government uses the FUA to provide loans to states that have depleted their UI accounts during severe recessions. When the FUA is not being used for state loans, the surplus that builds up in the account is essentially used to fund other government programs and amounts to a tax on jobs to reduce the deficit. At the end of September 1995 there was a $5.9 billion surplus in the FUA.

- **Repeal the Disabled Veterans Outreach Program and the Local Veteran Employment Representative Program and amend FUTA to incorporate the veteran preferences already in Title 38 of the US code (Veterans Benefits).**

The administrative efficiency of the ES offices could be significantly improved by repealing barriers to the integration of veterans' services with other employment services. As the Vice President's National Performance Review noted in calling for the removal of barriers,[13] DoL's Veterans' Employment and Training Service provides for state-employed, federally funded, employment specialists to serve veterans in local state employment service offices. However, these staff are legally prohibited from helping non-veterans." So, if a local office is crowded with non-veterans," points out the NPR, "these specialists cannot help out--even if they have no veterans to serve." Employment Service staff would be used more efficiently and the public better served by eliminating this requirement.

---

[11] Benefits are generally paid to workers with substantial labor force attachment who have lost their jobs through no fault of their own -- not to workers who quit their jobs voluntarily, who were fired for cause, or who have had no recent employment, such as those who are entering or reentering the labor force. The some of the difference between the insured unemployment rate and the total employment rate is also due to the exclusion of self-employed, certain agricultural labor and domestic service workers, railroad workers, and certain seasonal camp workers from collecting UI benefits.

[12] FUTA funds are indirectly deposited the FUA when the EUCA and Employment Security Administration Account (ESAA) have reached their statutory limits. The ESAA is used for financing the administrative costs of the employment security program and should be phased out. Funds in the ESAA should be allocated to the state UI accounts for the administration of their UI programs.

[13] *From Red Tape to Results,* p. 80.

- **Enable state legislators to determine the ES administrative budgets, payroll taxes, and UI benefits under limited federal guidelines.**

The UI system is an experience-rated and employer-paid payroll tax. The system was set up with specific objectives and a designated tax as its funding source. Federal or state proposals that would combine the funding sources for the ES program and job training programs are unwise. Job placement services have different goals, populations, and outcomes, from those of training programs. ES offices are suppose to get unemployment claimants get back to work quickly, thereby ensuring employer taxes are as low as possible. But job training programs often do not share that objective. Suggesting that FUTA payroll tax funds be utilized for anything else but paying unemployment benefits and funding state job placement assistance is merely a backdoor way of introducing a payroll tax for training. Transferring ES funding to the states removes the potential for Congress to dilute the mission of the ES system and divert funding for other purposes.

The limited federal guidelines should include the following:

- The single state UI tax for both administration and benefits should be experience rated.
- Funds should be used only for program administration and paying weekly benefits, and capped at levels necessary for proper and efficient administration during periods of high unemployment.
- States should be required to continue cooperative and financial contracts to administer the interstate benefit program.
- Federal funding for the administration and payment federal employee UI benefits, military separations, and disaster unemployment programs should be deposited in state UI accounts as needed.
- Federal oversight should be limited to determining if state laws conform with federal requirements.

IV. CONCLUSION

The recommendations presented here for the transfer of the UC system to the states constitutes a modest, achievable proposal that will not unduly affect the federal budget. If enacted such a transfer will enable states to reduce payroll taxes, increase jobs and take-home pay, reduce paperwork burdens, and improve services for unemployed workers.

○

JOINT HEARING ON H.R. 3467, "SAVING OUR CHILDREN: THE AMERICAN RENEWAL ACT OF 1996"

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS

AND THE

SUBCOMMITTEE ON EARLY CHILDHOOD, YOUTH AND FAMILIES

OF THE

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

JULY 30, 1996

Committee on Ways and Means Serial 104–56
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CONTENTS

	Page
Advisory of July 23, 1996, announcing the joint hearing	2
The text of H.R. 3467	209

WITNESSES

Butler, Stuart M., Heritage Foundation	127
Catholic Charities USA, Sharon M. Daly	70
Christian Coalition, Rev. Earl W. Jackson, Sr	79
Coalition on Urban Affairs, Star Parker	57
Community Development Corp., and Crispus Attucks Association, Inc., C. Scott Dempwolf	59
Daly, Sharon M., Catholic Charities USA	70
Dempwolf, C. Scott, Crispus Attucks Association, Inc., and Community Development Corp.	59
District of Columbia Congress of Parents & Teachers, Alieze Stallworth	101
Heritage Foundation, Stuart M. Butler	127
Jackson, Rev. Earl W., Sr., Christian Coalition	79
Knollenberg, Hon. Joe, a Representative in Congress from the State of Michigan	18
Kolbe, Hon. Jim, a Representative in Congress from the State of Arizona	24
Ladd, Helen F., Duke University	141
Lewis, Hon. Fannie, Member, City Council, Cleveland, OH	98
Lewis, Hon. Glenn O., State Representative, Fort Worth, TX	97
Muldro, Asha, Yale University	113
National Center for Neighborhood Enterprise, Robert L. Woodson, Sr	45
Parker, Star, Coalition on Urban Affairs	57
Porter, Michael E., Harvard Business School	133
Scott, Hon. Robert C., a Representative in Congress from the State of Virginia	28
Stallworth, Alieze, District of Columbia Congress of Parents & Teachers	101
Van Allen, Terry, University of Houston-Clear Lake	148
Watts, Hon. J.C., Jr., a Representative in Congress from the State of Oklahoma	13
Woodson, Robert L., Sr., National Center for Neighborhood Enterprise	45

SUBMISSIONS FOR THE RECORD

American Civil Liberties Union, Daniel E. Katz, statement	161
American Counseling Association, Alexandria, VA, Gail Robinson, statement	165
American Federation of Teachers, statement and attachment	169
American Heart Association, statement	173
American Symphony Orchestra League, John D. Sparks, statement	176
Independent Sector, statement and attachments	178
National Association of Alcoholism and Drug Abuse Counselors, Arlington, VA, statement and attachments	195
National Council of Jewish Women, New York, NY, Nan Rich, statement	199
National Council on Alcoholism and Drug Dependence, Inc., statement	200
People for the American Way Action Fund, statement	202

JOINT HEARING ON H.R. 3467, "SAVING OUR CHILDREN: THE AMERICAN COMMUNITY RENEWAL ACT OF 1996"

TUESDAY, JULY 30, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
JOINT WITH COMMITTEE ON
ECONOMIC AND EDUCATIONAL OPPORTUNITIES,
SUBCOMMITTEE ON EARLY CHILDHOOD, YOUTH AND FAMILIES,
Washington, DC

The joint Subcommittees met, pursuant to notice, at 10:35 a.m., in room 1100, Longworth House Office Building, Hon. Randy "Duke" Cunningham and Hon. E. Clay Shaw, Jr. (Chairmen of the Subcommittees), presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE
July 23, 1996
No. HR-14

CONTACT: (202) 225-1025

Shaw and Cunningham Announce Joint Hearing on H.R. 3467, "Saving Our Children: The American Community Renewal Act of 1996"

Congressman E. Clay Shaw, Jr. (R-FL), Chairman of the Subcommittee on Human Resources of the Committee on Ways and Means, and Congressman Randy "Duke" Cunningham (R-CA), Chairman of the Subcommittee on Early Childhood, Youth and Families of the Committee on Economic and Educational Opportunities, today announced that the Subcommittees will conduct a joint hearing on H.R. 3467, "Saving Our Children: The American Community Renewal Act of 1996." **The hearing will take place on Tuesday, July 30, 1996, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be heard from invited witnesses only. Witnesses will include Members of Congress, community leaders, and education and tax analysts. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

An important aspect of the welfare reform debate has been many Americans' contention that the current welfare system has usurped the traditional role of individuals and private organizations in helping Americans avoid poverty and welfare dependency. Several bills have been introduced in both the House and the Senate that are designed to reverse this trend by stimulating private sector involvement in promoting moral development, strengthening families, and supporting economic empowerment of individuals and communities. Most of the bills also contain provisions intended to strengthen the role of private charities in achieving these goals.

H.R. 3467, introduced on May 16, 1996, by Reps. J. C. Watts (R-OK) and Jim Talent (R-MO), would provide for 100 Renewal Communities, established in poor urban and rural areas, that would promote economic development by providing tax advantages for entrepreneurial activity. The bill would also establish scholarships so that children from poor families living in the Renewal Communities could attend private schools of their choice. Finally, the bill would provide tax incentives for charitable contributions and would allow neighborhood groups, including religious institutions, to provide drug treatment and drug counseling programs.

In announcing plans for the hearing, Chairman Shaw said: "The Watts/Talent bill is a good complement to the welfare reform bill now moving through Congress. A vital part of welfare reform must be the economic development of poor communities and the growth of private organizations trying to help poor families establish their independence." Chairman Cunningham added: "Poor Americans should have the same opportunity as more affluent Americans to send their children to private schools."

WAYS AND MEANS SUBCOMMITTEE ON HUMAN RESOURCES

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by the close of business, Tuesday, August 13, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Human Resources office, room B-317 Rayburn House Office Building, at least one hour before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are now available on the World Wide Web at 'HTTP://WWW.HOUSE.GOV/WAYS_MEANS/' or over the Internet at 'GOPHER.HOUSE.GOV' under 'HOUSE COMMITTEE INFORMATION'.

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Chairman SHAW. If Members and guests can find a seat, we will go ahead and proceed.

As you will notice, there are a lot of empty chairs here. It is not a reflection of the interest in the subject matter before us. There are two things going on right now, a memorial service for one of our colleagues, Ham Fish, and also, votes aren't expected until later in the day, so many of our Members are making their way back to Washington. So, as the hearing proceeds, I would guess that we will fill many of the chairs that you see empty right now.

I welcome you to this hearing today. It is appropriate that as we move toward final passage of historic legislation to reform the welfare system that we recognize, and even with final passage, that much more needs to be done to renew our Nation's communities.

One important effort is embodied in the legislation before us, H.R. 3467, "Saving our Children: The American Community Renewal Act of 1996," cosponsored by Representative J.C. Watts and Representative Jim Talent. I want to thank both of my distinguished colleagues for being at this hearing today to share with all of us the hope and vision behind this important legislation.

The principles that underlie the American Community Renewal Act of 1996 are the very same principles that have guided the Republican welfare reform proposals. These principles include an emphasis on personal responsibility, the empowerment of individuals through choice, the reliance on the free enterprise system, and the commitment to local, community-based solutions to social problems.

The sponsors of H.R. 3467 and its supporters recognize what it takes to change our communities and to revitalize our neighborhoods. This hearing reflects the breadth of the legislation we have before us. It will certainly take a fundamental restructuring of society to change the status quo, a change that cannot take place without the input from all of you here, from Congress, State, and city representatives, think tank experts, charitable organizations, and members of various grassroots groups.

I was speaking with one of the witnesses that will be before us later today and she was saying that she disagreed with what we were doing, but certainly didn't disagree with our motives. I think our motivations are all in the same direction.

Are we going to make mistakes? Absolutely. Have we already made some mistakes that we don't know about? Absolutely. The present welfare system that has to be changed, that has set up 60 years of stagnation, is it that bad? I think we all agree that it is a terrible system that must be changed.

We are going to have to be patient with each other through the transition that we are going through from the present welfare system to a system that emphasizes work and self-responsibility, and I think it is not going to be an easy matter, but it is one that I think we can certainly accomplish if we work together.

I would now yield to my co-Chairman, Mr. Cunningham, for any opening remarks that he might have.

[The opening statements of Chairman Shaw and Mr. Rangel follow:]

Opening Statement of The Honorable E. Clay Shaw, Jr.

Joint Hearing on: H.R. 3467,
"Saving Our Children: The American Community Renewal Act of 1996

July 30, 1996

I welcome all of you to this hearing today. It is appropriate that as we move toward final passage of historic legislation to reform the welfare system that we recognize that even with final passage much more still needs to be done to renew many communities in our nation. One important effort is embodied in the legislation before us: H.R. 3467 - Saving Our Children: The American Community Renewal Act of 1996 co-sponsored by Rep. J.C. Watts (R-OK) and Rep. Jim Talent (R-MO). I want to thank both of my distinguished colleagues for being at this hearing today to share with all of us the hope and the vision behind this important legislation.

This principles that underlie The American Community Renewal Act of 1996 are the very same principles that have guided the Republican welfare reform proposals. These principles include an emphasis on personal responsibility, the empowerment of individuals through choice, the reliance on the free enterprise system, and, the commitment to local community-based solutions to social problems.

The sponsors of H.R.3467 and its supporters recognize what it takes to change our communities and to revitalize our neighborhoods. This hearing reflects the breadth of the legislation we have before us. It will certainly take a fundamental restructuring of society to change the status quo. A change that can not take place without the input of all of you here today - from Congress, state and city representatives, think tank experts, charitable organizations and members of various grassroots groups. Again, thank you all for coming.

OPENING STATEMENT OF MR. RANGEL

Subcommittee on Human Resources Hearing on H.R. 3467, The American Community Renewal Act," July 30, 1996

I am pleased that we are here today to focus attention on ways in which the federal government can participate in revitalizing depressed areas of our cities and rural regions and how we can best help the American citizens who live and work in those areas.

What those citizens desperately need is government intervention that is well-thought-out and carefully targeted, assistance that will help them improve their jobs skills and their opportunities for employment. They need an environment that reduces the chances of crime, promotes a spirit of community and commitment, and encourages a healthy and lively business sector.

I welcome this discussion of H.R. 3467. I am not convinced that the specifics of this bill are the right answer, however. Much of the federal benefit provided by this bill will accrue to well-off taxpayers living outside the designated "renewal communities" that the bill would create,

rather than going to those needy residents and workers in distressed areas. And, most of the tax benefits provided by the bill are triggered by improvements in capital and physical property, rather than by investment in education, job retraining, and other improvements in human capital. I would prefer to see more emphasis on people-oriented policies to help those in need by making them more capable of helping themselves.

Nevertheless, I believe that this hearing is very useful. I welcome the opportunity to hear from the community activists, local officials, and researchers who will be our witnesses today. I hope they can advise us regarding the most effective ways of targeting federal efforts to solve one of our society's most intractable problems.

Chairman CUNNINGHAM. Thank you, Mr. Chairman.

I will be brief, and I would like to submit the majority of this for the record, but part of restoring the hope in the education system, there are many American schools that are good. I would be foolish not to say that.

My wife is a principal in a public education system. I taught myself on secondary education and also at the postsecondary level, and there are many good schools in the Nation, but if we travel across the country, there are many, many of our schools that are failing.

We have less than 12 percent, Mr. Chairman, of our schools across this country who have got even a single phone jack, and if we look at fiber optics and computers in the 21st century, how are we preparing those children?

I would say that, although this is a hearing, I think maybe the focus is probably in the wrong direction, and let me be specific.

I am trying to take the Federal Government out of education. I think that education, whether it be choice in our school systems or public education, ought to emanate from the public. Where we get very low return on our dollars that come to Washington, DC, in my opinion, liberals have cut education over the last 30 years by having big bureaucracies with additional paperwork that take away from the dollars going down to our classrooms, both in the public and private sector.

This particular hearing we are looking at is for lower income children. In my own district, I have got Bishop McKenney, who is the pastor of a church and he also has a private school that was one of our witnesses during past hearings. He couldn't make it here. Jack Kemp also helped him, and Jack is going to speak today.

I want to thank the Chairman, and I look eagerly to this hearing, but I think we also need to look and see how we reduce the size of the bureaucracy here in Washington, DC, return the power to people, State and local governments, where we have the standards set up in a local area with parents and with the schools themselves and take Washington, DC, other than maybe research and development, looking at how we get our schools upgraded to meet the needs of the 21st century.

With that, I yield back the balance of my time and thank the Chairman, and especially the great J.C. Watts from the State of Oklahoma, a very famous quarterback and friend of education, and Jim Talent from Missouri.

Thank you for bringing the bill up.

Mr. Chairman, I yield back.

[The opening statement follows:]

OPENING STATEMENT OF
REP. RANDY "DUKE" CUNNINGHAM
CHAIRMAN, HOUSE SUBCOMMITTEE
ON EARLY CHILDHOOD, YOUTH AND FAMILIES

ON H.R. 3467
THE AMERICAN COMMUNITY RENEWAL ACT OF 1996

JOINT HEARING WITH HOUSE WAYS AND MEANS
SUBCOMMITTEE ON HUMAN RESOURCES

TUESDAY, JULY 30, 1996, 10:00 A.M.
1100 LONGWORTH BUILDING
U.S. CAPITOL

Good morning. As chairman of the House Subcommittee on Early Childhood, Youth and Families, I am honored today to co-chair this hearing on the American Community Renewal Act, H.R. 3467. My opening statement will be brief. When we congressmen speak too much, we do not hear enough from the people.

The American Community Renewal Act represents a bold approach to restoring hope for the American Dream in communities where it has been lost. Part of restoring this hope is reviving excellence in education. Many American schools are excellent. And I strongly support public education. But in many major cities, our schools are failing to graduate young people who are prepared to advance into the high-tech careers where most of the best paying jobs are. We know that in our poor communities, there are families who do everything they can to raise their children well. But schools full of drugs and empty of hope simply let them down.

To address this challenge, the American Community Renewal Act proposes a major investment in private school choice scholarships for children lower-income families. Perhaps our children are too precious to leave to a public education monopoly that is beholden to the special interests over the children's interest. I believe there are important issues to be addressed. Transportation of students is a potentially costly factor. We should also review the impact of this plan on the quality and financing of local public schools, and the issues surrounding scholarships to religious schools.

At heart, though, we must work to restore hope and opportunity where it is scarce today. I believe that this hope begins with education. And the President and the First Lady should not be the only residents of American government housing to have a real choice of where their child goes to school. I look forward to hearing from our witnesses, and I yield back the balance of my time.

Chairman SHAW. I would say to my friend that Mr. Watt is still a quarterback, throwing the ball very precisely since he has been here in the Congress.

I would now yield to Mr. Kildee for any opening statement he might like to make.

Mr. KILDEE. Thank you very much, Mr. Chairman.

First of all, I want to thank you for initiating this morning's hearing on this proposal. Although I have serious problems with this legislation, I think it is very important that we take a comprehensive look at the challenges faced by low-income communities.

So I am gratified that we are not looking at these problems in isolation. Having said that, however, I am dismayed that title IV of this bill, which seeks to address the educational needs of children and low-income communities, seems to rely on a single solution, a mandatory school voucher program.

I strongly disagree that the focus of this much energy and funding should be on a program that I feel will benefit so few students.

In addition, this is a Federal mandate, which in this present Congress, it is to say the least, ironic. In State after State, residents have rejected statewide referenda on school voucher plans, including a highly publicized rejection by a margin of 70 to 30 percent in California in 1993.

The question for all of us, Mr. Chairman, is how to improve the academic achievement of children in low-income communities. To me, the answer is pretty clear. Education reform needs to be focused on strategies to lift the performance of all students in all schools. The bill should be focused on exploring ways to teach local innovation and encourage improvements in how teachers teach and what students learn.

The most serious problem I have with what is proposed here is that if we encourage students or give them some help or their parents some help in moving from school A to school B because school A is not performing well, what do we do with those students who for one reason or another remain back in school A. I think we should really use our energy, our time, our talent, and the money of the taxpayers to make sure that children in all schools have a good education.

I would submit my entire statement for the record, Mr. Chairman.

[The opening statement follows:]

July 30, 1996

Honorable Dale E. Kildee

Joint Hearing on H.R. 3467- American Community Renewal Act

Mr. Chairmen, I want to thank you both for initiating this morning's hearing on this proposal. Although I have numerous and serious problems with the legislation, I do think it is important that we look at the challenges faced by low-income communities comprehensively because those challenges are closely linked. Disinvestments tend to feed a spiral. When businesses leave a community, employment declines and crime increase. A declining tax base destabilizes school finances and planning. Declining resources force teachers to leave the system and families to flee to the suburbs which further erodes the tax base.

So I am gratified that we are not looking at these problems in isolation. Having said that, I am dismayed that Title of this bill which seeks to address the educational needs of children in low income communities relies on **a single solution - a mandatory school voucher program.** I strongly disagree that the focus of this much energy and funding should be on a program that **benefits so few students**. In addition, the fact that this is a federal mandate is to say-the-least ironic. In state after state, residents have rejected state-wide referendum on school voucher plans, including a highly publicized rejection by a margin of 70 - 30% in California in 1993. Mr. Chairman, in the 1996 legislative session **20 state legislatures rejected voucher plans** including 7 states where the Republican party controls both House and 5 in which control is split.

The question for all of us is how to improve the academic achievement of children in low-income communities. To me, the answer is pretty clear – education reform needs to be focused on strategies for lifting the performance of <u>all</u> students in <u>all</u> schools. This bill should be exploring ways to support local innovation and encouraging improvements in how teachers teach and what students learn.

Mr. Chairmen, I applaud the efforts of the authors of this legislation. In my opinion, it will, however, add to the education challenges faced by low-income communities. I think there are huge significant implementation problems and I have many questions about how children currently served by other national education programs, such as IDEA, would be served under this proposal.

Finally, I am gravely concerned about the way participating private and parochial schools are insulated from public accountability under this bill. I am a strong supporter

of private and religious education in this country. Both are a vital part of the rich array of education opportunities and I support their independence from federal oversight. But you can't have it both ways. If you accept taxpayer resources you should not be able to reject children because they have a particular disability or reject teachers because they are the wrong gender or religion. In that sense, this proposal is a fairly sizable step backwards.

I know we will have a lively dialogue here today and I look forward to hearing the testimony of each of our witnesses.

Chairman SHAW. Thank you.

Mr. Goodling, do you have an opening statement that you wish to make?

Mr. GOODLING. I will make a very brief statement simply because we may have time on the floor by the time the second panel gets to testify.

I want to welcome Scott Dempwolf who is here to share innovative, community-based activities that are taking place at Crispus Attucks, which is one of the country's largest community centers.

For many years, I have worked very closely with Scott and also Bobby Simpson on early children programs, job training programs, youth bills, Project Connection, Even Start, and many others, and now I am excited about a new program. They want to develop one of the main thoroughfares in York, Boundary Avenue, and I hope to work closely with them on this project.

The proof of their success is in the fact that the community is willing to get behind them in almost every effort that they put forth, not only with the go-ahead, but with money, and they have just made the biggest difference in the world in the city of York. I am sure you will enjoy their testimony, as well as the booklet that they have for all of you to see. So I welcome them.

I may not be here for the second panel because I may be on the floor.

Chairman CUNNINGHAM. Thank you, Mr. Goodling.

Without objection, all the Members may submit whatever information they wish as opening statement for the record.

At this time, I would ask that Mr. Watts be joined by his colleagues, Mr. Kolbe, Mr. Knollenberg, and Mr. Scott at the witness table.

It is now my pleasure to recognize the gentleman from Oklahoma, Mr. Watts.

STATEMENT OF HON. J.C. WATTS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. WATTS. Thank you, Mr. Chairman.

Let me say at the outset, we operate in an arena in Washington, and in government in general, at the State and Federal level, where you have Republicans, Democrats, Independents, and men and women of different colors of skin and different religions.

I know every time something is introduced in this city or in this body there is supposed to be opposition. Not everyone is going to agree with every piece of legislation that comes down the pike. There is supposed to be opposition, and opposition comes for many different reasons. Somebody may disagree with a piece of legislation because of its substance, because of a certain element of that legislation, because of the many interest groups that may or may not be represented in a piece of legislation. I hope I can ease the hearts of those who are in this hearing today to say to them that as far as special interest goes, the only special interest I have and that we had in producing this legislation was America's kids, the poor communities, and especially our poor kids and giving them an opportunity to achieve and have every opportunity possible available to them to accomplish the American dream.

So, with that, I want to say good morning, and thank Chairman Shaw and Chairman Cunningham and the Members of the Human Resources Subcommittee, as well as the Members of the Early Childhood, Youth, and Families Subcommittee, for holding this hearing today.

I believe this hearing is evidence of our shared commitment to helping America's poor communities and the millions of adults and children who call these communities home.

According to the Human Resources Subcommittee, over the past 30 years we have spent over $5 trillion on well-intentioned, but failed social welfare programs. These welfare programs have not alleviated poverty. Instead, they have alienated poverty. Poverty is worse today than when these programs originated. This is not compassion, and neither is addicting people to government.

The day has come when we all recognize this failure. It is evident around all of us, from the dilapidated city buildings that once towered as signs of economic prosperity to the children who now wander the streets looking for a chance, but running head on with trouble.

I come before you today as someone who has witnessed this frustration and despair, as a concerned father, a concerned citizen, as a youth minister, and a Congressman.

Just as many of the youth leaders present today, I have spent my life with young people in both rural and urban areas, helping them overcome the challenges and difficulties of their lives. Just like many of the youth leaders here today, I know how "big government" can hinder programs aimed at truly helping and reaching out to those in need.

Today, many social programs aimed at helping our youth and the poor deny moral responsibility and the role of religion. As a result, we have failed those who need our help the most. This is a flaw Congressman Talent and I have consistently seen and something we have sought to address through the Community Renewal Project.

We must begin to encourage economic and spiritual renewal for Americans by promoting work, family, faith, and community, not by discouraging work, family, faith, and community.

I can testify to the damage our current system is producing, and others will testify from living through the experience. My personal experience has taught me that throwing money at a problem is not necessarily a solution. The greatest resource we have in America is not the automobile industry or agriculture or the energy business or the high-tech industry. The greatest resource we have in America is our people, their hopes, their dreams, their ideas, their ambition, and most importantly, their goodness. People, not government, are our biggest resources, and people, not government, change hearts.

Our legislation removes needless government obstacles and allows people to be a resource, to truly help those in need.

I have learned this by traveling around the country and meeting with people who are in the trenches every day, making a difference despite government obstacles, people like Freddie Garcia who runs Victory Fellowship in San Antonio, Texas. Freddie houses hundreds of former drug addicts, men who have been in prison so many

times they have lost count, and he helps put them back on their feet. However, Freddie is limited in what he can do because he doesn't have much money, and the government refuses to give him funding despite his success rate of over 80 percent. This is only because his program involves religion.

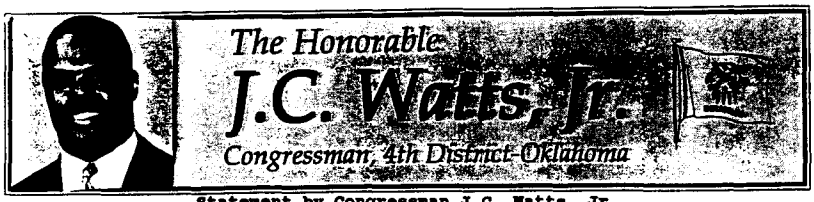
There are also people in my home State of Oklahoma who are doing wonderful things to help others back on their feet, including the Resurrection House in Chickasha, Oklahoma, which helps the homeless, and Doc Benson in Oklahoma City who runs an education and employment ministry. Doc Benson has also achieved an over 80-percent success rate in getting people off the streets, off welfare, into productive lives on a budget of $100,000 a year annually. Can you imagine what he could do if he had used over $5 trillion?

Programs like these are the genesis and inspiration for the Community Renewal Project because these programs work and change lives. They give citizens a vested interest in their community and give them a stake in the system.

I am always amazed at how dramatically people's attitudes change when they feel like they have ownership in a system. Community Renewal allows people the opportunity to make a real difference.

Thank you, Mr. Chairman.

[The prepared statement follows:]



Statement by Congressman J.C. Watts, Jr.
Joint Hearing on the Community Renewal Project
Ways & Means and Economic & Educational Opportunity Committees
July 30, 1996

Good morning. First, I want to thank Chairman Shaw, Chairman Cunningham, and the members of the Human Resources Subcommittee as well as the members of the Early Childhood, Youth, Families Subcommittee for holding this hearing today. I believe this hearing is evidence of our shared commitment to helping America's cities and the millions of adults and children who call these cities home.

Over the past 30 years, we have spent over $5 trillion on well-intentioned, but failed social welfare programs. These welfare programs have not alleviated poverty. Poverty is worse today than when these programs originated. This is not compassion, and neither is addicting people to the government. The day has come when we all recognize the failure; it's evident all around us -- from the dilapidated city buildings that once towered as signs of economic prosperity - to the children who now wander the streets looking for a chance but running head on with trouble.

I come before you today as someone who has witnessed this frustration and despair, as a concerned father, citizen and Congressman. Just as many of the youth leaders present today, I have spent my life with young people in both rural and urban areas, helping them over come the challenges and difficulties of their lives. And just like many of the youth leaders here today, I know how "Big Government" can hinder programs aimed at truly helping and reaching out to those in need.

Today many social programs aimed at helping our youth and the poor, deny moral responsibility and the role of religion. As a result we have failed those who need our help the most. This is a flaw Congressman Talent and I have consistently seen and something we have sought to address through the Community Renewal Project. We must begin to encourage economic and spiritual renewal for Americans by promoting work, family, faith and community, not by discouraging work, family, faith and community.

I can testify to the damage our current system is producing, and others will testify from living through the experience. My personal experience has taught me that throwing money at a problem is not a solution. People, not government, are our biggest resources, and people, not government change hearts. Our legislation removes needless government obstacles and allows people to be a resource -- to truly help those in need.

I have learned this by travelling around the country and meeting with people who are in the trenches everyday, making a difference, despite government obstacles. People like Freddy Garcia who runs Victory Fellowship in San Antonio, Texas. Freddy houses hundreds of former drug addicts, men who have been in prison so many times they've lost count, and he helps put them back on their feet. However, Freddy is limited in what he can do because he doesn't have much money, and the government refuses to give him funding despite his success rate of over 80%. This is only because he involves religion in his program.

There are also people in my home state of Oklahoma who are doing wonderful things to help others back on their feet including the Resurrection House in Chickasha, Oklahoma and Doc Benson's TEAM in Oklahoma City. Doc Benson also has above an 80% success rate in getting people off the streets and into jobs, on a $100,000 budget. Can you imagine what he could do if he had $5.2 trillion to work with?

Programs like these are the genesis and inspiration for the Community Renewal because the programs work and change lives. They give citizens a vested interest in their community, and allow people to make a difference.

After visiting with community leaders and families from across the country, Congressmn Talent and I kept hearing that communities lacked two primary foundations vital to renewal: 1) strong cultural and spiritual roots and 2) a democratic capitalist job creating system which is practically non-existent in urban areas today.

We realize helping communities develop cultural and spiritual roots cannot be legislated, that is why the goal of our legislation is to give people the means to meet this goal -- a helping hand to climb the ladder of economic opportunity. To help reach this end, our bill empowers families in Renewal Communities by establishing Family Development Accounts which can be used for education, creation of a small business, or the purchase of a home. It also empowers families by creating an Educational Choice Scholarship program that would both expand children's educational options and take pressure off budget-strapped public schools.

When I visited a program in Michigan, we asked how important this school choice option was. I personally did not realize how valuable this choice is for people. They told us about their kids who walk through metal detectors everyday to face a drug and gang ridden environment, and the fear they have that their children won't be able to read and write or compete in the job market. After listening to them, it was obvious that school choice is an essential key to empowering people. School choice should not be the private reserve of America's economic elite.

The bill also allows neighborhood groups, including religious groups, to join in public drug treatment and drug counseling efforts. This part of the bill would enable men like Freddy Garcia at the Victory Fellowship to reach out and save more lives.

The bill includes Congressman Kolbe and Congressman Knollenberg's charitable tax credit legislation which would encourage contributions to charities that aid the poor.

To help invigorate the economies of these neighborhoods the bill would greatly reduce the tax burdens born by renewal communities, including a 100% exclusion from capital gains taxes. The bill would also facilitate the creation and survival of businesses in renewal communities by easing regulatory requirements. It also extends the Work Opportunity Tax Credit which encourages businesses to hire disadvantaged individuals.

We have a golden window of opportunity with the Community Renewal legislation to do something for this country. When I look around this room at these children, I am reminded why I believe so strongly in the Community Renewal Act. I am inspired by the men and women who serve as role models and offer moral guidance, and I am excited by the innocent hope I see in our childrens eyes.

I can guarantee everyone here that if we will advocate the principles of the Community Renewal Project: family, faith, work and community over the next 30 years as fervently as we have the Great Society over the last 30 years, we will Save Our Children and the cities across America they call home.

Chairman SHAW. Thank you, Mr. Watts.

Mr. Knollenberg.

STATEMENT OF HON. JOE KNOLLENBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. KNOLLENBERG. Thank you, Mr. Chairman, Chairman Shaw and Chairman Cunningham, for giving us this opportunity to speak in favor of the Saving Our Children, commonly called the American Community Renewal Act, and especially on the subject of its tax credit for poverty-fighting charities.

As you may know, Congressman Kolbe and I have been working on this issue since the beginning of the 104th Congress, and we are pleased to have this opportunity to share our thoughts and experiences.

For the last 30 years, our country has taken a "bigger is better" approach to fighting poverty. We took functions that used to be handled by local government and community institutions and gave them to the Federal Government, but while well intentioned, this approach has been an abject failure. Despite spending the $5 trillion that my colleague, Congressman Watts, mentioned, our poverty rate is still as high today as when we started.

This week, Congress will put the finishing touches on legislation that trades "bigger is better" for a more decentralized method of providing assistance to low-income Americans. It will be a great first step. However, changing the way we provide help to individuals is only half the battle. We must also strengthen the civic institutions that are working from within to rebuild the stressed cities.

Small nonprofits run by those who live in the same community as the people they are helping are absolutely critical to Community Renewal. They treat assistance as a tool by which to change behavior, not as a right or a way of life. They stress personal responsibility and provide hands-on involvement. In short, they do what a government bureaucracy cannot do. They give compassion a human face.

However, unlike their large counterparts, these grassroots nonprofits lack the savvy grant writers necessary to tap into the stream of government dollars, and some of them rightly worry that the receipt of Federal money will force them to abandon the faith-based portion of their programs, but while they may lack bureaucratic sophistication, they more than make up for it in energy and devotion to their communities.

Currently, according to the Congressional Research Service, less than 10 percent of charitable giving in the United States goes to direct assistance to the poor. A charitable tax credit like the one included in the Talent-Watts package would increase the flow of resources and cause those grassroots charities to grow and flourish. Community leaders across the country will find themselves financially empowered and free of government regulations and mandates.

Equally as important, a tax credit would raise the public's awareness and the involvement in these kinds of organizations. While still imperfect, I can think of no better method of ensuring the prompt and efficient flow of services than giving millions of taxpayers a stake in the process.

I can think of no better weapon in the war on poverty than a greater public awareness of the problems at hand. We must begin the transition now, and a charitable tax credit, along with the other reforms embodied in the Talent-Watts proposal, is the best way to do it.

I thank the Chairman, and I yield to my colleague from Arizona, Congressman Kolbe.

[The prepared statement follows:]

STATEMENT OF HON. JOE KNOLLENBERG

I would first like to commend Chairman Cunningham and Shaw for joining efforts to hear testimony on H.R. 3467, "Saving our Children: The American Community Renewal Act of 1996."

I believe most of us here today would agree that we cannot do enough to renew the plight in our inner cities. Whether it is through incentives for businesses or expanding educational opportunities or creating an environment friendly for charitable contributions, it is important to remember that the federal government has not succeeded, in fact it has trapped the poor, limited initiative, stifled progress.

One particular provision in H.R. 3467 that I would like to call to the attention of both committees is the charitable tax credit. As early as January of 1995, Congressman Kolbe and myself introduced H.R. 2225, the "Choice in Welfare Tax Credit Act of 1995." It is our

belief that Charitable tax credit would restore the American tradition of neighbor helping neighbor. Both of us here today continue to believe this and are excited to see that this concept has been embraced by Congressman Watts and Talent in their legislation.

Under the current system, we send taxpayers dollars to washington to be tied up in ineffective programs and ideas. However, a charitable tax credit keeps the money out of washington, empowers individuals, replaces government as the guardian of the welfare state, and increases individual pride in communities.

Mr. Chairmen, there are those who argue an individual does not give because of the deductibility or tax credit. They give because they want to give. This may be true, however, through heightened awareness of such a credit coupled with other economic incentives, we believe the necessary funds will still exist to

help the poor.

Moreover, there are some facts we do know. For instance, for every dollar the federal receives from taxpayers and decides to spends on the poor, only 30 cents meets it target. In prior legislation, our charitable tax credit would limit charities to spend 30 percent on administrative cost. Thus, 70 percent will be directed toward the poor. It does not take a rocket scientist to figure out that 70 cents is leaps and bounds over the 30 cents the federal government provides to the poor. It is common sense and efficient to want increased participation by individuals and the private sector.

Second is the fact that of all the charitable giving, some $126 billion in 1994, under 10 percent is directed toward the poor. Any effort we can do to increase this amount, no matter how small, will directly benefit the poor, and that

certainly is the overwhelming intent of the charitable tax credit.

Third, after 30 years and over $5 trillion dollars, there are more AFDC recipients then ever. The federal government has not proven itself.

Again, it is my hope that we continue the debate on new and innovative ways to help our children and families. A charitable tax credit is such a proposal, and I look forward to working with Congressman Talent and Watts on crafting a Charitable tax credit provision acceptable to all.

Thank you for this opportunity, and I would like to yield the balance of my time to Congressman Kolbe.

Mr. GOODLING [presiding]. Mr. Kolbe.

STATEMENT OF HON. JIM KOLBE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. KOLBE. Thank you, Mr. Chairman. I salute you and Mr. Shaw for holding this hearing. I particularly salute our colleagues, Representatives Talent and Watts, for their work in developing this Community Renewal Project.

As Congressman Knollenberg has explained, the charitable tax credit is a fairly simple idea we have been working on for a couple of years, but I think it is also revolutionary in the sense that it allows the American people to determine how and where their poverty relief dollars are going to be spent and how to spend them most effectively.

We do that because we have faith. We believe in the ability of individuals in communities to know what is working well and to reward private charities for doing what they traditionally have been doing best: providing prompt temporary assistance.

The charitable tax credit has been in progress for the past 2 years. We have remained dedicated to the underlying theme of transferring welfare programs back to the communities and individuals, but we have continued discussions with charitable and not-for-profit organizations to ensure that this legislation will not indirectly harm their work, particularly if they are in other fields than poverty work.

Let me take my remaining moment here to debunk many of the myths surrounding the charitable tax credits.

First, critics have said the charitable tax credit will reduce overall spending in welfare relief programs. This is not true. All economic evidence shows charitable contributions are a normal good. As the price goes down, the demand goes up. Additionally, study after study has found that the private sector can deliver virtually any service in a more effective and cost-efficient manner than the government.

Second, it is charged that the 100-percent credit will increase fraud and abuse in charitable giving and the creation of charitable organizations. There is no reason to think fraud and abuse statutes that currently affect 501(c)(3)s would be different for charitable organizations as part of the charitable tax credit. Anyone who does not follow the law is subject to criminal prosecution that could result in stiff fines, imprisonment, as well as revocation of their 501(c)(3) status.

Last, charitable organizations have expressed concerns regarding paperwork requirements for charitable filing. In consultation with the charitable community, the tax credit legislation comports with the current reporting requirements by modeling IRS form 990. This legislation tries to minimize the amount of paperwork for the charity while still ensuring accountability. For most nonprofits, no additional paperwork would be required. Churches would have to file a 990 form, but only for their qualifying poverty program, and most would be able to file the EZ form.

Americans need to become personally involved in reforming the welfare system. Let us give taxpayers a role in providing assist-

ance, while giving charities the opportunity to compete for welfare dollars in a truly competitive atmosphere.

You will hear today from many of those who work directly in the community and have seen more examples of success than failure. It is these organizations that understand the true needs of their communities and the individuals that reside in them. I think we have a unique opportunity with the Community Renewal Project to help rebuild low-income communities through moral renewal and economic opportunity.

Mr. Chairman, if there is any reason why this legislation should be given serious and prompt consideration, it is the people sitting behind me, in front of you, who really represent the future of this country, and they are here today because they know what a difference this can make in their communities.

Thank you, Mr. Chairman.

[The prepared statement follows:]

JIM KOLBE
5TH DISTRICT, ARIZONA

COMMITTEE ON
APPROPRIATIONS

SUBCOMMITTEE ON
INTERIOR

SUBCOMMITTEE ON
COMMERCE, JUSTICE,
STATE, AND JUDICIARY

COMMITTEE ON
THE BUDGET

Congress of the United States
House of Representatives
Washington, DC 20515–0305

WASHINGTON OFFICE:
405 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–0305
(202) 225–2542
FAX (202) 225–0378

ARIZONA OFFICES:
1661 NORTH SWAN ROAD, SUITE 112
TUCSON, AZ 85712
(602) 881–3588
FAX (602) 322–9490

77 CALLE PORTAL, SUITE B–160
SIERRA VISTA, AZ 85635
(602) 459–3115
FAX (602) 459–5419

Testimony by
The Honorable Jim Kolbe (5th-AZ)
Committees on the Ways and Means and
Economic and Educational Opportunities

July 30, 1996

Thank you, Mr. Chairman, for conducting this joint hearing on the Community Renewal Project introduced by our colleagues Reps. Talent and Watts. I applaud the work done by the two lead sponsors of Community Renewal Project, and am pleased that Rep. Knollenberg and I have been able to join in their efforts.

The recent passage of the welfare reform bill takes the first step toward reform of the welfare system. We believe it is not only possible, but sensible, to turn the administration of the welfare system to the states. This flexibility is critical to allowing states to test assistance programs best suited to their needs.

We believe, however, that the debate should be taken a step further. As Congressman Knollenberg explained, the charitable tax credit allows the American people to determine where their poverty-relief dollars are spent the most effectively. We have faith in the ability of individuals who are in the communities to know what is working well and we reward private charities for doing what they have traditionally done best, and that is to provide prompt temporary assistance.

The charitable tax credit has been a work in progress over the past two years. We have remained dedicated to the underlying theme of transferring welfare programs back to the communities and individuals, but have continued discussions with charitable and not-for-profit organizations to ensure this legislation will not indirectly harm their work. I want to take my remaining minute to extinguish many of the myths surrounding the charitable tax credit.

First, critics have stated that the charitable tax credit will reduce overall spending in welfare relief programs. Not true. All economic evidence shows that charitable contributions are a normal good. As the price goes down the demand goes up. Additionally, study after study have found that the private sector can deliver virtually any service in a more effective and cost-efficient manner.

Second, it is charged that an 100% credit will increase fraud and abuse in charitable giving and in the creation of charitable organizations. But there is no reason to think the fraud and abuse statues that currently affect 501(c)(3)s would be different for charitable organizations as part of the

charitable tax credit. Anyone who does not follow the law is subject to criminal prosecution that could result in stiff fines, imprisonment, as well as revocation of 501(c)(3) status.

And lastly, charitable organizations have expressed concern regarding paperwork requirements for charitable filing. In consultation with the charitable community the tax credit legislation comports with the current reporting requirements by modeling IRS Form 990. This legislation tries to minimize the amount of paperwork for the charity while still ensuring accountability. For most nonprofits no additional paperwork would be required. Churches will have to file a 990 Form but only for their qualifying poverty program and most will be able to file the EZ form.

Americans need to become personally involved in reforming the welfare system. Let's allow taxpayers a role in providing assistance, while giving charities the opportunity to compete for welfare dollars in a true competitive atmosphere. You will hear today from many of those who work directly in the community and have seen more success than failure. It is these organizations that understand the true needs of their communities and the individuals that reside in them. I feel we have an unique opportunity with the Community Renewal project to rebuild low-income communities through moral renewal and economic opportunity.

Mr. GOODLING. Mr. Scott.

STATEMENT OF HON. ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. SCOTT. Thank you, Mr. Chairman, Ranking Members, and Members of the Subcommittees. I want to thank you for the opportunity to appear before you today to address both Subcommittees on H.R. 3467. I want to focus my comments on two provisions in the bill, title IV involving vouchers and title III on substance abuse.

Any education reform proposal we consider, we should seek to enhance the educational experience of our children. The challenge we face is to squeeze all of the resources we can out of our annual budgets for education and use that money as wisely and productively as possible.

In October of last year, the Education Committee held a field hearing in the City of Milwaukee to examine that city's experience with its voucher program. At that hearing, we heard testimony about the voucher programs and how we can give a few families better access to schools, but we did not hear enough about the effect of those programs on those who are left behind.

We found that Milwaukee's voucher program, serving 7,000 students, cost $21 million. That is $3,000 per voucher. If you had used the $21 million for all 100,000 students in the Milwaukee school system, that would have been about $4,000 to $5,000 extra per classroom. Although there was significant satisfaction with the program expressed by those who had received the vouchers, the evidence remained inconclusive as to whether the program significantly improved the education of its participants, but there is no question that diverting $4,000 to $5,000 per classroom cannot help the 93 percent who are left behind.

The Milwaukee voucher program is limited to low-income students at this time, and H.R. 3467 includes a similar limitation. We should not, however, ignore the political reality and suggest that these limitations will be permanent. As more and more students desert the public schools, more and more parents will demand the vouchers so their children can also escape.

Furthermore, out of 140,000 school-aged children in Milwaukee, 40,000 already attend private schools, and their parents can certainly be expected to demand tuition assistance. Once vouchers become commonplace and the public schools become worse than they are now, those demanding the vouchers will represent a much more powerful constituency than those left behind in the public schools. So the pressure on school budgets will be for more vouchers, not improving the public schools.

The effect could be devastating if all 40,000 students now in private schools in Milwaukee received a $3,000 voucher. The cost would be $120 million, or approximately $20,000 to $25,000 per classroom.

H.R. 3467 not only fails to assist most students, it also insulates private schools from fundamental equal protection laws in the area of civil rights. Since H.R. 3467 only prohibits private schools from discriminating based on race, a private school receiving public moneys could discriminate based on gender, religion, and disability,

and it is not clear whether this bill would also allow the schools to discriminate on the basis of national origin.

This provision should also be considered in the light of many studies of voucher programs already showing that school choice programs generally have the result of more racial segregation.

Furthermore, as private schools continue to be able to discriminate based on a student's academic record and behavior, the public schools would be relegated in trying to educate the most difficult students, including the disabled, with less public support. I think we can all agree public schools are not doing as good a job as they should, but the answer to this should be to provide more resources, not less.

Similar to the school voucher provision, title III of H.R. 3467 presents considerable public policy and constitutional issues. Under title III, pervasively sectarian institutions, including churches and other houses of worship, would receive Federal funds to administer substance abuse programs on behalf of the government.

Under current law, religiously affiliated organizations, such as Catholic Charities and Salvation Army, are generally permitted to provide social services with government funds, so long as they are not sectarian or religiously discriminatory.

H.R. 3467 allows providers to require program participants to, and I quote from the bill, ". . . actively participate in religious practice, worship, and instruction; and to follow the rules of behavior [of the religious provider] that are religious in content or origin . . . ."

Mr. Chairman, since the government officials cannot declare one religion valid and another invalid, I would only ask what would happen if the late David Koresh had run a drug program. How would the government declare his religion invalid and deny his followers the benefit of government funds?

Mr. Chairman, neither the voucher nor the substance abuse provision represents sound public policy, nor addresses the real problems of improving quality education or expanding substance abuse treatments to those most in need. We should look for effective means of reform without violating the Constitution by benefiting the few to the detriment of many.

Thank you, Mr. Chairman.

[The prepared statement follows:]

Remarks of Rep. Robert C. Scott
Joint Hearing on H.R. 3467
"The American Community Renewal Act"
July 30, 1996

I want to thank you for the opportunity to appear before you today to address both subcommittees on H.R. 3467, "The American Community Renewal Act". I want to focus my comments on two provisions in this bill- Title IV involving vouchers and Title III on substance abuse. As a member of both the Economic and Educational Opportunities Committee and the Judiciary Committee, I have concerns that this bill threatens not only efforts to ensure that ALL children are educated but also the equal protection clause and the wall between church and state.

Any education reform proposal we consider should seek to enhance the educational experience for all children. It certainly should not support the exclusion of certain groups of children. The challenge we face is to squeeze all of the resources we can out of our annual budgets for education and to use that money as wisely and productively as possible.

In October of last year, the Education Committee held a field hearing in the city of Milwaukee to examine that city's experience with its voucher program. In that hearing, we heard testimony about voucher programs and how we can give a few families access to better schools, but we did not hear enough about the effect of these programs on the students who are left behind.

We found that Milwaukee's voucher program, serving 7000 students, cost $21 million. That's $3,000 dollars per voucher. If you had used the $21 million for all 100,000 students in the Milwaukee school system, that would be $4000 to $5000 per classroom. Although there was significant satisfaction with the program expressed by those who had received the vouchers, the evidence remains inconclusive as to whether the program significantly improved the education of its participants. There is no question, however, that diverting $4,000 to $5,000 per classroom cannot help the 93% students left behind.

The Milwaukee voucher program is limited to low income students at this time and H.R. 3467 includes a similar limitation. We should not, however, ignore political reality and suggest that this limitation will be permanent: as more and more students desert the public schools, more and more parents will demand vouchers, so their children can also escape. Furthermore, out of 140,000 school-aged children in Milwaukee, 40,000 already attend private schools - and their parents can certainly be expected to demand tuition assistance. Once vouchers become commonplace and the public schools become worse than they are now, those demanding vouchers will represent a much more powerful constituency than those left behind in the public schools, so the pressure on school budgets will be for more vouchers, not improved public schools. The effect could be devastating: if all 40,000 students now in private schools in Milwaukee received a $3,000 voucher, the cost would be $120,000,000 or approximately $20,000 to $25,000 per classroom.

H.R. 3467 not only fails to assist most children, it also insulates private schools from fundamental equal protection laws in the area of civil rights. It does so by explicitly stating that government assistance in the form of scholarships or transportation assistance does not constitute Federal aid to a participating choice school. Therefore, the government may not regulate beyond those statues cited in the legislation. Since H.R. 3467 only prohibits private schools from discriminating based on race, a private school receiving public monies may discriminate based on gender, religion, and disability, and it is

not clear if this bill would allow schools to discriminate on the basis of national origin. This provision should also be considered in the light of many studies of voucher programs that already show that school choice programs generally have the result of more racial segregation.

Furthermore, as private schools will continue to be able to discriminate based on a student's academic record and behavior, the public schools will be relegated to trying to educate the most difficult students, including the disabled, with less public support. I think we all can agree that the public schools are not doing as good a job as they should; but the answer to this should be to provide MORE resources, not LESS.

Similar to the school voucher provision, Title III of H.R. 3467 (relating to substance abuse programs) presents considerable policy and constitutional issues. Under Title III, pervasively sectarian institutions, including churches and other houses of worship, would receive federal funding to administer substance abuse benefits on behalf of the government. Under current law, religiously affiliated organizations, such as Catholic Charities and the Salvation Army, are generally permitted to provide social services with government funds, so long as they are not sectarian or religiously discriminatory.

H.R. 3467 allows providers to require program participants to "...actively participate in religious practice, worship, and instruction; and to follow rules of behavior [of the religious provider] that are religious in content or origin..." (from bill language). Therefore, H.R. 3467 as written would authorize the use of taxpayer dollars to directly coerce government beneficiaries to practice certain religious beliefs.

Proponents suggests that there is no Establishment issue because participants choose to participate or not. But H.R. 3467 fails to adequately provide for alternative services. Nor does it provide participants with notice that they have a right to seek other non-religious services.

Putting aside the constitutional implications of this, there are practical consequences of this policy as well. Since government officials cannot declare one religion valid and another one not, I would ask if the late David Koresh ran a drug abuse program, how would the government declare his religion invalid and deny his followers the benefit of government funds.

The voucher and substance abuse provisions represent poor public policy: they fail to address the real problems of improving the quality of our children's education and expanding substance abuse treatments to those most in need. We should look for effective means of reform without violating the Constitution or benefitting the few to the detriment of the many.

Mr. GOODLING. Mr. Talent.

Mr. TALENT. I thank the Chairman. We have other panels waiting. I appreciate the comments of my colleagues.

Let me just make a point to my friend, Mr. Scott, if I could, particularly with regard to the school choice provisions.

Here is what I can't get around, and I understand the sensitivity of people concerned about the existing establishments. I want to move with as much delicacy and with regard to that sensitivity as I can, but what I can't get around is what we have is just incontrovertible that in many of the most distressed neighborhoods around the country, the local public schools are, for one reason or another, simply failing to educate the kids adequately.

We know we can't renew these neighborhoods without a comprehensive approach. That includes jobs, home ownership, and schools. We know that in order for kids in these neighborhoods to have equal opportunities, they must attend good schools. We know there are schools that are succeeding and that people of middle or higher level incomes have access to them.

It is just hard for me to get around the very simple point that if we can provide access to this kind of education to these kids, then we ought to do it. We can't just let another generation go.

I wish we could solve the overall problem overnight as well, but I don't see that happening.

You mentioned taking funds away from the public schools. This bill is a scholarship rather than a voucher in the sense that it is new money. In other words, there would be no money taken away from the kids in public schools, and I wonder if that might make a difference for you.

In other words, the downside for the public school is that it had 25 kids in the class before and now it has 22 kids and the same amount of money. It would seem to me, if anything, this makes it easier for them to accomplish their goals.

Would that make any difference to you?

Mr. SCOTT. If you are going to put new money in education, the question is whether or not it would be better spent on vouchers or on the public schools themselves.

As I indicated, the voucher program in Milwaukee costs approximately $4,000 to $5,000 per classroom. If you are going to put $21 million into the system, it seems to me that that would be a better place to put it.

The people that are getting away are the most able students, the ones whose parents are most involved, and the ones that are left behind are the ones that need the most help.

My view is, if you are going to spend $21 million more on education, it should be spent to improve the situation.

We can agree the schools in inner cities are not doing the job they ought to do. If we have $21 million more to apply for it, my view is it ought to be applied to those schools and not giving a few students a better education and relegating the rest to a worse education than they are getting that we all agree is bad.

Mr. TALENT. Mr. Chairman, I appreciate my friend's comments and the work he has done in this area. We are all groping for the right solution.

I just want to note for the record that in Milwaukee, choice schools provide education. Here is a figure; for example, about $3,000 per child; compared to the public schools, about $7,000. I don't know that the evidence really indicates the kids going to these schools are harder kids to educate.

The verdict—in a lot of respects—is not in. I will grant the gentleman that. I think the parents are happy with the program, with its results. It seems to me this is something, a direction that would be promising for us to pursue.

I will just say that for the record, and I thank the Chairman for the opportunity.

Mr. SCOTT. Mr. Chairman, could I respond for about 10 seconds on that?

Mr. TALENT. I cut the gentleman off.

Mr. SCOTT. Many of the private schools are subsidized by church and others. So the dollar-to-dollar comparison, I think, needs to be looked at closely.

Thank you, Mr. Chairman.

Chairman SHAW [presiding]. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman.

To Representative Watts, I have a serious question about how vouchers for students with disabilities would be calculated. Our Subcommittee has jurisdiction over that, and your bill seems to base the voucher on the average per-pupil cost associated with children with the same needs or handicaps.

Does that mean whatever entity the community creates will develop sort of a list for each disability and the average educational and health care cost associated with that disability? If that is the case, I believe it would directly contravene the intent of IDEA, which is based upon meeting the individual needs of disabled children.

How would you calculate the value of that voucher for the disabled student going to the school of choice?

Mr. WATTS. Mr. Kildee, before I answer that question, let me say this. It has been mentioned, and we all have our reasons for supporting voucher systems or not supporting the voucher systems, and you shared your thoughts in your opening statement. Mr. Scott has shared his thoughts today.

Kids in public schools today feel they are being discriminated against, for race, gender, religion, or for whatever reason.

Public schoolteachers are strapped by regulations that the NEA fights for, that the Department of Education fights for, that hinder their ability to teach and discipline and do the things that they need to do to prepare our kids to compete in a global marketplace and making sure they can read, write, and do arithmetic.

We have kids in inner cities, in poor communities, who are forced to go to schools where they carry guns and knives and have to walk through metal detectors, and we ask them to learn in that type of environment. It baffles me that we sit here and continue to defend that system.

I am not painting it with a broad brush and saying all public schools are bad.

Mr. KILDEE. May I clarify my question?

Mr. WATTS. As I said, before I answer the question, I wanted to share that. I am not painting with a broad brush and saying all public education systems are bad because they are not, but we do have kids, especially our poor kids, who are trapped in that system.

Concerning how the voucher systems work with certain disabilities, we use the same educational standards for private schools within that locality that existed as of January 1, 1996. There is no discrimination or no rules in place today that says we cannot create the type of formula that would allow or would make sure a student is taken care of if their parents send them to a private school.

Mr. KILDEE. The question is, Who would determine how much that voucher would be worth in order to meet the necessities of the IEP, which is agreed upon with a parent?

Take, for example, Down's syndrome. Within Down's syndrome, there is a gradation of need, both educational and health care needs. How would you determine how much the voucher would be if a student transfers from Jefferson High School to St. Mary's High School? How would you determine the value of the voucher needed to take care of both the health and educational needs of that student, and who would determine that?

Mr. WATTS. Mr. Kildee, in H.R. 3467 and the bill itself, if you turn over to page 115, you will see that the value of each scholarship is defined there. The renewal community shall determine the value of scholarships provided each semester within the renewal community, except that the value of a scholarship provided for a renewal community shall not be less than the minimum value specified in paragraph 1 and shall not exceed the maximum value specified in paragraph 2. That is spelled out in the bill itself.

Concerning disability, if a student has a disability, the average per-pupil cost per semester in the public school system or systems in the renewal community in the preceding year shall be calculated using the same cost for students with the same special needs or handicap category for such period of time. That is defined in the bill on pages 115 and 116.

Mr. KILDEE. I would like to work with you more to make sure that it is coordinated well with IDEA, which we just reauthorized again this year. The IEP is an essential part of IDEA, and I would like to work with you to make sure that we don't damage that important centerpiece of the law.

Mr. WATTS. I would be delighted.

Mr. KILDEE. Thank you.

Chairman SHAW. Mr. Goodling.

Mr. GOODLING. First of all, I want to thank you for bringing the legislation before the Congress, not because I think it is perfect legislation, but you are causing the Congress to do a little thinking.

I have served on the Education Committee for 20 years, and the only concern was if we only had more money, we could cover more children. My question was always, Cover them with what? If you are not covering them with excellence, then you are smothering them, and above all, don't smother them.

Education reform is just like welfare reform. We couldn't truly reform welfare until we admitted on both sides of the aisles that what we had done in the past was wrong. If we can do the same here, I think we can bring about legislation that will be beneficial.

Let me caution you in one area, and I come from a totally different perspective as those who lobby for public education and from those in the Congress who support those who lobby for public education.

I think the only way you can have choice is through the Tax Code, and I say that because I am thoroughly convinced that in my lifetime if you go a choice route, and include private and parochial schools, then you will destroy private and parochial schools. Private and parochial schools, in my estimation, would be required to accept all students who wish to attend. They would keep all students who wish to come, just as the public school must. They would receive all of the mandates from the Federal Government and the State government, and they would be destroyed as a private or parochial school. That is my opinion, and I think I will live to see that if we move that way without going through the Tax Code.

I think it can be done through the Tax Code without getting into that kind of situation. I caution you to look carefully at how you do that because I believe in the long run, you destroy private and parochial schools unless it is done through the Tax Code.

Thank you, Mr. Chairman.

Chairman SHAW. Mr. Blumenauer, do you have any questions?

Mr. BLUMENAUER. No.

Chairman SHAW. Taking you in the order that you arrived, you have no questions.

Mr. Fattah.

Mr. FATTAH. Let me ask a quick question to my colleague. First, let me thank you for your interest in these matters and your effort, Congressman Watts, but a quick question just by glancing at this issue on school choice.

I note that the bill makes these scholarships available for alternative schools and charter schools, religious schools. It does not mention how they would relate to home schooling which is an important issue. Would these scholarships be available for home schools?

Mr. WATTS. Home schools have not been addressed in this legislation.

Mr. FATTAH. They would not be available, then, under this drafting of the bill?

Mr. WATTS. No.

Mr. FATTAH. OK, thank you.

Congressman Scott, you made a number of points. Congress is an interesting place. It is hard to follow some of the seemingly contradictory focuses of our work. When we talk about defense spending, for instance, there is a need to strengthen defense, and when we say strengthen it, we give more money to it. When we talk about protecting veterans, we put more money in. When we say we want to deal with the problems of education, we seem to think that everything other than money is what is needed.

Money is not going to solve all of the problems at hand, but it is of note that if we wanted to look at low-income communities, both in urban or rural areas in our country, and look at a government service that was not being adequately effective, I don't think we would stop at schools. Police departments have not proven to

be able to make these communities safe, but we spend more and more money at it.

It would seem that the logic that would flow from the school choice is that we could take, for instance, people who didn't think they were being adequately protected by the police department and give them a scholarship or voucher, let them hire a private security firm or get a burglar alarm.

What happens as you take away from these common goods, whether they are police services, fire services, or school services, you do, in fact, create a situation where there are fewer resources available, whether they are new, resources that are being diverted, or whether they are resources that exist that are being diverted, but I think you have said in your comments that you have a concern about the resource side of this.

I would like you to speak to the other side of this, which is not the money side, but one of the things public education has accomplished in this country, notwithstanding all of the criticisms of it, is it has been the vehicle by which the United States, since its work in this area has tried to forge a society in which people can get along, develop the social skills, develop the kind of fabric of a community that you will not have if you have people proceeding along 1,000 different paths.

You talk about the whole definition of religious schools. I mean, there could be, beyond the mainstream religious efforts in our country, any number of entities that could be established or promoted through the use of these scholarship dollars that could work at cross-purposes, perhaps, to the whole notion of community.

So I would be interested in your comments.

Mr. SCOTT. I think what you pointed to is what your vision of the future is and where public schools fit in, and I think you have pointed to a lot of the points I would have said, whether we want an integrated society or a segregated society. All of the evidence says that we have private school choice. People tend to pick with a racially polarized view.

The common experience, the joint culture, people growing up together, I think, is very valuable for the country.

Whatever happens with this bill, the gentleman from Oklahoma said people will benefit, but the fact is, 95 percent will be left behind with whatever is left in the public schools without the public support, maybe only 90 percent, maybe only 70 percent. The vast majority will have to go to the schools that are left.

You drain the public schools of a lot of the value of the common culture, people coming together. We have a multicultural society. I think there is significant value in people going to public schools together.

Mr. FATTAH. What about the issue of the local government which runs these schools that are in the business of providing public goods, whether it is public safety or public education?

As you move people away from the notion of these public goods to private choices as individuals that people would make with or without additional resources, how do we keep local communities moving in some notion of collective good for the entire community?

Mr. SCOTT. I think one of the things you can't ignore is the political support for public schools, the fact that everyone relies on the

public schools, everybody supports the public schools. To the extent most of the people now would be in private schools, would be choosing and taking the vouchers, the support for public schools would diminish, and as bad as they are now, there is no question in my mind they would be worse.

All of the political pressure would be against public schools, in favor of more and more expensive vouchers.

Mr. FATTAH. Thank you, Mr. Chairman.

Chairman SHAW. Mr. English.

Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

I suppose education is about the biggest political football that exists in this country because everybody who runs for public office is in favor of education.

I am reminded of, back in the Bush administration, when he came forward with his proposal on education and he wanted to be known as the educational President. I was in the Georgia State Senate at the time and became pen pals with part of his staff because I immediately wrote and called and suggested that if President Bush wanted to go down in history as the educational President, then at the Federal level we put our moneys where our rhetoric is. We should send these funds down to the State and local governments to use for educational purposes. We must cut the Federal strings that are attached to Federal funds and allow the State and local governments the flexibility to use those funds as they best see fit, so they can use it for educating students and not as a political football.

Also, many of the local systems don't have the tax base they need at the local level to support education as well as they should. I come from a rural county in Georgia, have been a county commissioner, and have levied taxes at the local level. I know the resistance to taxation based on the property tax digest.

I want to further state, Mr. Chairman, that if we are going to have a successful welfare program—which we are all debating and have been debating now for several months in this Congress—we are going to have to have some tax reform. Tax reform that will encourage the investment, encourage and stimulate the economy in the private sector to increase the number of jobs. If we are going to successfully remove people from welfare roles, we must have the payrolls available to move them to.

I appreciate the fact that our colleagues have come forth with a bill that will have some tax reform, will encourage investments in certain areas, and will develop a tax base in a lot of our inner cities if we follow through with this type of legislation, maybe not exactly as this has been written, but in this area and with this focus. It will not only create jobs in the inner cities, giving the people more opportunities, but it will also create a stronger tax base, so that local governments can have more funds at the local level to access for the purpose of education.

So I just say that and appreciate the fact that you all have come forth with this, and hopefully we will be successful. I think, based on the trend of legislation and the passage of legislation in this town in the last 18 months or so, we are and will be heading in

the right direction toward education and toward job creation at the local level and especially in our inner-city areas.

Thank you, Mr. Chairman.

Chairman SHAW. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman.

I would simply like to thank my colleagues for coming here to testify. I think they have come to this hearing with an agenda of issues that offer a real alternative vision for how to revitalize our inner-city communities and to build the jobs base and revitalize neighborhoods without creating bureaucratic and inherently inflexible programs.

I want to congratulate them, and I appreciate very much their efforts to offer an alternative agenda for addressing many of our urban problems.

Thank you, Mr. Chairman.

Chairman SHAW. Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman. I want to thank you and Mr. Cunningham for conducting this hearing and to thank our colleagues for bringing this legislation before us.

It is not the first time that our Subcommittee has confronted the question of the many choice mechanisms that are currently a part of the public debate all across the country and the many forms they take.

Education policy should be a matter of broad public debate, but it seems important that educators and the public alike guard against taking untested ideas and using the most critical years of children's actual lives for undocumented experimentation. That is not to say that we shouldn't try new things.

In the State of Ohio, there is a great deal that is being done in terms of both the planned and, I suspect, unplanned driving of dollars to nonpublic schools. On the one hand, the State legislature has proposed to use the city schools of Cleveland, Ohio, for an experiment in choice. On the other hand, in a way that is a surprise to many people, Ohio last year distributed $136 million of State money to private schools at $599 per pupil. Ohio pours more money into private educational institutions than any other State.

Those State dollars last year would have been enough to have maintained the solvency of every school district that slipped into the State's emergency fund last year.

It is ironic that in the very year that Ohio spent $136 million on private schools, the GAO concluded that our State's school buildings have deteriorated to the point where they are the worst in the country. The problems include all of the things that you can imagine—faulty wiring, leaky roofs, and structural decay.

At the same time all of this is going on, since 1990, we find that Ohio has spent $209 million to repair its school districts, and during that same time, it has directed $509 million to private schools.

The fact is, this debate about choice is about broader issues, and if we are going to undertake it, it seems to me we must undertake it in a coherent way.

Last year, our colleagues, Mr. Weldon and Mr. Riggs, introduced legislation to attempt to undertake a learning process about various choice structures and provided that modest test with a commitment that we would share in bringing a level of accountability

to it. While I share in the views of my colleagues, Mr. Goodling and Mr. Kildee, in general, I also think if we are going to conduct a test of this kind, we must have a level of accountability that is rigorous.

To quote Bruce Fuller of Harvard University, "The school choice movement is wide and robust, but actual choice experiments remain young and modest. Clearly, there is a need for more robust evaluation."

While I don't intend to go through the entire range of evaluative tools that I think are important to bring to this much broader-based experiment that is proposed here, just let me suggest that any measure that doesn't look at before and after testing in terms of the results of student performance and the geographic mobility of students, the effective choice on neighborhood schools, the consequences in terms of the long-term supply of schools and slots in classrooms and of the consequences on the overall system of education to all students, both those in a choice program and those not, really fails to undertake the kind of understanding that we would need to go to the level of expenditure that is contemplated in this bill.

As I understand it, this measure would have two evaluations, after 2 and 4 years and would expand this program from $200 million to $400 million to $500 million to $1 billion to $2.5 billion, successively. That may be appropriate, but only if we understand the consequences of the lessons.

So, for my part here today, rather than ask questions, let me pledge my commitment, as I did to my friends on the Subcommittee, to work with the sponsor of this legislation to come forward with an appropriate valuative mechanism if any of this is thought in terms of enactment.

The debate is healthy. I think we ought to undertake it, and I hope the debate can be far reaching and in depth so that we don't make mistakes in the lives of children.

I yield back the balance of my time.

Thank you, Mr. Chairman.

Chairman CUNNINGHAM [presiding]. Thank you.

I would make just a couple of brief comments, and then I would yield to my friend, Mr. Johnson.

I support school choice, but I have some concerns. First of all, many people have supported alternative types of education. For example, charter schools. When they first came up, there was a lot of fighting against them, but I think they have proven to be very, very good programs.

Some folks have gone off with alternative school systems of just home schooling, and I look at Wisconsin and New Jersey and I know those work fairly well, but I have some concerns; for example, transportation or if you have students that aren't scoring very well at a poverty level when they are put into a position, will that school have to take that child when they are trying to build up their ratings to compete with other schools and so on? I think transportation is probably the biggest concern.

I think there are many areas where school choice would work. I don't know, and I am being honest, being a supporter of choice, that it would work in all situations. I think we need to look very,

very carefully, so that we don't damage the public school systems before we get into it. Those are my main concerns.

I would yield to Mr. Watts.

Mr. WATTS. Mr. Chairman, thank you.

I would like to address your comments. I agree with you. I think we need to consider what the debate is. Mr. Sawyer made an excellent comment in saying that education is more than just money. Money is a critical element, but it is about more than that. I think the real thrust behind education is excellence to make sure our kids can read, write, and do arithmetic, to prepare them to compete in a global marketplace.

There are poor kids in many parts of the country. It doesn't matter in this world if they are from a poor community. If they can't read, write, and do arithmetic, they are going to be left out.

We talk about public education as far as trying to fund public education. The dollars that come from this program will not be the sole source of funding for a private school, just like the public dollars that a public institution receives for education are not the sole source of their funding.

I have done many fundraisers for educational foundations in the State of Oklahoma.

Chairman CUNNINGHAM. Can I interrupt to ask the gentleman a question?

Mr. WATTS. Yes.

Chairman CUNNINGHAM. Would that private school be forced to take a low-income minority child that wasn't doing very well?

Mr. WATTS. Before?

Chairman CUNNINGHAM. Yes, that was making Ds or Fs and you wanted that child to go into a private system to get a better education. Would that school be required under your envision to take that child?

Mr. WATTS. Yes, they would.

Again, this is not an indictment on the entire public education system. There are good public schools out there that work. There are good public school teachers out there who want to teach. There are good public school principals out there who want to administer. They want to do all the necessary things so we can get the results we all want.

In a town meeting once I had a gentleman stand up who was a public schoolteacher. My sister is a public schoolteacher. She is a special education teacher, bless her heart. She has a difficult challenge, and I think God has a special place in heaven for those special education teachers who commit their lives to making sure those kids are getting the tools they need to survive.

This man stood up and said to me, "Mr. Watts, you are on record as supporting the voucher system." I said, "Yes, sir." He said,

> Well, tell me this. If you support voucher systems, I would just hope you would understand that we as public schoolteachers have different restrictions on us than the private schoolteachers do.

I said,

> Sir, that is the point. That is the very point. I want those restrictions taken off of you. I mean, we have got to have safeguards, no question about that, but I want those restrictions taken off of you that you can teach and you can do what you do best.

I am not an educator. I don't even claim to do that, but I have five wonderful, healthy, vibrant children, and I want them to be given every opportunity they possibly can to be educated properly.

Our poor kids, it is the poor kids in these inner cities who suffer from poor education and a lack if opportunities. They have to go to school. They have to go to school every morning and walk through metal detectors, and kids carry guns and knives, but they can't get out of that system. They can't get out of it.

We would say that no, no, no, we don't want them to have the opportunity to go somewhere. We have had an opportunity to do something about this. We have had an opportunity to look at this situation before, and nothing has been done to this point. We keep saying we need more money, we need more money, and we need more money.

Sure, we need to be adequately funded, but funding is not all that the education is made of.

Chairman CUNNINGHAM. I see my time has expired.

Thank you.

Chairman SHAW [presiding]. Mr. Johnson.

Mr. Weldon.

Mr. WELDON. I thank the Chairman, and for the sake of time, I will just make a few general comments and yield back the balance of my time.

I very much thank J.C. Watts of Oklahoma and Mr. Talent for the hard work they have done with this legislation.

The reason I support this legislation is probably too long for me to include in a 5-minute comment, but let me just mention the two hot-button issues that are raising the most concern from the Democrats regarding the issue of vouchers. My intent in supporting this legislation is very, very simple.

Upper middle class and upper class families have been escaping the failing public school systems because, very simply, they have the money to do so. The intent here is to give poor people the same kind of abilities that these more wealthy families enjoy.

Those families engage in accountability. There have been issues raised by some Members about concern for accountability. The parents who take their children and put them in private schools hold those schools accountable. What we are trying to do is give poor families that same authority and ability.

Regarding the faith-based drug treatment centers, I have some experience in treating drug addicts. As a physician, I frequently got involved in taking care of them. The track record of success in keeping particularly young people off of drugs in the nonfaith-based programs is poor, and that is where we are pumping our money.

The faith-based programs are better. They are not 100 percent, but they are better. What we are talking about is putting our money in a system that works better.

Indeed, I have spoken to judges who will only relegate some teenaged drug abusers into these faith-based programs because they have learned from their experience that these are the only systems that work, and that is what we are trying to be about here, trying to find real solutions that work.

Mr. TALENT. Would the gentleman yield?

Mr. WELDON. I would be happy to yield.

Mr. TALENT. It is just for a comment.

I think what the gentleman said is worth emphasizing. All of these arguments against the scholarship program, for example, the public goods arguments, they don't mention the fact that people with the means to do so are, as Mr. Scott said, escaping. That is the word he used.

So what we leave is for the children of the poor to hold down the fort in schools that we all acknowledge are seriously flawed.

Mr. FATTAH. Would the gentleman yield for 1 second?

Mr. TALENT. It is the gentleman's time, but when I am finished, if he wants to, that is fine.

They are the ones left there, and we just keep coming back to that hard reality that all of these arguments just don't deal with arguments made if we put this money into public schools.

Over the years, we have increased spending geometrically on all levels of government into those schools, and they are not succeeding. In fact, they are failing. Again, everyone admits that. I don't know if there is any empirical evidence to suggest a relationship between the amount of money we are spending at this level and the performance of those schools.

This is an alternative which we have reason to believe will work for these kids. It is working for other people who have the means to take advantage of it. To me, to say that we are going to keep casting about trying to find some overall solution while these kids continue and not to get the education that they need, it shows, although certainly not intended, a kind of insensitivity to their situation.

I thank the gentleman for yielding.

Mr. WELDON. I would like to yield back the balance of my time.

Chairman SHAW. Mr. Kildee had an additional question.

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. Watts, section 408 of your bill, page 118, reads,

> Eligible children whose parents have applied to receive a scholarship under this title shall be subject to the admission criteria of each scholarship school or alternative public school, and nothing in this title shall be construed to guarantee the right of an eligible child to attend any scholarship school or alternative public school.

Isn't that cherrypicking? Can't they pick the ones they want and even maybe go out and recruit or advertise? It seems to me that language is exactly cherrypicking. Would you comment on that?

Mr. WATTS. Would you repeat your question again?

Mr. KILDEE. My statement is that that seems to be cherrypicking. Here is an eligible student, but that alternative public school or scholarship school can turn that person down. It would seem to me that that school is then going to be cherrypicking and picking those whom they want to come to their school and tell the others they can't come to their school.

Mr. WATTS. Mr. Kildee, I guess that is one way to look at it. However, if you have a qualified student, why would that student not be admitted to the alternative school or to the private school?

Mr. KILDEE. I can think of a hundred reasons. I taught school for 10 years. I had some students who very often I was tempted to

wish they would drop out. But in a public school, that is not an option.

Mr. WATTS. I don't think that a student qualifies necessarily for a school on academic requirements alone. That is why you have charter schools. That is why you have alternative schools.

I have spoken in many of those alternative schools, and what the public schools have done, they have sent certain students to different schools to try and create a certain set of circumstances for those children to be able to learn and to be educated. The public school does that today.

Mr. KILDEE. Why did you put that language in there? What is the purpose of the language? It gives the receiving school the ability to say no to a student who applies for admission there.

Mr. WATTS. Why do public schools say no to those kids that they send to different educational institutions?

Mr. KILDEE. The public school has to take the students in that school district.

In Flint, Michigan, the Flint Board of Education has to take the students who live in Flint. Here you are saying the scholarship school does not have to take a student applying.

Let me give you an example. You have students applying for this scholarship school, you have students who are all A students with a good record of conduct, and you have students who are all D students with maybe some behavioral problems. It seems to me the receiving school is going to be cherrypicking by your language here.

Mr. WATTS. Well, not every school.

There is a school in Oklahoma City. It is an advanced science and math school. It is a public entity for special students. Not every student that applies at that school can get in. That is the same difference.

Mr. KILDEE. All right. What happens?

Mr. WATTS. That is the same difference.

Mr. KILDEE. What happens to the student who, say, is a good B, B-minus student, his parents want a better school, they apply to one of these scholarship schools, and the school says we have the choice between a B-minus student and an all-A student? Under your language here, you are going to put in that school a temptation of saying we are going to take the very top students rather than the B-minus students.

Mr. WATTS. No.

Mr. KILDEE. Your language invites that.

Mr. WATTS. The student would have to be within the renewal community, and this language does not encourage, in my opinion, cherrypicking. It just gives private schools and alternative schools the same option that public schools have in determining how they create an environment for the kids to learn.

Mr. TALENT. Would the gentleman yield?

Mr. KILDEE. Yes.

Mr. TALENT. It is to make clear the schools don't have to lower the standards, and not just academic, which standards are why a parent might want to send her child there in the first place. There isn't any evidence where these kinds of choices are allowed, either because people can pay for it themselves or because there is some program that moves the better students.

In fact, I think there is evidence to the contrary. If they are doing well at the public school, they are less likely to move, which is pretty commonsensical.

Most of the time, if you have the money and your child is having problems, then that is when you consider moving your child to a school that meets his special needs. The question is whether the poor kids are going to have the same opportunity, I would say to the gentleman. I think that is the experience in Milwaukee.

Mr. KILDEE. It says, "nothing in this title shall be construed to guarantee the right of an eligible child to attend any scholarship school or an alternative public school." If that isn't cherrypicking, I would like to know what it is. I am asking this sincerely. I don't think you want that.

Chairman SHAW. The time of the gentleman has expired. I would suggest if you get to markup, perhaps you might want to make some amendments.

Mr. KILDEE. Thank you, Mr. Chairman.

Mr. WATTS. Mr. Kildee, let me say this. The children in Milwaukee who get the scholarships are the lower achieving students. They are taking the lower achieving students and trying to create a system that will encourage them and nourish them through the system and give them an environment in which they can learn.

Under your definition, it seems that a public school with an undisciplined child that created havoc would not be able to discipline that student and then terminate her admission.

Mr. KILDEE. Just in summary, you have an A student disciplined and a B student disciplined. I still think you are going to have cherrypicking of the school preferring the A-disciplined student rather than the B-disciplined student.

Mr. WATTS. Under your definition, the private schools are no different than the public schools.

Chairman SHAW. Mr. Watts, I am quarterback of this particular team and I am taking the ball back.

Mr. WATTS. OK.

Chairman SHAW. We will have to leave further discussion of that particular item to other hearings.

I appreciate the panel very much for being here with us today. You have done a good job, and I compliment you on a good start on your legislation.

I would now like to introduce the second panel that I would ask to come up and sit at the witness table, and you will be recognized in the order in which I introduce you.

We have Robert Woodson, who is the president of National Center for Neighborhood Enterprise in Washington, DC; Star Parker, who is the founder and president of the Coalition on Urban Affairs out of Los Angeles, California; C. Scott Dempwolf, who is the director of the Crispus Attucks Association, Inc., of York, Pennsylvania; and he is accompanied by Robert Simpson, who is executive director; Sharon Daly, who is the deputy to the president for Social Policy of Catholic Charities in Alexandria, Virginia; and Rev. Earl Jackson, the national director of Community Development of the Christian Coalition, Chesapeake, Virginia.

Ladies and gentlemen, we have your written testimony, all of which will be made a part of the record. We would invite you to summarize, if you are comfortable doing so.

The Chair now recognizes Mr. Woodson.

STATEMENT OF ROBERT L. WOODSON, SR., PRESIDENT, NATIONAL CENTER FOR NEIGHBORHOOD ENTERPRISE, WASHINGTON, DC

Mr. WOODSON. Thank you, Mr. Chairman.

Just before I give my testimony—unfortunately, I have a previous speaking engagement and I have to leave at 12:10.

Chairman SHAW. You can go ahead and proceed, and then you will be excused.

We thank you for being here.

Mr. WOODSON. Thank you, Mr. Chairman.

The Community Renewal Act is one of the most important pieces of legislation to be introduced in the past 2 decades because it holds the promise of rescuing the poor from the suffocating grip of their saviors of the past 30 years.

Chairman SHAW. Mr. Woodson, pull the microphone back a little bit. Pull it back toward your face a little closer, so we can hear you better, please.

Thank you.

Mr. WOODSON. Thank you.

The Community Renewal Act is one of the most important pieces of legislation to be introduced in the past 2 decades because it holds the promise of rescuing the poor from the suffocating grip of their saviors of the past 30 years. Provisions of this act would answer, once and for all, whether the Federal Government will continue to pour billions of dollars each year into subsidies through an expansive poverty industry whose professional managers and staffs have prospered, while the pain and suffering of the poor continues unabated; or will the Federal Government embrace an alternative approach to aiding the poor, providing them with the tools to be agents of their own deliverance.

The clash of these two principles and these two approaches is clearly evident and illustrated by the list of those who opposed this legislation, which consists of the professional providers of the substance abuse industry, the teachers unions, and all of the others who make up the poverty industry.

By contrast, in just 3 days, when we sent word out through our network of grassroots organizations, 150 grassroots organizations responded in support of this act. These are the people who share the same zip code as those experiencing the problem, and they wish to change from clients into customers.

In the few minutes that I have left, I would like to emphasize how desperate the need is for a change in the approach where we change the locus of power from the traditional provider industry to those in the communities who are suffering the problem.

A community leader by the name of Alverta Munlyn and her colleagues from the Perry School Family Service Center live in a neighborhood that is a few minutes drive from here, where the infant mortality rate is four times the national average. Elderly people there have suffered needless amputation of limbs because their

diabetes goes untreated; yet, they are compelled to go to the local public health clinic that has been totally insensitive to their needs. Elderly people and others with lumps on their breasts have to wait 2 and 3 months to see a doctor.

A 13-year-old girl who had a baby was seen by the clinic, but there was no followup, and Ms. Munlyn found her wandering in the rain with this newborn baby because there was no followup.

In response to this, the community established its own clinic and went to Providence Hospital and Georgetown Hospital, raised $3 million, secured the support of the city's health commissioner and identified an abandoned school and put this package together, so that they could take control of their own health clinic with the help of these two hospitals.

What happened as a consequence? The service unions in the city of Washington, DC, opposed these efforts, and the city council and the control board went along with it and betrayed these residents. What they are really saying, and this is a metaphor for this whole conflict, is that the service industry in a poverty pentagon values the interest of their jobs serving the poor more than they do the well-being and lives of these children who are suffering the problem.

Another community leader with us today is Pastor Freddie Garcia from Victory Fellowship, a reformed drug addict who has changed the lives of 13,500 hardcore drug addicts at a cost of about $50 a day, with about a 60- to 70-percent success rate in cities throughout this Nation and in various other Latin American cities. Yet, Pastor Garcia and his group, who operated in public housing units as volunteers and accepted no government money, face many roadblocks in operating there. All they have gotten is resistance from government.

In conclusion, I really believe there are three provisions of this act that are important for grassroots people and would empower them.

One is the charitable tax credit. It has been estimated that less than 10 percent of all private charitable dollars go to low-income people. So, therefore, I think this act would help by empowering taxpayers, so they could give money directly to these groups. It would also ensure accountability.

The second provision would end the discrimination against faith-based organizations. The Congressman indicated that they are much more effective, and yet, they are discriminated against in policy. Many of these groups are not asking for government money. They just want to end the discrimination.

Third, we strongly support the vouchers for private education, as 83 percent of the black community that knows about vouchers in education support it, as well as the groups that we have identified here. We hope and pray that the Congress will listen to the voices of these people in the communities and invoke their interests and not the interest of the poverty industry.

[The prepared statement and attachment follow. The booklet entitled, Bridging the Gap: Strategies To Promote Self-Sufficiency Among Low-Income Americans, is being retained in the Committee's files.]

Testimony of Robert L. Woodson, Sr.
President, National Center for Neighborhood Enterprise

Joint Hearing on
"The American Community Renewal Act of 1996"
July 30, 1996

The Community Renewal Act is one of the most important pieces of legislation to be introduced in the past two decades because it holds the promise of rescuing the poor from the suffocating grip of their saviors of the past thirty years. Provisions of this Act would answer once and for all whether the federal government will continue to pour billions of dollars each year in subsidies to the expansive poverty industry whose professional managers and staffs have prospered while the pain and suffering of the poor continues unabated. Or will the federal government embrace alternative approaches to aiding the poor by providing them the tools to be the agents of their own deliverance.

The clash of these two approaches is vividly illustrated by the list of those who oppose the legislation. They fall into four categories: 1) Organizations representing professional service providers; 2) the professional substance abuse industry; 3) the professional teachers' union and its education lobbyist; and 4) the American Civil Liberties Union.

These are the same people who over the past thirty years have resisted change and expressed more interest in protecting their programs than the poor. Like George Wallace who stood at the school house steps demanding "Segregation Now, Segregation Forever!," the ACLU and other special interest groups are in effect standing in the doorway of empowerment demanding "Dependency Now, Dependency Forever!"

By contrast I have included with my testimony the list of organizations whose leadership share the same zip codes as those they serve. Since they are not well funded they cannot afford to come in person to present their testimony so they have asked me to represent them. A few of these leaders are here with me today to personally lend their support for the Community Renewal Act.

In the few minutes that I have left let me emphasize why there is such a desperate need for a dramatically different approach to aiding the poor. What is at stake here is not a contest between alternative ideologies, of conservative versus liberal approaches. What is at stake here is the lives of poor women and children,

men and women who are swimming in a sea of poverty who then confront severe injury from those society has sent to rescue them.

Not more than a ten minute drive from this Capitol a community leader by the name of Alverta Munlyn and her colleagues from the Perry School Family Service Center live in a neighborhood where the infant mortality rate is four times the national average. The elderly people there have suffered the needless amputation of limbs because their diabetes had not been treated.

The community is served by a public health clinic that is so poorly administered that it took them a week and a half on average to test a stool sample. One baby was losing weight at a rate of two pounds a week while waiting for testing. A woman with a lump on her breast had to wait two months to see a doctor.

In response the community leaders attempted to establish their own community-controlled health clinic. The group raised $3 million and formed a

partnership with Providence Hospital. The initiative was endorsed by the City's Health Commissioner as "a perfect partnership," that would have put an abandoned school building back in use while saving taxpayers a million dollars per year.

Because they feared the loss of jobs the hospital workers union and others successfully petitioned the city council to oppose the clinic. The community leaders feel betrayed. The Community Renewal Act would act to correct this abuse by "the helping hand."

Another community leader with us today is Pastor Freddie Garcia from Victory Fellowship, a reformed drug addict who changed the lives of 13,500 ex-alcoholics and prostitutes over the last 30 years. The success rate of his program is 70%, while professional therapeutic programs are often in the single digits. Victory Fellowship program costs are $25 to $30 per day compared other professional treatment where costs are up to $600 per day.

Again, what has been the response of government and conventional agencies to this demonstrably successful community approach? Rather than applaud Pastor

Garcia's efforts, the San Antonio Housing Authority this spring imposed new regulations that would require Victory Fellowship to do such things as carry $1 million in liability insurance; pay the housing authority rent to perform services for public housing residents; and submit more than forty points of documentation. All of this for an organization that gets no government money, yet combats drugs and violence and provides valuable services to the public housing authority!

These examples are illustrative of the kind of individuals and groups that will be helped by the Community Renewal Act. While I am supportive of all of the provisions, there are three key features of the Act I would like to address today.

The Private Charity Tax Credit (Kolbe-Knollenberg) will permit money to flow directly from taxpayers to grassroots organizations such as the ones I have mentioned, instead of going through governmental bureaucracies whose overhead can be as high as sixty percent. The Charitable Tax Credit would create a resurgence of civic involvement across this country linking contributors directly with the most effective community organizations, whose outcomes and

performance could be monitored at the local level by contributors.

Second, the Act would end the discrimination against faith-based providers such as Victory Fellowship and Teen Challenge who have proven track records of combatting drug use across this nation.

The Act thus recognizes the importance of combatting a crisis that is ultimately spiritual and moral in nature with faith-based neighborhood initiatives, that, uniquely, can address the root causes of social pathologies and transform the lives that have been dominated by them.

And third, the Act would give parents in low-income communities long over-due school choice to direct their children's education.

We were pleased that before crafting this legislation, Congressmen JC Watts, Jim Talent, Joe Knollenberg, Jim Kolbe and others actually went out and talked with our constituents, those experiencing the problem in our nation's inner cities. They received NCNE's Neighborhood Leadership Task Force Report on

Grassroots Alternatives for Public Policy and incorporated many of its recommendations into the legislation.

The principles embodied in the Act unleash the potential for healing and development that exists within every neighborhood of our nation.

This cutting-edge legislation not only provides long-term solutions to the problems of poverty, but also offers a paradigm that can be applied in every sector of society for the reclamation of our nation's civil society.

National Center for Neighborhood Enterprise
1367 Connecticut Avenue, N.W., Washington, D.C. 20036
TEL: (202) 331-1103
FAX: (202) 296-1541

NEIGHBORHOOD-BASED ORGANIZATIONS
SERVING LOW-INCOME COMMUNITIES
SUPPORTIVE of COMMUNUNITY RENEWAL ACT POLICIES

Willie Henderson, Joshua's Assembly, San Antonio, TX
Roy G. Gomez, Victory Fellowship Ministry, Dallas, TX
Joe M. Trevino, The Sparrow's Home, Houston, TX
Manuel Nabarrette, Jr, Words of Life Ministries, Dallas, TX
Dorothy Harrell, Abbottsford Homes Tenant Management Assoc., Philadelphia, PA
Richard Dodridge, Teen Challenge, Philadelphia, PA
Sylvia Nafziger Charles, Beth Shalom, Lancaster, PA
Patrice Mamba Abduallah, Haughville Community Council, Indianapolis, IN
Sarah Adeky, Ramah Navajo Weavers, Pine Hill, NM
Delores Beall, I Am That I Am Training Center, Dallas, TX
Ernest & Laverne Boykin, Capital Commitment, Washington, DC
Ruby Brunson, Oakland Licensed Day Care Operators, Oakland, CA
Chloe Coney, Lee Davis Neighborhood Svc. Ctr., Tampa, FL
Bob Cote, Step 13, Denver, CO
Freddie Garcia, Victory Fellowship, San Antonio, TX
Carl Hardrick, S. Arsenal Neighborhood Dev. Corp, Hartford, CT
Alice Harris, Parents of Watts, Los Angeles, CA
Spyke Henry, Smart Activities for Fitness and Education, Washington, DC
Harriet Henson, Northside Tenants Reorganization, Pittsburg, PA
Rita Jackson, Northeast Performing Arts Group, Washington, DC
William H. Lock, Community Enterprises of Greater Milwaukee, Ltd., Milwaukee, WI
Samuel D. McGhee, Delray Beach Ctr. for Technology, Enterprise and Development, Delray Beach, FL
Antoinette McIlwain, Ravendale Community, Inc., Detroit, MI
Juan Rivera, Victory Fellowship, San Antonio, TX
Gerald Saffold, Foundation of Prayer Ministries, Milwaukee, WI
Jacqueline Sharpe, Victims Against Crime, Norfolk, VA
Craig Soaries, Victory House, Atlanta, GA
Martha Urioste, Family Star, Denver, CO
Maxine Waller, Ivanhoe Civic League and Volunteers for Communities, Ivanhoe, CO
Leon Watkins, Cities in Schools and Family Helpline, Los Angeles, CA
Olgen Williams, Westside Cooperative Organization, Indianapolis, IN
Esther Yazzie, Navajo Spiritual Land, Recovery Project Albuquerque, NM
Ernesto Varela, Victory Fellowship, Mathis, TX
Tom Lewis, The Fishing School, Washington, DC

Joseph Young, The Joe...Picture This Show, Inc., Hartford, CT
Rev. Richard Stonewall, Maranatha Evangelistic School and Temple, Coatesville, PA
Carmen Bell, Mel Blount Youth Home, Claysville, PA
Kim Bennett, Alpha Pregnancy Services, Philadelphia, PA
Johnny Paiz, Victory Temple, Mathis, TX
Eric Johnson, Alliance of Concerned Men, Washington, DC
Ronald D. Davis, Texas Family Institute,
Terry Allen, CBO Development
Gehrig M. Saldana, Martin Weiss Recreation Ctr.
Cecil Hawkins, AA Men of Peace Development
M. Yolanda Nolan, Our Brother's Keeper-Ndugu
Clara Patterson, The AA Family Support Group
Joe Hernandez, Restoration Outreach, Inc., Houston, TX
Albert Flores, Victory Life of Odessa, Odessa, TX
Ruben Regalado, Victory Ministry of El Paso, TX
Juan Paiz, Victory Ministry of El Paso, TX, El Paso, TX
Albert Garza, Victory Outreach of Laredo, Laredo, TX
Diana Garza, Victory Outreach of Laredo, Laredo, TX
Stanley Mansfield, Skilton House Ministries, Philadelphia, PA
Charlene Johnson, Michigan Neighborhood Partnership, Detroit, MI
Ron G. Howard, MBA Consultants, Inc., Dallas, TX
Barbara Mueller, Teen Challenge, San Antonio, TX
Ray A. Montoya, Victory Life Fellowship
George Cano, Sr., Victory Ministries, Mathis, TX
Sylvia Lopez, Victory Temple, Mathis, TX
Robert Tavera, Victory Outreach, Seguin, TX
Rocky Rios, Victory in Jesus Ministries, Inc., San Angelo, TX
Rob Wisdom, Victory in Jesus Ministries, Inc., Albequerque, NM
Rosetta Carr, Serenity Family Center, Milwaukee, WI
Tenora Cottrell, AGAPE Community Center, Milwaukee, WI
Prentice Davis, Professional Business Institute, Milwaukee, WI
Kenneth Frederick, S.A.F.E. Group Services, Inc., Milwaukee, WI
Theresa Hadnot, Community Enterprises of Greater Milwaukee, Milwaukee, WI
Josephine Henderson, Daughters of Luke, Ltd. (DOLL), Milwaukee, WI
Josephine Hicks, QF&H Diner, Milwaukee, WI
Gerald Saffold, Foundation of Prayer Ministries, Milwaukee, WI
David Schachtner, Community Coordinated Child Care, Milwaukee, WI
Bruce Smith, Free Teens, Milwaukee, WI
Cordelia Taylor, Family House Inc., Milwaukee, WI
Katherine Taylor, Family House Inc., Milwaukee, WI
Rev. Lawrence Kirby, St. Paul Baptist Church, Racine, WI
Rev. Oren Arrington, Second Baptist Church, Kenosha, WI
Jo Ann Griffin, Project Bootstrap, Madison, WI
Rev. Sedgwick Daniels, Holy Redeemer COGIC, Milwaukee, WI

D.C. Neighborhood's Plan For Health Clinic Derailed

Unions Oppose Group's Effort to Take Over City's Role

By Amy Goldstein
Washington Post Staff Writer

Alverta Munlyn looked at her poor District neighborhood off North Capitol Street—the elderly women with legs amputated because of uncontrolled diabetes, the pregnant teenagers who don't go to doctors, the babies who die needlessly in infancy—and decided her neighbors would be healthier if they took over one of the city's faltering health clinics and ran it themselves.

So Munlyn persuaded Providence Hospital to manage a clinic her community would operate out of a historic former school building. She persuaded Georgetown University to provide doctors. And she persuaded D.C. public health officials to close a nearby city clinic and subsidize hers, showing them that the arrangement would save more than $1 million a year.

Finally, Munlyn presented her proposal to D.C. Mayor Marion Barry. By the end of the half-hour meeting, the mayor was a convert, too.

But the Perry School Family Health Center may never open.

The idea has run afoul of labor unions representing D.C. government health workers that say they believe it would deprive their members of jobs and undermine other city plans to change health care for the poor. The unions took their complaints to the D.C. financial control board, which has agreed that the clinic is ill-timed.

As a result, less than two weeks after all of the parties signed an agreement outlining one of the Washington area's most creative proposals for improving a community's health, D.C. officials have backed off.

See CLINIC, A10, Col. 1

Alverta Munlyn is leading efforts to turn the old Perry School, behind her, into a health clinic.

Community Group's Effort to Run D.C. Clinic Hits Obstacle

CLINIC, From A1

City Administrator Michael C. Rogers said that the Perry School clinic remains a good idea but that its fate will be decided by a quasi-private board—which does not yet exist—that is expected to start running the city's health clinics and its public hospital late this year. Rogers said Barry has promised that the board alone would have the power to decide whether any clinics should become private or be closed.

"That is disastrous. That could be five years down the road," said Munlyn, who has worked as a community organizer since the "urban renewal" days of the 1960s. "That is going to be more costly to my community and to the city."

The obstacles to the Perry School clinic show how difficult it can be to change the District's status quo, even when Barry (D), the control board and Congress are eager to lessen the burdens on the city's reeling government. Health experts say the clinic would be a model public-private partnership, a much-touted arrangement offered as a way to help the District and other governments leverage their strained resources.

"Everyone is saying what a great idea it is, but there is always a reason why it can't be done," said Sister Carol Keehan, president of Providence Hospital, who was so impressed with Munlyn's idea that she agreed to have the hospital run the clinic and to make available the hospital's laboratory, X-ray services and pharmacy.

But in another sense, the obstacles to the clinic reflect a basic disagreement that is emerging as the city tries to change a public health system that is overburdened and ineffective: Should the city's large population of poor people be cared for, as the unions believe, through their own network of services? Or should they be cared for, as the District's public health leaders believe, by the same doctors and nurses who treat the middle class and well-to-do?

The fact that two private hospitals have agreed to the unorthodox venture attests to another reality, as well. As changes in health care leave hospitals such as Georgetown and Providence with less money and more empty beds, poor patients who rely on Medicaid are being transformed from medical outsiders into valued commodities. The hospitals are willing to reach further into the community for new sources of business.

For Munlyn, and for her neighbors in the low-income apartment complexes near North Capitol and M streets NW, the issues are more personal. They need better health care, and they want to become more self-sufficient in providing many kinds of social services.

At the core of that vision is Perry School, opened in 1891 as one of the nation's first public high schools for black students. Today, the imposing red-brick building is vacant, its neoclassical doorway padlocked, its tall windows boarded up.

Since the late 1980s, Perry School Community Services Center Inc., the community group that Munlyn leads, has raised more than $3 million in private donations. It needs $1 million more, but it held a groundbreaking ceremony last week and hopes to open the building in a year as a place where neighbors can find job training, day care, reading programs, senior citizen services and mental health counseling. Already, the group has arranged with various nonprofit groups to carry out the work.

The health center would be an anchor, occupying the entire first floor.

It would serve about 16,000 people, many in dire need of better care. Forty of every 1,000 babies born in that community die before their first birthdays—an extraordinary rate that is more than twice the citywide rate and four times the U.S. average. The number of infants who die is considered a bellwether of a community's health.

Alverta Munlyn, center, talks about plans to turn Perry School into a health clinic during a meeting at the Sursum Corda community center. The privately-run clinic would replace a faltering city clinic to serve neighborhood residents.

Such an enormous problem persists even though residents live within blocks of the Walker-Jones clinic, one of the largest city-run health centers, with more than 10,000 patient visits last year.

Frank Silagy, a doctor who is director of community projects in Georgetown's Department of Family Medicine, said that proximity to a clinic that accepts poor patients doesn't automatically improve a community's health.

A clinic needs to reach into the community, and the community needs to trust it, said Silagy, who works at Walker-Jones part time. "That is what [the Perry School] proposal advances."

In a neighborhood where diabetes is common, Walker-Jones sometimes runs out of insulin and syringes. The clinic's roof leaks. Some days, there are no drivers to take blood and urine specimens to the city's overwhelmed medical lab.

"It's just one thing after another," said D.C. Public Health Commissioner Harvey I. Sloane. He said the Perry School clinic would be "a perfect partnership. It's a real win-win situation." The clinic is projected to cost the city $900,000 in its first year and $300,000 annually after that. The District spends $1.6 million a year on Walker-Jones.

The idea of a community-owned clinic has captured the imagination of some residents who have turned to Walker-Jones for help.

A 45-year-old woman named Mary, who is uninsured and unemployed and lives nearby in the Sursum Corda co-op, relies on the clinic for treatment of her heart problem and high blood pressure. She gets frustrated when the clinic runs out of her blood pressure medicine. She gets even more upset on the days when her headaches get so severe that she goes to the clinic to have her blood pressure checked and has to sit for hours in the waiting room.

"By your being sick and all, the waiting gets harder," Mary said. "Sometimes, I just get up and leave." One day the summer before last, her headache was so sharp that she left after 45 minutes to go home and lie down. Later that day, her daughter found her passed out on the living-room floor.

Sydnee Jones, 29, walked into Walker-Jones for the first time in mid-May, when she found a lump in one of her breasts. She was terrified; her mother had died of breast cancer. She had had private health insurance until last year, when she lost her job at Woodward & Lothrop because the department store went out of business.

When she asked the clinic for an appointment, a woman at the front desk said none was available for more than month. "I was like, wait a minute, I could be dead by then," Jones said.

She ended up getting an appointment sooner, after she called Munlyn, who called Silagy. The lump turned out to be an infected cyst, but Jones said she believes that a community-owned clinic would offer more compassionate care. "The person answering the phone could be my neighbor."

Said Mohammad N. Akhter, a former D.C. health commissioner who leads Barry's new Health Policy Council: "This makes perfect sense for the city. For the first time, we will have one system of care for the rich and the poor."

Perry School would be the first example of several unorthodox arrangements that Akhter and Sloane are trying to work out to make "primary care" more complete and convenient for the city's poorest residents. They are trying to negotiate for Chartered Health Plan Inc., a health maintenance organization, to run a large clinic in what is now a Northeast Washington grocery store. They are trying to tighten ties with two federal clinics.

But Lori Calderone, executive director of the Doctors Council, the union that represents 300 doctors who work for the city government, said such efforts conflict with a plan—supported by the mayor and likely to be approved by the D.C. Council this week—to create a "public benefits corporation" to run city clinics and D.C. General, the public hospital.

By siphoning large groups of patients into independent clinics, Calderone said, "they are setting up the [benefits corporation] to fail." Labor leaders are afraid, in particular, that D.C. General—which employs more than 1,500 city workers—could close if too many poor patients were treated at clinics with links to private hospitals.

"The long-term implication of what something like [the Perry School clinic] could mean, if replicated all over the place, is a loss of jobs," said Joslyn N. Williams, president of the Metropolitan Washington AFL-CIO.

The union stance has angered D.C. Council member Jack Evans (D-Ward 2), who represents Munlyn's neighborhood. "It is about jobs and taking it out of control of organized labor," Evans said. "At some point, you have to put your interests aside for the better interest of the community."

Munlyn said the Perry School clinic would invite Walker-Jones workers to apply for jobs. She said the clinic also would try to make more residents employable by training volunteers to do clerical work.

Georgetown's Silagy said that the Perry School clinic would not undermine the public benefits corporation because the patients now treated at Walker-Jones account for just 4 percent of the patients in the citywide network of 11 clinics and D.C. General.

But John W. Hill Jr., the control board's executive director, said city officials had erred by neglecting to analyze how such a clinic would affect the public benefits corporation. He said the control board would approve the idea only if it were later reviewed by that corporation's board—a requirement that he acknowledged would make it difficult, if not impossible, for the community group to move forward quickly.

Barry said last week that he remained "committed to the concept. We are having some difficulties that we are working through. [But] after some bugs get ironed out, it will happen."

Munlyn said, though, that it is foolish to wait. "The city is in a very hard strain in giving health care right now," she said. "If . . . communities come in and take care of themselves, that will help the city."

Chairman SHAW. Thank you, Mr. Woodson, and you are excused for your next obligation.

Ms. Parker.

STATEMENT OF STAR PARKER, FOUNDER AND PRESIDENT, COALITION ON URBAN AFFAIRS, LOS ANGELES, CALIFORNIA

Ms. PARKER. Hello. My name is Star Parker, and it is a privilege for me to be here today on behalf of Congressman J.C. Watts and Congressman Jim Talent and their excellent proposal, the Community Renewal Act of 1996.

I mean no disrespect, but it would seem that some of the Congressmen that were represented here today have never been in the inner city in regards to the school choice discussions you had 1 moment ago, especially the part about where people would have to leave the city. I know of too many people that have to walk past wonderful, tremendous schools, with excellent track records, to get to their broken-down public schools.

I want to talk to you today about these poverty-stricken areas and how they need more than just economic renewal. We need moral renewal, and when as a society we keep trying to separate the poor from God, we are separating a key part of the solution. For too long, churches have had excellent track records to helping people out of poverty, off of drugs, out of welfare, out of criminal activity. Yet, not only are they not given credit for their tremendous success rates, but so often they find themselves isolated by government, which keeps them from being more effective.

I want to tell you a little bit about my personal life and how I know the impact of church. I personally was one that was on drugs, in crime, and in poverty. I lived over 3½ years on the AFDC welfare system in Los Angeles, and it wasn't government that came to me and gave me the solutions to my problems. It was a man of God who dared to point his finger in my face and tell me that the government is not my source, but God is. It was at that time that I began to learn how to work in the American system with the system and, after that, getting myself to the point where it was through this church-based organization that I was able to get myself into business.

I want to mention briefly the isolation of government. When I had my business in Los Angeles, up until it was destroyed during the 1992 Los Angeles riots, I worked with more than 500 urban-based businesses. I will tell you, one of the biggest problems that we have in the inner city is that we have too much regulation from government.

I remember the first day I got paperwork from the organization called the EDD. I didn't know who they were. I was a simple business owner, a small business owner, attempting to make ends meet by selling advertising to smaller businesses.

I remember one of our businesses, a street vendor, who sold little Raggedy Ann dolls. He had it right on the corner in Los Angeles on Crenshaw and Slauson, and he would make these dolls. So as the kids in the community came by, they would see the efforts of people putting their hands to a project and then selling these dolls, but who shut them down? The regulation, the city, because they came in and said that he owed them $2,000 tax money for standing

on that corner. They don't do that to the drug dealers on the corner, but they do it to business people.

The zoning laws, when I had my business in my home, the government actually came out there to make sure I wasn't doing something illegal, like printing in my apartment.

When you discuss schools, the private schools are competing with the government in urban communities, and I want to tell you a story that I tell often because it is a personal story, but some of you can relate to it. Many of you remember the name Damian Williams because we all saw him on our national televisions. He was the guy with the brick over Reggie Denny's head during the 1992 riots.

Well, Damian Williams was trapped in a school right up the street from where my daughter went to school, and the reason I say trapped, and I like that word "escape" because people do have to escape, I was in a position because of my business that I was able to dig really deep into my pocket and pull out $230 a month to send my daughter to a faith-based school, where, yes, the men did wear collars. Yes, they did hold sticks in their hand, and you don't want to get sent to the principal's office, but the graduation rate at my daughter's school was 98 percent. Those kids could read.

In fact, my daughter today is 15 years old. She is a senior in high school. She just took her SAT and did very well, and she has a 3.7-grade point average. She is now looking at what college she will go to.

On the other hand, Damian Williams, who went to school right up the street from where my daughter went to school, had a school where they had glass all over the playground. They had locks on the doors in order to get into the classroom, broken lockers, braless teachers, teachers that were drunk, and Damian Williams is in jail today. We, the taxpayers of Los Angeles, are paying for him.

Now, I know that you guys are used to talking about all of these superficial issues here in Washington, DC, but I will tell you, this is real life in the urban communities, and had we empowered his mother with a voucher, she wouldn't have had to go out to the suburbs to find a good school. She could have walked up the street, and I think that it is our responsibility to stop talking all of this hogwash about bankrupting schools that already have a 70-percent dropout rate and start talking about what is real in the communities and who are providing.

When you talk about the church-based organizations and your insistence of this wall of separation, you are separating people from the solution.

There are over 2,000 churches in Los Angeles. Most of them have business development centers. Most of them have schools. Most of them have drug rehab programs that are very, very effective. Their biggest problem is government has been competing with them too long, stealing the resources of the taxpayers from the community, and then throwing them into organizations and so-called programs that have not worked.

I want to commend you for your efforts in welfare reform. I appreciate, Mr. Shaw, the work you did with the Personal Responsibility Act last year, and I really like the efforts that are going on

right now, but the next step is the Community Renewal Act of 1996. I hope that you will consider this legislation.

[Ms. Parker's statement was not available at the time of printing.]

Chairman SHAW. Mr. Dempwolf.

STATEMENT OF C. SCOTT DEMPWOLF, DIRECTOR, CRISPUS ATTUCKS ASSOCIATION, INC., COMMUNITY DEVELOPMENT CORP., YORK, PENNSYLVANIA; ACCOMPANIED BY ROBERT L. SIMPSON, EXECUTIVE DIRECTOR, CRISPUS ATTUCKS ASSOCIATION, INC.

Mr. DEMPWOLF. Thank you.

Good morning. I would like to thank both Subcommittees for the opportunity to share the experience of CAA, the Crispus Attucks Association, Inc., and our current understanding of what it takes to revitalize a neighborhood.

Located in the most distressed neighborhood of York, Pennsylvania, CAA operates an early learning center for 170 children, instilling values and self-esteem, while providing our kids with an academic jump start. In fact, once they enter school fully, 90 percent of our children achieve the honor roll in their school.

At the other end of the age spectrum, CAA seniors program provides hot meals and social activities for a group which is old in body, but young at heart. Our seniors are often engaged with our youngsters in various programs, including youth programs where hundreds of young teenagers participate in responsibility classes, learning to take responsibility for themselves and for their community.

Recreation at Crispus Attucks is a privilege, earned long after the membership is paid for. At CAA, kids in the community have access to some of the finest facilities and equipment from the gymnasium to the pool to the computer lab, but before they learn some new moves on the basketball court or ascend to the next level of their favorite video game, our kids learn some smart moves to keep their lives on the right track. These programs take money to run, and we have been blessed with a generous community. However, the charitable contribution provisions of the act would provide an additional incentive for more people, even those of modest means, to support these programs.

For those young people who have gotten onto the wrong track, CAA operates a Youth Build Program where each year 30 to 40 young people, ages 16 to 24, work to get their GED or their high school diploma while they rebuild housing for the homeless. Crispus Attucks Youth Build harnesses the energy and the potential of these young dropouts and transforms many of them into community leaders.

As an aside from this, I would ask all of you to support HUD funding for the Youth Build Program. Currently, the House has approved $20 million. The Senate and the administration have approved $40 million. I strongly urge you to support the funding at $40 million.

Youth Build isn't the only part of Crispus Attucks working in housing or job training. In a neighborhood where one in every four households is on public assistance, the Crispus Attucks Center for

Employment and Training is at the forefront of welfare reform. The center offers a program designed to remove the able-bodied from the welfare roles to the payrolls of the work force as rapidly as possible.

During our first 6 months, we have placed 42 recipients in jobs. Pulling down a paycheck helps people who reside in Crispus Attucks housing to pay the rent, as 85 percent of our tenants work for a living, far above the neighborhood average. To provide those apartments, Crispus Attucks has rehabilitated 120 units in 60 buildings in the southeast neighborhood, and by the end of 1997, another 47 units in 22 buildings will be completed, erasing eyesores throughout the neighborhood.

While rental housing and rehabilitated buildings stabilizes the neighborhood and mends the physical fabric, it is not the long-term solution. Moving people from welfare to entry level jobs is a good start, but it is not the long-term solution. The fundamental problem that we face is poverty in all of its manifestations, and the long-term solution to poverty is the creation of wealth. Wealth, quite simply, is ownership.

Home ownership is one way to build wealth, and CAA is actively engaged in the redevelopment of single-family ownnership. Business ownership also creates wealth, and CAA CDC's first effort was the formation of a for-profit subsidiary, the Crispus Attucks Construction Co., which hires welfare recipients, Youth Build graduates, and unemployed construction workers from the neighborhood.

Ownership is created through an employee stock plan where construction employees can own part of the company and share in the profits.

All of this work leads up to our most ambitious effort to date, the Boundary Avenue Project. Simply put, the Boundary Avenue Project is the culmination of everything we have learned about community development. It is the creation of a new neighborhood commercial center which provides offices, medical facilities, education and training facilities, entertainment facilities, a food store, restaurants, and shops.

In providing for all of these varied uses, the Boundary Avenue Project creates two very important byproducts for the city at large: jobs and tax base. Hundreds of jobs will be created and will range from entry-level service jobs through managerial and professional positions. There will also be a number of opportunities for entrepreneurial startups, and a wide variety of businesses will be encouraged.

When complete, the project should also add upward of $1 million annually to the city coffers. It is in this context that the Community Renewal Act becomes a powerful tool for reinvestment in our community.

The southeast neighborhood may be poor in economic terms, but we are rich in spirit. This is a community with a fierce determination to become independent and self-sufficient. While I believe that the Federal Government has the responsibility for direct investment in our poor communities, the Community Renewal Act provides a valuable and appropriate incentive for private investment.

The commercial revitalization tax credit, favorable treatment of capital gains, and the work opportunity tax credit all provides such incentives.

The commercial revitalization tax credit provides incentives for investment, but more importantly, it allows the community through Crispus Attucks to maintain control of the development by offsetting much of the equity requirement. Simply put, the credits will enhance the negotiating position of our low-income citizens to determine and control what gets built in their community.

Gentlemen, we have a plan of what we want to do, and we have the determination to do it. We are asking for your help to allow us to do this and to maintain control within low-income communities to make this happen.

Thank you.

[The prepared statement and attachments follow:]

STATEMENT OF C. SCOTT DEMPWOLF, DIRECTOR
CRISPUS ATTUCKS ASSOCIATION, INC.
COMMUNITY DEVELOPMENT CORP.

Good Morning. I would like to thank both committees represented here for the opportunity to share the experience of Crispus Attucks and our current understanding of what it takes to stabilize, sustain, improve and expand a declining neighborhood. Time does not permit me to fully describe the comprehensive nature of our approach, but it is detailed more fully in the written testimony. In brief, Crispus Attucks Center is among the largest and most comprehensive community center in the country. Located in the most distressed neighborhood of York, Pennsylvania, CA operates an early learning center which provides top quality day care and nutritious meals for 170 children, instilling values and self-esteem while providing our kids with an academic jump start. In fact, once they enter school, fully 90% of our kids make the honor roll in their school. This has prompted us to begin to examine the potential of developing a charter school at Crispus Attucks, and the scholarship provisions of the Community Renewal Act would allow us to take that next step. At the other end of the age spectrum, the CA Seniors program provides hot meals and social activities for a group who are old in body but young at heart. Our seniors are often engaged with our youngsters in various programs.

These activities include youth programs, where every day hundreds of young teenagers participate in responsibility classes, learning to take responsibility for themselves and their community. Recreation at CA is a privilege which is earned long after the membership is paid for. At CA, kids in the community have access to some of the finest facilities and equipment available anywhere, from the gym to the pool to the computer lab. But before they learn some new moves on the basketball court, or ascend to the next level on their favorite video game, our kids learn some smart moves to keep their lives on the right track. These programs take money to run, and we have been blessed by a generous community. However, the charitable contribution provisions of the Act would provide an additional incentive for more people, even those of modest means to support these vital programs.

For those young people who have gotten onto the wrong track, CA operates a YouthBuild program where each year 30-40 young people ages 16 to 24 work to get their GED or high school diploma while they rebuild housing for the homeless. Crispus Attucks YouthBuild harnesses the energy and the potential of these young dropouts and transforms many of them into community leaders. Already dozens of young people have gone from being a burden to society to being positive role models in neighborhoods where many of us are afraid to go. As an aside, while this bill does not specifically address YouthBuild, I would urge all of you to support HUD funding for the YouthBuild program. Currently the House has approved $20 million; the Senate $40 million. I strongly urge the House to recede to the Senate in conference on funding for this important and effective program.

YouthBuild isn't the only part of Crispus Attucks working in housing or job training. In addition to YouthBuild, the Crispus Attucks Community Development Corporation is actively engaged in finding creative solutions to the problems which plague our cities. In a neighborhood where one in every four households is on welfare of one form or another, the Crispus Attucks Center for Employment and Training is at the forefront of welfare reform. The Center offers Project Connect, a program designed to move the able bodied from the welfare roles to the payrolls of the work force as rapidly as possible. During our first six months, we have placed 42 welfare recipients in jobs for nearly a 60% placement rate. And pulling down a paycheck helps those who reside in CA housing units to pay the rent. Eighty-five percent of the 110 tenants work for a living, far above the neighborhood average. To provide these apartments, CACDC has rehabilitated over 60 buildings in the Southeast Neighborhood. And by the end of 1997 another 47 rental units in 22 buildings will be completed, erasing eyesores throughout the neighborhood.

But while rental housing in rehabilitated buildings stabilizes the neighborhood and mends the physical fabric, it is not the long term solution. Moving people from welfare to entry level jobs is a good start, but it not the long term solution. The fundamental problem in the Southeast Neighborhood is poverty, and the long term solution to poverty is the creation of wealth. Wealth, quite simply, is ownership. Home ownership is the simplest way to build wealth, and where home ownership makes economic sense, CA is actively engaged in the rehabilitation and resale of single family homes. Another way to create

wealth is through business ownership, and to foster this CACDC is engaged in a number of efforts. To accomplish the extensive renovations to properties under redevelopment, CACDC formed a for-profit subsidiary, Crispus Attucks Construction Company, Inc., hiring former welfare recipients, YouthBuild graduates, and unemployed construction workers from the neighborhood. Ownership is created through an employee stock plan, wherein construction employees can own part of the company and share in the profits.

CA is committed to building and strengthening the local economy, and over the last three years has created over 70 jobs in our community. We are currently seeking discretionary grant funds from the US Department of Health and Human Services to establish a community owned grocery store, fund the expansion of our construction company, and the development of an entrepreneurial training and development program. These efforts will create an additional 170 jobs over the next 3 years. This summer, CACDC and Crispus Attucks Construction will partner with a local minority owned business, and with two Harrisburg based businesses in the rehabilitation of three prominent buildings on South George Street, bringing new commercial life and a dozen more jobs to the corridor.

All of this work leads up to the most ambitious - and arguably the most important - CA effort to date, the Boundary Avenue Project. Simply put, the Boundary Avenue Project is the culmination of everything we have learned about community development. It is the creation of a new neighborhood commercial center which provides office space, medical facilities, a world class education and training facility, movie theaters, entertainment and recreation facilities, a food store, restaurants and shops. In providing for all of these varied uses, the Boundary Avenue Project creates two very important by-products for the city at large - jobs and tax base. Hundreds of jobs will be created and will range from entry level service jobs through managerial and professional positions. There will also be a number of opportunities for entrepreneurial start-ups, and a wide variety of businesses will be encouraged. The tax base created will also be substantial. When complete, the project should add upwards of $1. million annually to the city coffers.

It is in this context that the Community Renewal Act becomes a powerful tool for reinvestment in our community. The Southeast Neighborhood of York may be poor in economic terms, but we are not poor in spirit. This is a community with a fierce determination to become independent and self-sufficient. While I believe that the federal government has a responsibility for direct investment in our poor communities, the Community Renewal Act provides valuable and appropriate incentives for private investment. The commercial revitalization tax credit, favorable treatment of capital gains, and the work opportunity tax credit all provide such incentives. Even with TIF financing, bond issues, and a committed group of lenders, a project of this magnitude will require approximately $6. million in equity. The commercial revitalization tax credits will provide an incentive for investment, but more importantly, it will allow the community, through Crispus Attucks, to maintain control of the development by offsetting the bulk of the equity required. Simply put, the credits will enhance the negotiating position of low income communities to determine and control what gets built within their community.

Crispus Attucks Community Development Corporation

History

Recognizing that rehabilitation of neighborhood properties was essential to the success and long-term stability of its community center, Crispus Attucks Association, Inc. founded a housing subsidiary in 1982. Originally named Crispus Attucks Revitalization, Crispus Attucks Community Development Corporation (CACDC) was formally incorporated and received 501(c)(3) status in 1987. With minor modifications to the Board of Directors, CACDC became a designated Community Housing Development Organization (CHDO) in 1993. To date CACDC has completed substantial rehabilitation of 63 buildings in the southeast neighborhood of York.

The Crispus Attucks Employment Center was founded in 1986 to help minorities and the hard-core unemployed find stable, good paying jobs. A "jobs bank" was created and to date over 4000 jobs have been posted. Nearly 800 permanent and several hundred temporary placements have been made. Over 200 of the permanent placements have been successful over the long-term. In 1994 the Center won the prestigious EPIC award from the US Department of Labor for its efforts in minority job placement. But 1994 was also a year of strategic restructuring for the employment center. Without adequate job training, the prospects for *stable* employment of the center's clients remained marginal. The Employment Center made a decisive shift to an emphasis on job training and education, changing its name the Center for Employment and Training. The center is now at the forefront of the Welfare reform movement, finding new ways to address one of the most intractable problems of our age.

The experience of the early housing development and employment activities revealed very clearly that the problems facing the neighborhood were systemic. Real and lasting change would only come if the community addressed those systemic issues underlying the more obvious symptoms of physical decay, crime and wide-spread unemployment. The York 2000 Commission identified the issues in its commission report in 1990. Not surprisingly, they included a need for more basic and vocational education and expanded economic opportunity for the minority community. With these issues clearly identified, Crispus Attucks Association went to the business community with a plan for a new human resource center. Within six months the Association had raised the $2.2 million necessary to construct the addition to the existing center and to meet the challenges head-on.

Today, the Crispus Attucks Community Development Corporation and its Employment Center operate out of the 90,000 square foot Crispus Attucks Community Center. CACDC is one of three broad divisions of the center, sharing the facilities with an Early Learning Center which provides child care and latch-key programs for more than 170 neighborhood children. The success of the program is reflected in the following statistic: 90% of Crispus Attucks school age day care children are on the honor role of their school. The Crispus Attucks Association operates youth counseling and development programs, a youth center and study hall, and a snack bar. Recreational facilities and programs including swimming, basketball and weight training are available. CA is also the home of the South Side Steppers, the reigning state and national junior drill team champions.

Active since 1931 and now the largest center of its kind in the country, Crispus Attucks continues to grow, developing new and innovative solutions to the fundamental problems of poverty which plague our nation. With each new solution comes an improved understanding of the complex and dynamic systems which have entrapped a generation and a class of American citizens in the "era of benign neglect." With each new problem comes yet a deeper compassion and respect for the dignity and intrinsic value of each human life.

CACDC Mission Statement

The mission of Crispus Attucks Community Development Corporation is to empower residents at the grass roots level to transform the Southeast Neighborhood into a safe, attractive and vibrant community. CACDC seeks to promote self sufficiency through a comprehensive application of physical redevelopment, property management, employment services and support services. These individual focus areas contribute to the overall mission in the following ways:

> *Physical Redevelopment* seeks to foster a commitment to the neighborhood by focusing public & private resources on physical transformation through strategic acquisition and rehabilitation of residential and commercial properties.
>
> *Property Management* works to promote a sense of community by providing and managing decent, safe, affordable rental housing and encouraging residents to assist in the maintenance of their homes and community. Homeownership is encouraged and facilitated through financial counseling, home buyer training and community lending programs.
>
> *Employment Services* promote self-sufficiency for the hard-core unemployed through education, training, counseling and job placement.
>
> *Support Services* are offered to help break the cycle of multigenerational poverty by empowering residents to address their own problems and providing the necessary support for the process to occur.

Current Status, January 1996

Physical Redevelopment

CACDC's physical redevelopment priority is being pursued on two fronts: residential and commercial. On the residential front the corporation has reached a stable production rate of 36 units per year. This rate will lead to the rehabilitation of 180 units of affordable housing in roughly 100 buildings over the next five years, at a cost of nearly $12. million. 95% of the units will be targeted to very low and low income levels, with several restricted to housing homeless families. Many of the buildings scheduled for rehabilitation are single family homes. While they will initially be used as rental housing, they represent a stock of homes which will be converted to homeownership over the next 15 to 20 years. Under this model, using the structures as rental housing over a period of 10 - 15 years allows for the use of the low-income and historic tax credit, and also allows rents to offset the high cost of rehabilitation. Such an approach also provides for revitalization without wholesale gentrification.

On the commercial front CACDC continues to revitalize scattered site business spaces where appropriate, while focusing most of its energy on the Boundary Avenue Development Project. This project is a $34. million development of a new neighborhood commercial center at the intersection of South George Street and Boundary Avenue. When completed, the project will include roughly 200,000 square feet of new and rehabilitated commercial space. Uses include offices, shops, restaurants, movie theaters educational facilities, a health clinic, pharmacy, branch bank and grocery store. In support of this will be two parking structures offering nearly 700 parking spaces. With the first

building scheduled to begin construction in the spring of 1997, the project is expected to take approximately five years to complete.

Property Management

CACDC presently manages 120 apartments and commercial spaces in 64 buildings throughout the neighborhood. The occupancy rate fluctuates between 90% and 96%. Approximately 80% of the households are headed by a female and average family size is 3.4. 72% of the families work at least part-time and average household income is $13,100 - *less than 40% of median income for the York MSA.* (There is no significant difference between median and mean incomes for the tenant population.) 75% of the households are African- American; 18% Latino; 6% Caucasian and 1% other.

Employment Services

The Crispus Attucks Center for Employment and Training has experienced considerable growth and change. With the completion of the new Human Resource wing of the Crispus Attucks Center, the focus of the employment center has shifted to provide a greater emphasis on training and education. The new wing includes three new classrooms, a machine shop, two computer labs and a multi-purpose room. Partners in Education (PIE), an educational consortium representing twelve educational institutions has been in operation for two years and is working to define the new collaborations necessary to transform our educational system. PIE coordinates the educational offerings at the center, providing adult basic education through college level programs, along with lecture series' and enrichment courses.

The Center for Employment and Training has also taken a leading role in the welfare-to-work movement which is at the heart of welfare reform. in the fall of 1994 Crispus Attucks hosted a night of hearings by the Welfare Committee of the Pennsylvania Senate. Offering testimony based on years of experience, CA staff presented their own welfare-to-work system, a version of which was later funded through the Pennsylvania Department of Public Welfare's Project Connect. Over the next three years, Project Connect will move hundreds of York County welfare recipients off the welfare rolls and into the working world. While both financial and philosophical constraints have limited the scope of project connect, the Center for Employment and Training continues to work on the development of its training model, which includes a machine shop and several other vocational training facilities.

Support Services

The decline of the American family and in particular the African-American family has been well documented in recent years. The statistics of CACDC's own rental units reflect this disturbing trend with 80% of the households headed by single mothers. In CACDC's rental units alone this places nearly 150 children at risk, without a stable male presence in the household. In addition to the youth programs based at Crispus Attucks Center, CACDC offers a variety of low-intensity counseling services, providing support and referral to agencies which specialize in drug and alcohol abuse, domestic violence, mental illness and a host of other problems.

CACDC also conducts an annual Earned Income Tax Credit (EITC) campaign and a Volunteer Income Tax Assistance (VITA) program. Together these programs cost less than $5,000. to run, yet they yield over $500,000. in direct benefits to working families in the community. Volunteers help families prepare their tax returns, taking advantage of the appropriate tax credits, and counseling them on the prudent use of tax refunds. The program is now in its third year and continues to grow in popularity.

CACDC staff also work with several students from William Penn High School in the Graham scholarship program which targets inner city minority youth who would otherwise not be college bound. The program pairs the youth with York College student mentors,

giving them additional preparation for college and providing them with the necessary funds to attend the college of their choice.

YouthBuild

Established in 1994, the YouthBuild program combines all of the CACDC objectives in one program. Annually the YouthBuild program provides training opportunities for nearly 30 high school dropouts putting young trainees to work rehabilitating housing for the homeless. The trainees, ages 16 - 24 learn construction skills, but also spend alternate weeks in the classroom preparing for their GED or high school diploma. Upon completion of the one year training period the Employment Center will help the trainees find work or assist them in college enrollment. The entire program is embedded in a leadership development context designed to cultivate a new generation of neighborhood leaders. YouthBuild students are also AmeriCorps volunteers, completing approximately 1000 hours of volunteer service during the year.

Community Initiatives

CACDC has been active in a broad community initiative - the South George Street Community Partnership. Funded entirely by private donations, the partnership seeks to bridge several diverse interests and link the efforts of several community groups to provide greater coordination in the delivery of services. The Partnership, in conjunction with participating organizations has prepared a comprehensive plan for coordinated service delivery which addresses the linkages between these diverse segments of the community. CACDC has participated in the development of the plan and has also provided administrative and financial support for the effort.

CACDC is also working with the city on the preparation of a redevelopment area plan for the South George Street corridor. This is only the latest in a series of collaborations between the city and CACDC - a series which has involved the preparation of several grant applications as well as the city's plan for designation as a federal Enterprise Community.

These initiatives combined with CACDC's own programs should achieve significant redevelopment of South George Street corridor and the southeast neighborhood over the next five to ten years. Initiatives such as YouthBuild, the Welfare-to-Work program, the Earned Income Credit campaign, and the Boundary Avenue Project will help extend and supplement our families' limited resources. Every family deserves the opportunity to make a better life for themselves. Crispus Attucks Community Development Corporation is committed to providing that opportunity.

Organizational Structure

Crispus Attucks Community Development Corporation has experienced explosive growth during the past three years, growing from six employees in 1992, to thirty-eight employees in four departments and one subsidiary corporation in 1996. CACDC also has four subsidiary limited partnerships for the purpose redevelopment and ownership of rental property. These subsidiaries are depicted in figure 1 on the following page, and are described below. CACDC maintains a number of contractual arrangements with these subsidiaries, including construction contracts, development contracts and management agreements.

Crispus Attucks Construction Company, Inc., a for-profit corporation owned by CACDC, began as the construction department of CACDC in January 1994. After completing over $1 million in rehabilitation projects, the department was spun off for several reasons. First, a for-profit corporation is not subject to the same restrictions as a non-profit, allowing it to enter markets which would be outside the domain of the CDC.

Second, the separation provides for an additional, direct funding stream to Crispus Attucks Association, Inc., in the form of licensing fees. Since support of the Association is one of the fundamental missions of the CDC, this motivation is consistent with the overall CDC mission. Third, formation of a separate, for-profit corporation promotes economic development by allowing employees to participate in a Phantom Stock plan which vests one third of the rights and benefits of ownership in a stock pool for employees of the company. Such a plan will promote the expansion of minority owned and neighborhood based businesses as employees use their accumulated equity to form new companies of their own. Fourth, the formation of a separate corporation protects the CDC from the risks associated with construction, while providing for significant asset accumulation as the company increases in value. Two thirds of the appreciation will accrue to the CDC.

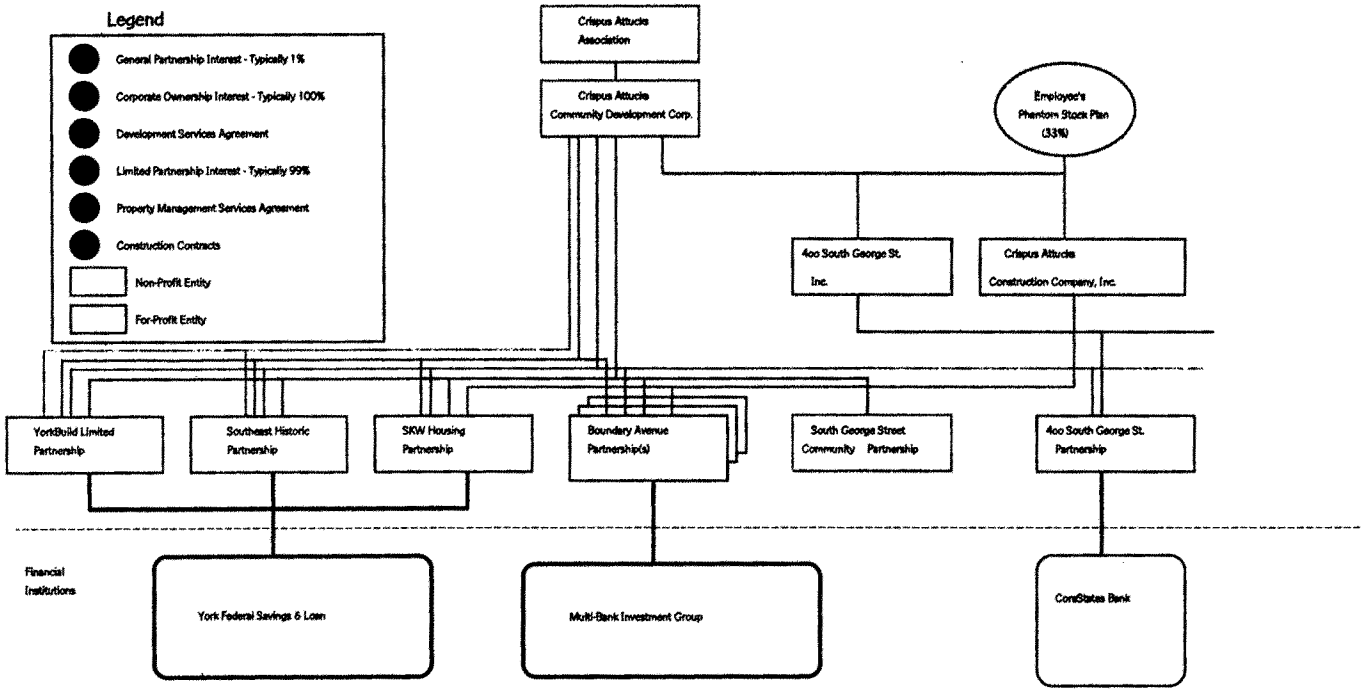
400 South George Street, Inc., a for profit subsidiary holds CACDC's 1% interest in the ***400 South George Street Partnership***. Ninety-nine percent of this limited partnership is owned by CoreStates bank. The partnership owns 15 buildings with 36 units of low-income housing in the 400 block of South George Street. The partnership invested $2.2 million in acquisition and rehabilitation, using low-income Housing Tax Credits, Historic Tax Credits, and low-interest financing from the Pennsylvania Housing Finance Agency (PHFA). Completed in the fall of 1992, the project has reached stable operation and is fully occupied.

The ***Southeast Historic Partnership*** is a limited partnership between CACDC (1% general partner) and York Federal Savings and Loan Association (99% limited partner.) The project involves 10 buildings with 21 apartments and 4 commercial spaces scattered throughout the Southeast Neighborhood. At a cost of $1.3 million, the project is substantially complete and in the rent-up phase. Stable occupancy is expected by July, 1996. Project financing included Historic Tax Credits, a Housing and Community Development Grant from the Pennsylvania Department of Community Affairs, federal HOME funds, property donations from the Redevelopment Authority, and low-interest loans from Mellon Bank.

The ***YorkBuild Limited Partnership*** is a limited partnership between CACDC (1% general partner) and York Federal Savings and Loan Association (99% limited partner.) The partnership was formed specifically for the purpose of owning and rehabilitating properties associated with the YouthBuild program. At present, work is nearly complete on 158 South Duke Street, including eight efficiency apartments and a public health clinic. Work is about to start on five apartments at 200 South Duke Street. This partnership, along with the YouthBuild program is responsible for the transformation of one of York's most blighted intersections into a safe and attractive place to live.

The ***SKW Housing Partners*** is a limited partnership between CACDC (1% general partner) and York Federal Savings and Loan Association (99% limited partner.) The partnership, which is in the process of being formed, is named in honor of Suzanne K. Williams, a woman who has devoted her life to working with low income families and low income housing. Construction is scheduled to begin in June 1996 on 36 units in 22 buildings throughout the southeast neighborhood, with concentrations on West Maple Street and East South Street. Project completion is expected by December 1997.

Organizational Structure of Crispus Attucks Community Development Corporation
and
Related Companies



Chairman SHAW. Thank you, Mr. Dempwolf.
Ms. Daly.

STATEMENT OF SHARON M. DALY, DEPUTY TO THE PRESIDENT FOR SOCIAL POLICY, CATHOLIC CHARITIES USA, ALEXANDRIA, VIRGINIA

Ms. DALY. Thank you, Mr. Chairman. I appreciate this opportunity to testify.

Catholic Charities agencies in the United States have over 250 years experience in helping people in need. Catholic Charities USA is the national association of 1,400 independent local Catholic Charities agencies and institutions that serve more than 11 million people annually of all religions and of no religion and of every social, racial, and economic background.

I am going to restrict my comments today to titles III and IV. Since your kind invitation, we have not had an opportunity to study title I, and we leave school choice issues to the capable hands of the U.S. Catholic Conference.

Over the next few years, the religious charities and nonprofits will be drowning in requests for assistance. In such a scenario, you would expect a representative of America's largest network of private social service agencies to be here pleading with you to pass legislation, encouraging more charitable giving.

So why am I here today raising concerns about this charity tax credit? Why aren't I leading the cheers? In our view, Mr. Chairman, the proposed credit will probably not increase charitable contributions, at least not by much, and yet, if it is financed by cutting programs for the poor, it will make poverty worse.

We have strong reservations about the proposed charity tax credit. First and foremost is financing. While H.R. 3467 includes no offsets, additional spending cuts in programs for the poor have been cited as the source of revenues.

In addition, we are concerned that the tax credit will promote costly competition among charities, shift necessary resources away from essential, but not means tested community services, further isolate and stigmatize the poor, and foster a bureaucratic culture among charities, but we do need to find ways to encourage charitable giving without further reducing government spending on the poor.

As you know, the welfare bill now in Congress would cut approximately $60 billion over 6 years. If you divide this figure by the number of religious congregations in the United States, each parish, congregation, and synagogue would have to raise almost $275,000 over and above its present commitments just to make up for these cuts in the welfare bill.

To understand why the nonprofit community cannot compensate for these massive cuts, look at the nationwide effort of the United Way, which is organized in every community in the Nation and involves tens of thousands of volunteers raising funds in tens of thousands of workplaces. The entire effort raises just over $3 billion. Yet, the proposed cuts in the welfare reform legislation alone are 20 times that number.

Given the magnitude of these figures, you can see why Catholic Charities USA, the Catholic Bishops, the Salvation Army, the Lu-

theran Social Ministry, the Council of Jewish Federations, and 40 other religious groups have written to you to object to the depths of these cuts and to say that they could not possibly begin to fill the gaps.

Some have argued that these cuts don't matter; that the poor can't be helped by government; and that compassion must be personal, challenging, and spiritual. That argument is only partly right. In fact, government programs, bureaucratic and secular as they may be, are a necessary lifeline for people who can't work and can't find a job—just ask anyone who lives on a Social Security check or an unemployment check. But government alone is not enough.

Poor people are often marginalized and isolated from the larger community just because of their poverty, and they need special help. In our tradition, we are taught to see Jesus himself in every person, but especially in the suffering poor. Even though our agencies receive Federal funds, they treat each person as a brother or sister in Christ, and by their kindness, courtesy, and loving attention, they show God's love to those who need our help.

Some make a flawed and facile argument about the lack of morality of the poor as compared to the rest of us. All too often today, as it was in the time of Jesus, poverty is seen as the same as in immorality, but as Jesus himself did in the Sermon on the Mount, we challenge that assumption.

If the welfare bill passes in the next 2 to 5 years, millions of poor families are going to find themselves ineligible for welfare, but still without jobs. Most of those parents will get jobs eventually, but unless there is some miraculous change in the economy, those jobs won't last long enough or pay enough for the families to make it on their own.

Half of the people who come to us now for emergency assistance aren't on welfare. After paying rent, heat, electric, and day care bills, there is nothing left for food, diapers, medicine, or even bus fare to get to work, and their chances of getting subsidized housing or day care are about as good as getting kidnapped by space aliens.

For millions of children, the current dysfunctional, broken, and disgraceful system at least keeps them alive, living in apartments instead of in shelters, eating at kitchen tables instead of soup kitchens. Their moms may be off and on welfare and in and out of work, but they are alive.

Our agencies are terrified about the time limits in the welfare reform bill. You can repeal the entitlement, but you can't repeal the laws of economics. At the lower end of the labor market where welfare moms find employment, the jobs are unstable, of short duration, with seasonable layoffs, frequent cutbacks to part time, and no vacation or sick days and usually no benefits. Typically, workers in these jobs cannot get unemployment insurance and rely on welfare.

We are very concerned about what is going to happen to these folks, Mr. Chairman, and we do not think the charity tax credit is going to be the answer. While we hate to turn down money, if this tax credit is to be financed by even more cuts in programs for the poor, we say, "No, thank you."

If the new credit is offset by more cuts in programs for the poor, the result is certain to be a net reduction in combined public and private spending for the poor. While it may stimulate some additional giving, it will also simply reimburse many people for contributions that they already make, and we can know that with mathematical certainty. At least some of those people who currently give to charity and take the deduction will give no more and get the credit. So the Treasury will lose $125 for each $200 tax credit. If that money comes from offsets from programs for the poor, then the charity will get the same contribution as before, but the poor will be worse off by $125.

We are convinced that the new credit would also exacerbate the problems of distributing charitable funds across geographical barriers. People in the affluent suburbs often raise more than they need, while those serving the poor in inner cities and rural areas operate on a shoestring and a prayer. It is one of government's legitimate functions to overcome this geographical disparity.

Many of those we serve are not poor. They are near poor, and by helping them, we prevent poverty. The way the bill is constructed, it would encourage charities to get out of prevention and into remediation, and we think that could be a bad mistake.

We are also concerned about the prospect of greater government entanglement in church affairs. While Catholic Charities agencies are accustomed to thorough audits, smaller religious organizations would have to adopt the same bureaucratic recordkeeping and means testing in order for donations to be eligible for the credit. It is not clear what advantage there would be to the government, much less to the poor, to replace HHS program officers with an army of IRS agents who will have to continually monitor which agencies are eligible under the credit.

Finally, under the provisions of the bill, charities would not qualify for the tax credit if they tried to influence legislation, as I am doing here today, or if they had engaged in litigation on behalf of clients or they had tried to register people to vote. Why would the Congress want to silence the voices of the churches and charities? In fact, it is shocking that Members of Congress would seek to keep the religious community out of the public policy debate on poverty. What purpose could be served by excluding them from sharing the benefit of their experience, and for what purpose should tax credit-eligible agencies be forbidden from registering people to vote?

In our Catholic teaching, voting is not just a right, but an obligation. We encourage everyone to register and vote, and we have never considered voter registration to be a subversive activity.

On the other hand, depending on how it is financed, we would support a charitable tax deduction for those who do not itemize, many of whom give a higher proportion of their modest incomes to charity.

Mr. Chairman, even if the proposed tax credit were financed entirely by closing tax loopholes or reducing corporate subsidies, we would have concerns, but if it is to be financed by further cuts in means-tested programs, we would have to oppose it.

Thank you for this opportunity.

[The prepared statement follows:]

Testimony Regarding HR 3467
The American Community Renewal Act of 1996

Presented to the House Subcommittee on Human Resources
and the Subcommittee on Early Childhood, Youth and Families
July 30, 1996

Presented by
Sharon M. Daly
Catholic Charities USA

Mr. Chairman, I want to thank you for the opportunity to testify before these Subcommittees regarding federal efforts to increase the role of private charities in helping the poor. Catholic Charities agencies in the United States have over 250 years experience in helping people in need. Catholic Charities USA is the national association of 1,400 independent local Catholic Charities agencies and institutions with 234,000 staff members and volunteers. Last year, Catholic Charities programs served more than 11 million people of all religions and of no religion and of every racial, social, and economic background.

I will restrict my comments today to Titles III and IV of the bill. Since your kind invitation to testify did not arrive until a few days ago, we have not had the opportunity to study Title I, and we leave school choice issues to the capable hands of the US Catholic Conference and the National Catholic Education Association who speak for the Church on education policy.

Over the next few years, the religious charities and nonprofits serving the poor will be drowning in urgent requests for critically needed assistance. In such a scenario, you would expect a representative of American's largest private social services agency to be pleading with you to pass legislation encouraging more charitable giving.

So why am I here today raising concerns about this charity tax credit? Why aren't I leading the cheers?

In our view, Mr. Chairman, the proposed credit will probably not increase charitable contributions, at least not by much, and yet if it is financed by cutting programs for the poor, it might make poverty worse.

Catholic Charities USA has strong reservations about the proposed charity tax credit. First and foremost, our concern is about financing. While H.R. 3467 includes no mechanism for offsets, many of the sponsors have cited additional spending cuts in programs for the poor as a likely source of revenues. In addition, we are concerned that the tax credit, while well intentioned, is likely to promote costly competition among charities; shift necessary resources away from essential but non-means-tested community services; further isolate and stigmatize the poor; and foster a bureaucratic culture among charities.

Over 200 Catholic Charities agencies nationwide provided various forms of services to more than 1.1 million children and adolescents (18 and younger) in 1994. More than 110,000 children and adolescents were provided foster care, group homes, or residential care, and adoption services were provided to 42,134 people in 1994. That same year, more than 233,000 at risk families received intensive services.

Through home health care and Meals on Wheels, our agencies help elderly and disabled people stay in their own homes and out of nursing homes. Through our sponsorship of special housing, we make safe and affordable housing available to senior citizens who live on fixed incomes. We assist thousands of elderly each year with utility assistance and with rebates on their property taxes and rents under the Circuit Breaker program.

Through special pre-ownership counseling services and through partnerships with banks and other lending institutions, we assist working individuals and families to become home owners for the first time.

We help resettle refugees from every part of the world and help them to become productive Americans. We help in the reunification of immigrant families and we help them learn the English language and to become citizens.

We help families get back on their feet when floods, earthquakes, fires, plant closings, or

downsizings leave them jobless or homeless.

We help keep families together through marital and family counseling, and we rebuild families that are torn apart by substance abuse or by domestic violence.

Almost two-thirds of our agencies have waiting lists for family and children social services. They simply do not have sufficient resources to meet the need. Over the past 15 years, one of the greatest challenges that our agencies have faced is the steady increase in hunger and homelessness in their communities. In 1981, fewer than 1 million people came to our agencies for emergency food and shelter. By 1994, that number grew to over 7 million people who received emergency help, a 700 percent increase!

The 1994 budget of all 1,400 agencies combined was $1.9 billion. Over 60 percent of the cash revenues of our local agencies came from government at the local, state, and federal levels. The reason for this high percentage of government funds is that our agencies are reimbursed by government agencies under contracts to provide services that government would otherwise have to provide. The balance of funding for our agencies is raised by the local churches, the United Way, and from fees paid by those who are able to pay for their services. And we often provide a "match" from these funds to pay the actual cost of services provided under underfunded government contracts.

The welfare bill now in Congress would cut approximately $60 billion over six years. This does not include cuts in housing programs or other non-defense discretionary programs. If one divides this figure by the 258,000 religious congregations in the United States with telephones, one can see that each parish, congregation, and synagogue would have to raise and spend almost $275,000 over and above its present commitments to make up for the cuts proposed by Congress in just these programs.

Another figure that may help Congress realize why churches and charities cannot pick up slack in these massive cuts is the nationwide effort of the United Way. This effort is organized in every community in the nation and involves tens of thousands of volunteers raising funds in tens of thousands of work places. The entire effort raises just over $3 billion a year. Yet the proposed cuts in the welfare reform legislation alone are twenty times that number.

Given the magnitude of these figures, you can see why Catholic Charities USA, the U.S. Catholic Bishops, The Salvation Army, Lutheran Social Ministry, The Council of Jewish Federations, and 40 other religious groups wrote Members of Congress last November to express their grave concerns about the depth of proposed budget cuts and to say that they could not possibly begin to pick up these cuts through private charitable giving. They can't raise a half trillion dollars over the next seven years to fill the gaps in services and income maintenance created by congressional budget cuts. In fact, last July, Independent Sector released a study prepared by Alan J. Abramson (Aspen Institute) and Lester Salamon (Johns Hopkins University) indicating that to offset the entire reduction in federal spending in fields where nonprofits are active, private giving in the year 2000 would have to be 50 times greater than it has been in the recent past!

For more than a year, the welfare debate has focused almost exclusively on personal responsibility, with hardly a mention of social responsibility. It has talked about charity, but has been silent about social justice. The Catholic Church, from the Pope on down through the bishops, teaches that government must respect and guarantee that individual rights are respected, including the right to "suitable employment for all who are capable of it," to just and adequate wages, and to social welfare benefits when jobs are not available or people are not able to support themselves and their families. Government does not have to do everything, but the national government's role is to ensure that the minimum standards are available to all: jobs, food, housing, health care, and education.

This is not to say that there is no need for welfare reform or other reforms. We do not defend the current system, nor do we oppose intelligent reforms. For example, before the President's welfare proposals or the *Contract With America,* Catholic Charities USA called for a thorough reform of the welfare system, including work requirements for parents and strict requirements for teen parents to stay in school and to live under adult supervision. (CF. *Transforming the Welfare System,* Catholic Charities USA)

Many have argued recently that the poor cannot be helped by government programs and that

"compassion" must be personal, challenging and spiritual. That argument is only partly right. In fact, government programs, bureaucratic and secular as they may seem, are a necessary lifeline for people who can't work or find a job. Just ask anyone who lives on a Social Security check or an unemployment insurance check.

On the other hand, government assistance alone is not enough. It's necessary but not sufficient. It's not sufficient for two reasons:

First, even the combination of AFDC and Food Stamps is not enough in any state to bring a family up to the poverty line, and the value of welfare benefits has dropped by almost half due to inflation. Moreover, many states are now actually cutting AFDC benefits in addition to the losses caused by inflation.

Second, no one lives by bread alone; and poor people, often marginalized and isolated from the larger community because of their poverty, need special help. In our tradition, we are taught to see Jesus himself in every person, but especially in the suffering poor. Our agencies try to treat each person as a brother or sister in Christ and by their kindness, courtesy, and loving attention, to show God's love to those who most need our help.

While our agencies do not use federal funds to evangelize or proselytize, we can fulfill our religious mission by the very personal and challenging attention we pay to the mental and emotional as well as material problems of poor people. By respecting the God-given dignity of each person, we give them a glimpse of God's infinite love.

Many of those who come to Catholic Charities for help are spiritually bereft. Their suffering from poverty, disease, discrimination, and the loss of loved ones has made them question God's existence, or like Job, argue with God that they do not deserve such suffering.

Some social critics make flawed and facile arguments about the lack of morality or responsibility of the poor as compared to those of us with adequate incomes. All too often today, as it was in the time of Jesus, poverty is seen as the same as immorality. But as Jesus himself did in the Sermon on the Mount, we challenge this assumption based on the millions of poor people we serve whose goodness and virtue would shame most of us in this room.

The reason poor people need the personal, challenging, and spiritual help of religious organizations is, in part, because of the condescending, contemptuous and cruel treatment they so often receive from some welfare departments, landlords, employers, school systems, and other pillars of the community.

But counseling and kindness alone can't pay the rent or put food on the table. Religious charities supplement the role of government; we cannot substitute for government. As our bishops wrote in their 1995 *Political Responsibility* statement:

> "As advocates of both subsidiarity and solidarity, we also welcome the dialogue over how pubic and private sectors, government and community institutions can work together for the common good. What are the responsibilities and limitations of business and labor, churches and charities, and the various levels of government in protecting human life, enhancing human dignity, and pursuing social justice? Our tradition and experience teach us that markets have both advantages and limitations, that government is neither the solution nor the enemy, that private charities have essential roles, but cannot substitute for just public policies." (pp.6-7)

If the welfare repeal bill is signed into law, our agencies expect to be deluged by requests for emergency assistance for families facing eviction because they cannot pay their rent.

Over the next two to five years, millions of poor families will find that their eligibility for welfare will run out even though they have no other income -- or only minimal support -- from earnings or child support.

Within the time limits, most parents on welfare will find jobs, but unless there is some miraculous change in the US economy, those jobs won't last long enough or pay enough for the families to make it on their own.

Even now, under current welfare rules, half of the people who come to us for emergency

assistance are not on welfare. Many have found that after paying rent, heat, electric, and day care bills, there's nothing left for food or diapers or medicine or even bus fare to get to work. If they are not on welfare, their chances of getting subsidized housing or day care are about as good as getting kidnapped by space aliens.

Over and over our agencies work with parents who have to go on welfare to avoid eviction and to get help with day care. If they are lucky they can get subsidized child care for a year after they go off AFDC. The problem is that one year later they are no more able to afford both rent and day care. It they get behind in the rent, they are homeless. If they get behind with the baby sitter, they wind up out of work. For millions of families, AFDC is a temporary but regular safety net during layoffs and when affordable day care is not affordable.

For millions of children, the current dysfunctional, broken, disgraceful welfare system at least keeps them alive, living in apartments rather than in shelters, eating at kitchen tables rather than at soup kitchens. Their mothers are on and off welfare, in and out of work, and the churches and charities help to fill in the gaps so that a bag of groceries gets the family through the week until the Food Stamps come and the parish pays the electric bill so the lights aren't turned off before the welfare check arrives.

The nonprofit social services agencies and the religious community comfort and counsel the mothers who are on the brink of despair because they are laid off before they can buy school clothes for September. They help to find a day care provider who will wait to get paid until after the first pay check comes. They provide a security deposit so the family can move closer to the mother's job.

The staff and volunteers in our agencies are terrified about the time limits in welfare reform. You can repeal the entitlement, Mr. Chairman, but you can't repeal the laws of economics. At the lower end of the labor market, where welfare moms find employment, the jobs are unstable, of short duration, with seasonal layoffs, frequent cutbacks to part-time, no vacation or sick days, and usually no benefits. Typically, workers in these jobs don't qualify for unemployment benefits, so AFDC has been their lifeline.

What will happen two years from now when we begin to see large numbers of families who will never again be eligible for welfare, who don't qualify for unemployment insurance, and can't pay for rent or child care with Food Stamps? Poverty and dependency are terrible, but there is something worse: destitution, homelessness, hopelessness.

Throughout the last two years, we have heard the assertion that the welfare time limit would motivate parents to find and keep jobs and that the churches, charities, and nonprofits would take on those few families not exempted by the state from the time limits. We hope and pray that you are right, Mr. Chairman, but no one who works closely with the poor in our agencies would bet on it.

In addition, unless the President uses his veto pen, the religious charities will soon be inundated with pleas for help from the legal immigrants who will be banned from most federal programs. Moreover, the poor who depend on Food Stamps will need more help from us as they face a steadily growing gap between their monthly benefits and the actual cost of food.

Now the proposal comes to help the churches and charities to take over even more of the care of the poor by a new charity tax credit. Well, we hate to turn down money, but if this tax credit is to be financed by even more cuts to programs for the poor, we say "no, thank you."

If the new tax credit is offset by more cuts in AFDC, Food Stamps, WIC, child nutrition or other programs for the poor, the result is certain to be a net reduction in combined public and private spending on the poor.

The new credit may stimulate some additional giving, but it will also simply reimburse many for contributions they already make. Others may not increase their contributions, but merely shift them from one charity, such as a home for the elderly, to another, such as a shelter for addicts and alcoholics.

We can know with mathematical certainty that the net result for the poor will be less money spent to help them. If I donate $267 now to charity (28 percent bracket) and can itemize, after the tax deduction the net cost of the $267 to me is about $192. Under the proposed credit, it would cost me only $67. At least some, and probably many, people would not increase their

charitable giving; they would just pocket the tax subsidy. Yet, the Treasury would lose an additional $125 because of my credit and those funds would have to be offset. If the offset comes from programs for the poor, the poor will lose $125, and the charity will still get the same contribution as before. The charity gets no more and the poor are worse off by $125.

We are also convinced that the new credit would exacerbate the already serious problem of a mismatch of needs and resources. Private giving is largely local with religious organizations and other nonprofits in affluent suburbs able to raise more than they need, while those serving the poor in inner cities and rural areas are always operating on a shoestring and a prayer.

Few institutions in the US have the capacity to offset these geographical disparities, and it is one of government's legitimate functions. The distribution problem is likely to result in a greater reliance on direct marketing and other fund raising by charities from the general public. This is one case where competition and advertising costs are unlikely to promote efficiency.

We also serve people who are not technically poor to help prevent them from falling into poverty, and many of our organizations would not qualify under the credit because they don't spend 75 percent of their money on the poor.

If Catholic Charities USA and other charities shifted all of our resources to serving the poor, poverty would increase, not decrease. Preventive health care is less expensive than treatment; the same is true with fighting poverty. Much of our work prevents poverty.

Segregating the poor would stigmatize them further, but it would not help them. There are very good reasons why we don't want to segregate the poor. In caring for the elderly, for example, socialization is vital, and it would be destructive to isolate the elderly poor. We've learned from public housing that concentrating large numbers of poor people in a small area is destructive because a small number of criminals can terrorize and set the tone for an entire community. You'd think we'd learn a lesson.

According to the directors of substance abuse programs under Catholic Charities auspices, in most communities, three-month waiting lists for substance abuse treatment are common because of a shortage of funds from federal and state agencies. Frequently, Catholic Charities staff are unable to bring about long-term positive changes in troubled families because treatment is not available for addicted or alcoholic parents or teenagers. No matter how powerfully motivated, many people need professional treatment, not just religious inspiration and support.

A provision in the Senate welfare bill will only exacerbate the problem by denying Medicaid and other means-tested benefits to people convicted of drug offenses. Under H.R. 3467, religious organizations would be able to incorporate spiritual support in their federally funded programs. Of course, we would not object to greater flexibility in this area, but if people trying to overcome drug problems cannot receive cash assistance, Food Stamps, Medicaid, child care, housing subsidies or any other government aid, offering them government subsidized spiritual guidance alone is not likely to be effective.

We are also concerned by the prospect of greater government entanglement in church affairs. Catholic Charities agencies are accustomed to thorough audits of our programs that are funded with government funds, but it appears that to be eligible under the new credit even small religious organizations would have to adopt the same bureaucratic record keeping and means testing of government programs. Or -- perish the thought -- we might need more than one expensive and complicated accounting system -- one for HHS and state governments and another for the IRS.

It's not clear to me what advantage there would be to the government, much less to the poor, to replace HHS program officers and auditors with an army of IRS agents who would have to continually monitor which charities qualified under the tax credit.

Finally, under the provisions of H.R. 3467, charities would not qualify under the tax credit if they had engaged in any activities for 1) the purpose of influencing legislation: 2) litigation on behalf of clients; or 3) voter registration, public policy advocacy, or public policy research.

It is very difficult to understand why the Congress would want to silence the voices of the churches and charities whose very competence and contributions you would recognize in this bill. In fact, it is shocking that Members of Congress would seek to keep the religious community that serves the poor out of the public policy debate on poverty. What public purpose

could be served by excluding those with the greatest knowledge from sharing the benefit of their experience with public policy makers and with the public itself?

And for what purpose should tax credit-eligible agencies be forbidden from helping to register people to vote? In our Catholic teaching, participation in public life, including voting, is not just a right, but an obligation. Catholic Charities and other nonprofits encourage clients, staff, and volunteers to register and to inform themselves about issues and candidates. We have never considered voter registration to be a subversive activity. Even with our help, the poor are less likely to vote than higher income people. Is there some reason to make it even harder for them to participate?

On the other hand, depending on how it is financed, we would support a charitable tax deduction for those who do not itemize, many of whom give a high proportion of their modest incomes to charity.

Even if the proposed tax credit were financed entirely by closing tax loopholes or reducing corporate subsidies, we would have concerns about the proposal. If it were to be financed by further cuts in means-tested programs or programs that are primarily for low-income people, we would have to oppose it. I do not think you will find much support for this proposal from those who actually serve the poor. Few would want to see their own budgets increase at the direct expense of the very people they serve.

Thank you for the opportunity to share our views on the proper roles of government and church-related welfare agencies in providing for the welfare of the people of the United States, especially for the poor and the vulnerable among us. Our 1,400 agencies stand ready to show you the type of work that we do and to introduce you to the people whom we serve.

Chairman SHAW. Reverend Jackson.

STATEMENT OF REV. EARL W. JACKSON, SR., NATIONAL DIRECTOR OF COMMUNITY DEVELOPMENT, CHRISTIAN COALITION, CHESAPEAKE, VIRGINIA

Rev. JACKSON. Mr. Chairman, Members of the joint Subcommittees, thank you so much for the opportunity to come before you today. I have to tell you, however, that I come conflicted. My father, who has been the most important influence in my life, is deathly ill, and I struggled with the decision to come, but felt that I should come because he is concerned about his children and his grandchildren, and that this bill speaks to their concerns, their welfare, and their well-being. So I have come today, and if you will allow me, I want to dedicate what I have to say to my dad, the Reverend William Jackson.

I come today to offer testimony about a bill that could, in my view, provide incentive to countless millions of Americans to once again become involved in projects to renew and uplift the lives of their neighbors, to help our people to reach out in compassion to help them. Big government can't do that. Big government can't cook a home-cooked meal for my dad. Big government is not the solution.

We can meet the needs of the disadvantaged while not breaking the back of the American taxpayer, and this bill will provide incentives for people to renew their involvement in community-based programs and local help organizations.

This legislation could perhaps spur the private sector with a commitment to rebuild our inner cities. It could help school children to excel. It could create a tidal wave of giving to help the needy who are struggling for food or clothing or what have you.

I have come today in spite of the fact that my father is ill, and I am going to be leaving and going right back to him when I leave. I have come today because in my view, this bill is vision, and if you will allow me to quote someone wiser than I, "Where there is no vision, the people perish."

If I can turn that around, I would like to say where there is vision, the people flourish. We can create a future filled with hope and opportunity driven by the energy, creativity, and innovation of the American people, not by Federal bureaucracy, but by faith that this great Nation is not a happenstance of history, but ordained to a great destiny which beckons every citizen.

The comprehensive nature of this bill when passed and implemented will take us toward that destiny. Educational opportunity is also critical for the survival of our most precious resource, our children. Simply stated, choice in education is crucial. Parents must have the option of selecting the best public, private, or parochial school available. We must work for a day when quality education is available for all students of all backgrounds and income levels.

We have heard again and again that we are going to improve the public schools, but it never happens. Parents who have children attending dysfunctional schools must have the option of placing their children in schools that produce and encourage academic and career excellence.

Finally, allow me to speak for just 1 moment as a pastor, the pastor of New Cornerstone Exodus Church in Boston, where I have been deeply involved in social policy for a very long time, long before I joined the Christian Coalition, long before there was a Christian Coalition.

Some people would say there is no moral standard in America; that moral values should be fluid and change with the times. I would remind us all that slavery, Jim Crow, and the sin of racism were condemned at least 3,000 years ago when God chose David to be king, and Samuel looked at all of his sons and they were all fine-looking young men, and when he finally chose David, uttered these words, "God sees not as man sees. God does not look at the outside. God looks at the inside. God looks at the heart."

Let us be reminded that our Judeo-Christian ethic, for any feminists who might be in the room, asserted the dignity and equality of women 2,000 years ago, when Paul said, "In Christ, there is neither male nor female." That wasn't a creation of the seventies or eighties. These and other principles rooted in faith are legitimate and rational in the public debate, but in many instances, the public expression of faith is trampled upon.

In my 20 years of ministry, I know of no instance where the Federal Government has made an alcoholic throw down his bottle, made a gambler give up gambling, made a drug addict dry out, made men who were in and out of jail come out and become responsible husbands and fathers, made women on welfare become gainfully employed, and create fine entrepreneurs such as Star Parker, or made angry and bitter people come to peace with themselves and others. I have never seen the Federal Government do that, but I have seen it done in church after church, and I would urge us to acknowledge that faith must play a vital role in the lives of the American people, and we must remove the obstacles for churches and local help groups and private charities to play an increasing role in the revitalization of our cities and schools.

Therefore, in my view, the tax credit proposal is absolutely vital to this legislation and to our future. According to the National Center for Policy Analysis, 94 percent of all shelters for the homeless in the United States are operated by faith-based charities or private sector businesses. What is more, 80 percent of all low-income residents in this country turn to private sector help groups first when facing a crisis, and those help groups are first and most often the church.

We must create additional incentives for Americans to strengthen these outreach programs. We must do everything in our power to assure that if we carry through with our promise to the American people to reduce the role of Federal Government that no man, woman, or child who needs a helping hand is lost. This bill can serve as a bright, shining light. Please, please don't allow it to be hidden under the shadow of congressional partisanship, but set it up on a lamp stand of congressional and Presidential cooperation, so that it can serve as a light to lead our Nation down a wonderful path of renewed freedom of opportunity, prosperity, and goodwill. We must stretch out human hands of caring, not Federal hands of bureaucratic control.

Well, gentlemen and ladies, you are in my prayers for wisdom and the speedy passage of this bill. I really hope that it passes, and I thank you for this opportunity to address you, and may God be good to each and every one of you, regardless of your party and regardless of your position on this bill.

Thank you.

[The prepared statement follows:]

Reverend Earl W. Jackson, Sr.
National Director, Community Development for Christian Coalition
and Pastor, New Cornerstone Exodus Church, Boston, MA

Mr. Chairman, members of the joint subcommittees, distinguished panelists, it is a unique honor to be invited to share with you my thoughts about your exciting legislation, H.R. 3467, "Saving Our Children: The American Community Renewal Act of 1996."

This is my third time to appear before Congress in the last several weeks. I recently offered testimony in the wake of a rash of fire bombings of African-American churches and I have seen not only heartfelt concern for what's happening to our houses of worship but I have seen this body react swiftly in attempting to quell this senseless violence against people of faith.

I have visited a number of towns where these church burnings have occurred and I have seen, first hand, how good people of every age, color and creed have pulled together to heal these wounds of hate and bigotry.

I come before you today to offer my testimony about a bill that could inspire countless Americans to once again become involved in projects for renewal that could uplift millions of lives. Here, we are responding to general social decays and with a specific plan, not just for stopping decay in our cities and towns, but also for inspiring a change in the hearts of people to reach out in compassion to help their neighbors rather than thinking that big government will provide all the solutions. With this bill there is vision. Without vision our people will perish.

We must derive solutions to the age-old problem of meeting the needs of the disadvantaged while not breaking the back of the American taxpayer. This bill would provide incentives for people to renew their involvement in community-based programs and local help organizations. This legislation could provide the spark for a wildfire of private sector commitment to rebuild our inner cities, help school children to read or provide food and clothing for the needy.

We must create a future which is filled with hope and opportunity driven by the energy, creativity and innovation of the American people, not by federal bureaucrats. Inspired by the faith that this great nation is not a happenstance of history, but ordained to a great destiny which beckons us, but to which we have not yet arrived. The comprehensive nature of your bill, when passed and implemented, will take us toward that destiny.

Educational opportunity is also critical for the survival of our most precious resource, our next generation of children. Simply stated, choice in education is crucial. Parents must have the option of selecting the best public, private or parochial school available. We must work for a day when high quality education is available for all students of all backgrounds and income levels. Parents who have children attending dysfunctional schools that can no longer produce competent graduates must have the option of placing their children in schools that encourage excellence and ambition.

Finally, allow me to shed for just a moment my title as National Director of Community Development for the Christian Coalition and speak to you as a pastor--a pastor who has been on the front line in matters of social policy long before I joined the Christian Coalition.

Some people would say that there is no moral standard in America, that moral values should be fluid and change with the times. I would remind us all that slavery, Jim Crow and the sin of racism were condemned at least 3,000 years when God chose David to be king. "God sees not as man sees, God looks at the heart." The women's movement can look back 2,000 years to the scripture that spoke about what some might call a feminist principle: "In Christ there is neither male nor female."

The point I am driving at is simply this: These ancient principles rooted in faith have served us well for centuries, and at least deserve a place at the table of public debate. They should not be shut out, but in many instances, the public expression of faith is trampled upon.

Several years ago, a well-known and respected organization denied me the chance to speak to a

meeting of mothers and children about crime prevention. Why? For no other reason than the fact that I am a Bible-believing pastor. A large company, whose name you would recognize, agreed to fund a traditional values program for the school system until corporate heads learned the values program was sponsored by a pro-life, pro-family church. The program was already in place at several schools in Boston.

We offered a covenant which elementary school students signed agreeing to stay away from alcohol, drugs, gangs and violence. At the end of the covenant, we quoted from the Declaration of Independence. The principal of the school banned the covenant because the mere mention of a "creator" was "too controversial." It was astounding that we could not use a quotation from one of our founding documents because one school official though it violated separation of church and state.

Faith plays a vital role in the lives of millions of Americans and if we remove the obstacles for churches, local help groups, and private charities to play an increasing role in the revitalization of our cities and schools, we can accomplish much. According to the National Center for Policy Analysis, 94 percent of all shelters for the homeless in the United States are operated by faith-based charities or private sector businesses. What's more, 80 percent of all low income residents in this country turn to private sector help groups first when facing a crisis. We must create additional incentives for Americans to strengthen these outreach programs. We must do everything in our power to assure that if we carry through with our promise to the American people to reduce the role of the federal government, that no man, woman or child who needs a helping hand is lost. H.R. 3467, Saving Our Children: The American Community Renewal Act, offers what could be the beginning of that promise and vision. This bill can serve as a light to illuminate our hearts in a new way. Thank you for the opportunity to address this hearing today.

Chairman SHAW. Thank you, Reverend.

Mr. Cunningham may inquire.

Chairman CUNNINGHAM. Thank you, Reverend Jackson. I lost my dad about 1½ years ago, and you can't go back and spend time with him. So God bless you and spend the time with your dad.

Ms. Daly, I have no doubt that you have target goals, and I think your goals are the same as ours on our side, and that is to make sure people get off of welfare and they get help; that education has the support that we need. I have no doubt about that at all. I think deciding how we get there is where we totally disagree, and I think that is a legitimate debate.

I don't think most of the people, Republican or Democrat, feel that spending more money on a system makes it better. I think over the last many years, we have failed our people in trying to achieve our common goal. I think it is a mass failure but not total, because there are some wonderful things that happen in welfare.

There are some wonderful things that happen in our public school systems and private school systems, but overall, the public and, I think, our children are crying for help and reform.

Let me give you just a couple of examples. I don't plan on converting you, but I want to explain why we are coming at you for a direction. Time after time, you hear the members on the panel say that government is not the big solution. Everything that we have argued about in this 104th Congress about government shutting down and cuts and education and other programs is about power. It is about the power of the Federal Government to spend money and control people's lives. That is the failure. It is because that has expanded so far that government has become so inefficient.

Let me tell you what I think a real cut in education is. You take the President's direct lending program, the government lending program to control against spending, and the President wants basically all direct spending and government loans to emanate out of the Federal Government, thereby making the Federal Government the largest lending institution in the United States. Capped at 10 percent over the year, it can't account for $100 million. It costs $1 billion, according to GAO, just to administer above letting the private enterprise do it, and it will take $3 billion to $5 billion to collect it.

Spending more money, we took the savings and we increased Pell grants. We increased access to student loans by 50 percent, but yet, there are people who say we cut education.

Cutting education is wasting the money to let government have control of special interest groups. That is where we differ.

Ms. DALY. May I respond, Mr. Cunningham?

Chairman CUNNINGHAM. In just 1 second.

If we can actually get more money down into the classroom—do you know that in some areas we get as little as 23 cents on a dollar down to the classroom, and in welfare, we get less than 30 cents? That is cutting to me, and if I can make that more efficient and better—let me go through one other program, AmeriCorps, a great idea, except that when you pay $29,000 per volunteer, and in Baltimore, it was $50,000 per volunteer, that is wasting money. I would rather take that and put it to poverty children, to increase it even

more, or choice or access to the education system. That is cutting, and no matter what we as a Republican Congress put out here as a number, the President will put a higher number and say we are cutting. That is inefficiency.

In the meantime, of that increased spending, we have driven this country into bankruptcy. We are paying nearly $1 billion a day on just the interest on the national debt because we spent so much and the government is so big.

So we are saying we can actually give you more by taking government regulations off your back, by having less paperwork, by giving you the function at a State level. Those that want power in Washington will fight that, and you can respond.

Ms. DALY. Mr. Cunningham, I am not here to talk about school choice or education. As I mentioned, those are within the jurisdiction of the U.S. Bishops Conference and the National Catholic Education Association.

My organization, Catholic Charities USA, works with poor people. We don't do education, but we do child care, and we run shelters, many of those that the Reverend was talking about earlier. What I am here to tell you is not that the religious community can't do more, but that we can't make up for the level of cuts that are pending just in the welfare bill, just that 60 billion dollars' worth of cuts.

Food stamps is actually a pretty efficient program. There is a whole lot of fraud and abuse that we need to work on, but every time the Federal Government cuts the Food Stamps Program, poor people wind up coming to our soup kitchens and our parish pantries earlier in the month. So, instead of just coming the last week in the month when they have run out of food stamps, they are going to be coming after this bill passes at the middle of the month, and so we are going to run out of groceries and we are not going to have enough money at the soup kitchens.

Chairman CUNNINGHAM. Reclaiming my time. Did you see "60 Minutes" or the "20/20" documentary on food stamps where they estimate up to 50 percent fraud, waste, and abuse?

Ms. DALY. Well, I think that is absurd.

Chairman CUNNINGHAM. We need to clean up that system to get the funding to the people that deserve it.

Of the 5 million people on welfare, there is an average dependency duration of 13 years. We need people working that can and focus on the people that really need it. That is the cut of squandering and wasting the money.

Ms. DALY. We agree, Mr. Cunningham, but we worry what is going to happen to those people who are no longer eligible for welfare after 2 years or 5 years, for the rest of their lives—for the rest of their lives.

Chairman CUNNINGHAM. Reclaiming my time.

There is still, even after the 5 years, Medicaid. There are other systems to pick up the people. It is just that they are not going to collect AFDC.

My time has run out.

Ms. DALY. They can't pay the rent with a Medicaid card or food stamps.

Chairman CUNNINGHAM. Then let them work.

Ms. DALY. If they can, I think that would be great.

Chairman SHAW. Mr. Fattah is recognized.

Mr. FATTAH. Thank you, Mr. Chairman.

Let me first thank everybody on the panel. I wish Reverend Jackson's father well, and I welcome Ms. Parker.

I understood your point about Damian Williams, but I think we can all take anecdotes. I don't know if we would use the Menendez brothers as advertisements for private schools either.

We need to focus on the broad picture. We have 55 million children in America in public schools, and we have 8 million in private schools. The vast majority of the public thinks that their public school is doing pretty well, and there are pockets of problems. There are problems in the poorest communities.

There is a lot being said about the inner city, but some of our worst problem areas in terms of public education is in the rural areas of our country in which there is a desperate need for additional resources. I would hope that the Subcommittee as they consider this bill look at the fact that there is only a 10-percent set-aside for rural areas, and I don't think that is appropriate.

Even though I represent an urban area, I know a lot about, at least in Pennsylvania, the fact that there are other areas in our State that desperately need assistance.

I wanted to focus my question, first, to the gentleman of the Crispus Attucks, Community Development Corp. Let me thank you for the great work that you are doing.

I note that you made mention of how important Youth Build is, and Youth Build is a program that is also beneficial in my city and in cities around the country where young people are being engaged. I will work in terms of making sure that those additional funds are made available.

The great work that you have done, I would assume, has been aided by a number of programs at the Federal level. I would assume you get assistance from the Community Development Block Grant Program. Is that accurate?

Mr. DEMPWOLF. We do get assistance from Community Development Block Grant. This year, we got about $130,000 in block grants in a $4 million budget.

Mr. FATTAH. Your $4 million budget, can you just break out big chunks of it? Percentagewise, how much of it is Federal support, State support, and local support?

Mr. DEMPWOLF. I would say that perhaps 30 percent is Federal. Perhaps another 20 percent is State and local, and the remaining 50 percent is private.

Mr. FATTAH. OK. My good friend, Bob Woodson, has left, but notwithstanding the fact that we disagree on a lot of things, one of the things we do agree on is that Community Development Corp. at the neighborhood level can make a difference, but they can't make a difference absent resources. I mean, in order to rehabilitate a deteriorated, vacant home and put it back into shape so someone can live in it, you have to have the wherewithal to do that.

Mr. DEMPWOLF. That is absolutely correct.

Mr. FATTAH. So resources are important, and I think that the point that is being made by Ms. Daly from Catholic Charities, which has had a long history of working and trying to respond to

the needs of people in our country, is that there is a concern. The Federal Government provides very little of its resources to help poor people, even though the convention of wisdom around here somehow is that we are spending goo-gobs of our money on helping poor people.

AFDC, which Ms. Parker said she benefited from for, I think, 3 years, you said?

Ms. PARKER. I had been on welfare for 3½ years, and when you call it a benefit, I don't know that that would be appropriate.

Mr. FATTAH. We will get back to that, but got assistance from. We spend about a penny out of every Federal dollar on our main welfare program, even though the view around here is somehow we are spending too much. One penny out of every dollar is not a great deal.

Pete Peterson's book, "Facing Up," when he talked about what we had to do to balance the Federal budget, he said that one of the things we had to do is face the fact that most of the money that we are providing to help people is not going to help poor people. It is going to help Americans who are fairly well off. Until we get to addressing that issue and stop, I think, unfortunately trying to suggest that the problem with poverty in this country is that poor people have too many resources from the Federal Government, I think we are heading in the wrong direction.

The issue that is before the Congress now in terms of this bill is a proposal that has some good parts to it. I think that it is very useful that we could use the Tax Code in ways that could spur investment in poor communities. Again, I would not make the assumption that all of those communities are in inner-city areas. They are not.

Part of the hidden poverty and pain of it in our country is out in places where there aren't the "60 Minutes" and the great big city newspapers that cover some of the real pain and agony that people face in our Nation, but we have to look at some of the other parts of this bill.

This requirement that charities who receive this assistance not be involved in voter registration or public policy research or comments of any kind seems to take away what may be constitutionally protected freedoms that these entities should have, but more important than whether they are constitutionally protected, it just seems that it runs contrary to public policy that we would want groups who are at the ground level working with people stifled.

I would be interested in your comments on that, given your work.

Ms. DALY. Mr. Fattah, if that provision—

Mr. FATTAH. Excuse me. It is "Mr. Fattah."

Ms. DALY. I am sorry. "Mr. Fattah."

Mr. FATTAH. That is all right.

Ms. DALY. If that provision were adopted in the bill and our organizations received contributions for which people got the tax credit, none of us could be here today. We wouldn't have been able to spend any of our money doing the research, reading the bill, doing the analysis, collecting data, traveling here or coming here to talk with you.

Even more important, I think the kinds of people who work in our local agencies with poor people in shelters, in soup kitchens, with battered women, with teenaged moms, they would not be able to share with their local city council people and State legislators and Members of Congress their own experience because this doesn't just say you can't spend a lot of money. It says you can't engage in these activities at all, and that is very hard to understand.

Mr. Cunningham was saying earlier that what this debate has been about in this Congress has been about power. Well, that is right, and poor people are not registered to vote. That is why they have no power in these discussions.

To say that organizations that get tax contributions from them should not be able to register them to vote, I think that is an outrage.

Mr. FATTAH. Thank you very, very much.

Ms. PARKER. May I make a comment, Mr. Chairman?

That particular provision is for organizations like Union Rescue Mission, organizations like His Nesting Place, who have no interest in public policy, anyway, as 80 percent of their revenues are already being used to help the poor. It has nothing to do with lobbying efforts because other organizations in this country have chosen to lobby with their money.

Someone mentioned earlier some of the organizations. I think the name of United Way came up. After the Los Angeles riots, we found out that much of the revenues that the United Way was receiving from the urban communities were leaving the communities and they weren't reinvesting that money.

What this particular private charity act does is help people like myself, taxpayers who want their specific dollars to go to the organization right up the street from their homes that is helping the Damian Williams in our communities.

You mentioned the rural communities. There is a particular rural community in Mississippi I just visited. In fact, I was one of the speakers there. It is called Carey Christian Center. We have the reformed churches in this country, various congregations across this Nation, that have adopted one city in the middle of nowhere, USA, in Mississippi, and they have built a hospital. They brought in doctors. They have dentists there.

Helping the people in the community, yes, they have giveaway programs like food and clothing, but they also have job training attached to it, and what we have right now in this system is where government is competing with them and telling them they cannot come to this table, anyway, because they are regulated through our tax regulations already.

So I don't know that the arguments here are valid for what we are discussing in urban communities and rural communities with the specific emphasis on the 100 renewal areas. We are only talking 100 renewal areas.

Mr. FATTAH. Ms. Parker, you are saying you read this provision that says that organizations could not engage in voter registration, political organizing, public policy advocacy, or research or litigation on behalf of the poor as being restricted to certain organizations?

Ms. PARKER. No. The ones that would receive these dollars. We are talking about organizations that are helping organizations in

the community. They are already based in Los Angeles. For instance, Helpers for the Homeless and Hungry, they do none of those things. All they do is help—

Mr. FATTAH. Excuse me. I am just seeking clarity here. This bill says that qualified charities, and that would mean any charity that was qualified in receipt of these contributions, would be restricted from these activities. You don't think that that is a good thing, I would take it.

Ms. PARKER. Do I think that that is a good thing? I think that there are specific charities in this country—

Mr. FATTAH. You think that certain ones should be restricted and certain other charities should not be restricted?

Ms. PARKER. We already have that. We already have that situation in this country. We have people that specialize in certain work, and depending on whether you are a 501(c)(3) or a 501(c)(4), they have distinct things that they can or cannot do.

What this particular legislation is asking for is only organizations that have the specific interest in helping the poor, not organizations that use—

Mr. FATTAH. That is not what it says.

Ms. PARKER [continuing]. A lot of their money in public policy, but specific emphasis on helping the poor; that those would be the ones that would get this particular credit.

Mr. FATTAH. Thank you.

Rev. JACKSON. Congressman, if I may, it just seems to me—and I hope you will excuse me after this, Mr. Chairman, but if I may, I see that as a rather small matter because you know and I know that if an organization wants to set up something separate, if people within that organization want to say, OK, we are not going to be organization X, but some of us are going to be organization Y because we are concerned about certain issues and we are not going to use the resources of organization X, I mean, it happens all the time.

So, to suggest that somehow people would be muted and wouldn't be able to express themselves—

Mr. FATTAH. I understand your point, Reverend, that there may be creative ways around such a requirement.

Rev. JACKSON. I hope that is your only objection, in which case I am sure it will just fly right through.

Mr. FATTAH. Reverend, I appreciate your comments.

Chairman CUNNINGHAM [presiding]. The gentleman's time has expired.

I would like to be able to comment all day, but we do have another panel and we have other folks. The Chairman has let the time go through.

I would recognize Mr. Talent from Missouri.

Mr. TALENT. I have a quick question for Ms. Daly, if I could.

If I understand your testimony correctly, you are not commenting on provisions outside the charitable tax credit. Is that right?

Ms. DALY. That is correct.

Mr. TALENT. Did I understand your correctly that if your organization felt certain that the money used to pay for this came out of Defense or someplace that you approved of and if the problem were

dealt with regarding the lobbying, that you would be supportive of the charitable tax credit? Are those the two objections you have?

Ms. DALY. Well, we still would have some concerns about the danger of getting charities who now serve more broadly than just the poor to try to concentrate their efforts and restructure, as the Reverend Jackson was saying.

Some of the best programs in this country that help the poor help everybody else, too, who is eligible. They don't means test, and this is typical of all the programs that help the elderly. We try not to segregate the poor elderly from the rest. That is also true of people with AIDS.

We found, in fact, concentrating poor people in housing projects has not been a very good idea. You, from St. Louis, should know this above all.

We think you need to have programs that some poor people are served by them and then others might pay and then others get a partial subsidy. This tax credit could, I think, divert resources in a way and change the way services are delivered.

We are also very concerned about the possible intrusiveness of the IRS. You all are celebrating today the IRS reform bill because the American people have found that the IRS can be very intrusive.

If you have this tax credit, you are going to have to have revenue agents checking all the time to see if the shelter down the street is still spending 75 percent of their money on the poor. So the level of intrusiveness is going to be considerable, and many of us have concerns about that.

I don't think we would outright oppose it because of that, but we would ask you to think about how you would deal with this and other problems.

Mr. TALENT. I will, and I would ask you to think about whether or not you are being open enough to a provision that has the potential not just to raise billions and billions of extra dollars for people providing direct services on the ground to the poor, as Ms. Parker mentioned, but also to begin encouraging more than I think we do today, among all Americans, to think of this problem as their problem, to think of these people as their neighbors, even if they don't live in their neighborhood.

I can see, for example, as the end of the year approached, priests and parishes all around the country standing up and saying, "Now, look, there is this $200 that you can give Uncle Sam that is going to pick up most of it, and you need to consider doing this." I understand your concerns, and maybe we can talk about them. I was a little surprised to hear of the Catholic Charities coming here to testify against a charitable tax credit for the poor because, whatever we think about the efficacy of government, this is something that I thought we could agree on.

I have one other question for Ms. Parker. I missed your testimony. I wanted to be here. I went over to talk to the kids on the Capitol steps.

Let me just bring something up. I don't know if it came up, but I want to bring it up. I want to hear your comment on it.

One of the arguments against the scholarship provision in the bill that I have heard people give is that it would allow government money to go to sectarian schools, religious schools. Now, it does

that by going through parents. I think, as I read the Supreme Court decisions, there is absolutely nothing wrong with, in effect, giving people a choice about what to do with some money or some benefit if they decide to choose their religious—I mean, if there is, then a senior citizen who puts part of the Social Security check in the collection plate has just violated the First amendment, and I don't think that is a problem.

Assuming it is a constitutionally appropriate way, I think that part of the bill would have the effect of tending to draw religious schools and, therefore, put faith back on the center stage of these communities. A lot of people have said that to me as if that is a vice of the bill. I look on it as a virtue because everything that we know about these problems indicate that the more we get people involved in a faith community, the less crime there is, the less drug use there is, the lower the dropout rates.

Would you comment on that? I mean, I think of it as a strength of the bill.

Ms. PARKER. I think so, too, and I really appreciate your putting it there.

I know too many people, too many poor people whose children cannot go to the very schools that their churches have created because they can't afford them. This particular part of the provision would allow those same tax-paying parents to channel their dollars into their school, or another one that is faith-based, perhaps.

I went to college on a Pell grant. I could have gone to whatever school I wanted to. It didn't matter whether it was religious or not, and yet, when it comes to the younger age, it seems that we have a problem with that.

When I lived on welfare, I did use parts of my income to invest in church-related activities, and there was no problem with that, but when it comes to allowing parents to choose a school that will work best for them, too many people are having to work two and three jobs just to keep their kids tucked away.

I don't have a problem with the public schools, per se. In fact, my teenager that I did mention in my testimony, my senior daughter, is in a public high school. It was in those tender years when I was single-parenting her that I needed the assistance of a faith-based school because I did not have a husband, and I needed that minister to be able to put things in her life.

I am shocked that the Congressional Black Caucus is not in 100-percent support of this bill. I am shocked that they are not holding a press conference here today in regards to this bill because in so many areas it really empowers urban America, and I think that that is something they have said continuously that they want to do.

Now we have an opportunity to do it, and I just hope this legislation passes.

Chairman CUNNINGHAM. Ms. Parker, I hope your children understand what you have done for them and appreciate it.

Mr. Blumenauer, you are recognized. Do you have any questions?

Mr. BLUMENAUER. Pass.

Chairman CUNNINGHAM. Pass?

Dr. Weldon.

Mr. WELDON. Ms. Daly, you devoted a considerable amount of your time to criticizing our welfare reform bill, and I think you

made it quite clear that you would rather not give the tax credit and keep the money in Washington and spend more money on welfare. Is that correct?

Ms. DALY. No. I don't want us to keep the money in Washington. I want to not cut the benefits that are already being cut $60 billion in your welfare bill.

Mr. WELDON. Can I interrupt you?

Ms. DALY. I don't want to see any more cuts in those programs.

Mr. WELDON. OK. Now, that $60 billion, you throw out.

As I understand it, in our welfare bill, welfare increases each year. Is that $60 billion the decrease in the size of the increase you are talking about? Where do you get that?

Ms. DALY. No, I don't think it is, in fact. In some things, it is, in food stamps, for example, but for many people, it is not just the amount that they get won't increase. They will get less.

For example, immigrants will no longer be eligible for those programs.

Mr. WELDON. I don't think they should be.

Ms. DALY. People who have been on welfare more than 2 years won't get any more.

Mr. WELDON. I don't think they should be.

Ms. DALY. Well, that is right, but somebody is going to have to make sure that they get food, clothing, have a place to live, and medicine. Many of these people are over 60 years old. They are over 65. They are sick. They cannot work. Somebody has to make sure that they are taken care of, and that will fall on the churches, charities, and the local governments.

Mr. WELDON. Some of the people who live in my district are over 60 years old and work and they are paying taxes, and they don't think it is right that we should be giving their tax dollars to immigrants.

As I understand it, when an immigrant arrives, the sponsor who is sponsoring them to come to the country signs a document stating they will make sure they have a place to live and they get food to eat. It is one thing for a charity to decide that they want to reach out to people, but to be taking tax money, tax money is not a choice. You don't choose to pay taxes or not. You are taking it from the pockets of working families, and to take that money and to spend it on immigrants—my ancestors were immigrants, and they came to this country in a time where they had to get a job and they had to go out and provide. The concept that the Federal Government is providing is, I think, repugnant to a lot of Americans, basically.

I just want to make one other point. You had some really serious concerns about the 5-year limit, and maybe Star Parker can comment on this.

I have seen welfare work well. I had a patient. She and her husband went through a bankruptcy, and they went on welfare. They were on welfare 2 years, and they got back on their feet. They were able to get off of welfare and do well. I have to say that is kind of a good side of welfare where somebody is at a point in their life where they don't have the income; that the welfare system works well for them.

Then, on the other hand, I worked in inner-city hospitals and inner-city health clinics, and it sounds like I have to go to the floor, but I distinctly remember an incident when I was in my OB/GYN rotation, working at the Erie County Medical Center where I had a 15-year-old girl come in and she was pregnant, first baby. I remember I was devastated. I said to her, "Oh, gosh, how could this happen? You must be so upset. It is going to be hard for you to finish high school. It is going to be hard for you to ever go to college," and I will never forget the words that came out of her mouth. It totally shocked me. It floored me. She told me she deliberately got pregnant. She wanted to get out from her mother's thumb. She wanted her own place in the project. She wanted her own welfare check. I thought that was horrible.

As a matter of fact, I concluded at that point that in many ways our welfare system, though it does help people like the person I just described, it destroys people. There is an evil side to it. To place a time limit on it of 5 years, I personally do not think is an unreasonable thing to do.

Ms. DALY. May I respond, Mr. Weldon?

Mr. WELDON. Sure.

Ms. DALY. I think Catholic Charities agencies and parishes probably take care of more pregnant teenagers in this country than anybody else, and we were the first national organization in this country, long before the 104th Congress, to call for no more welfare checks to girls under 18 living on their own.

Mr. WELDON. Good.

Ms. DALY. We agree with that, but we think the government has the responsibility to make sure that whoever is taking care of that teenager and her child has some resources to do it.

So we support cutting off cash checks to teenagers. We would like to see more investment in second-chance homes and other services, so that 15-year-old who may not get along with her mother, but she may have been the victim of incest or abuse or some other problem, she may need another place to live. We have long, long waiting lists for that.

Mr. WELDON. You and I agree. I think we just disagree a little bit on how it is done.

I like the tax credit. I would like to get this city out of the loop completely.

Chairman CUNNINGHAM. The gentleman's time has expired.

Mr. Blumenauer, if you would yield just for 1 second, the Chairman has to leave. He wants to make a brief statement, and then I will yield to the gentleman.

Chairman SHAW. I would like to just go back and look at a common thread that has gone through this hearing, which I think is very impressive.

We heard J.C. Watts at the beginning of this hearing talk about work, family, faith, and community. That is what brings us together, and that is the important thing.

I think we are somewhere in between. We sometimes disagree in the statement that was made that says people, not government, are our biggest resources. I think on the whole we agree on that statement, but we may disagree in degrees.

I think when Star Parker comes in here and tells us that some fellow is taxed out of business for selling Raggedy Anns on the corner and the drug dealer is still going, something is desperately, desperately wrong, and I think that is the type of thing that we need to address.

Reverend Jackson made the statement which I think is quite profound, which I am going to try to remember. He says where vision is lost, the people perish. I know that others have made that statement, but it is so real, and that is where we have lost our way in this whole welfare debate.

Ms. Daly and I have talked privately about issues that we disagree on, but we do come together on defining the basic problem and trying to work toward the solution. I think the important work is going to be in the years ahead.

I am confident now that welfare is going to pass. I have had calls from the White House indicating things that they were concerned about, which makes me even more confident that the President will sign the welfare bill.

This means that we are going to have to be patient with each other. We are going to have to work together. We are going to have to find the solutions to the problems that Ms. Parker talks about, and this is going to be tremendously important for us in the future, whether or not we are talking about the bill that is the subject of today's hearing, which is part of the solution in pieces. We have got to put together the pieces that we can agree upon because we do desperately need the vision to work ahead and to get people out of poverty, and certainly, education is one of the big pieces in getting people out of poverty. A good education is the best antipoverty system that you can possibly have, and we have to make it available.

There are many that we have lost in this generation, and we will never be able to get them back, but we must now start on the next generation. I hope that we can discuss the things that bring us together because we do recognize the problems. We do recognize that inaction of the past has created a lot of the problems we have today, and we must not be afraid of the future. We must not be afraid of change, particularly when we have a system that is as bad as the one we are seeking to change and, indeed, will change.

Thank you, Mr. Chairman.

Chairman CUNNINGHAM. Thank you, Mr. Chairman.

Mr. Blumenauer is recognized.

Mr. BLUMENAUER. Thank you, Mr. Chairman.

I have been concerned with the turn that the discussion has taken in the course of the morning. Although I only recently joined you here in Congress, it has been my pleasure to have worked in local government for the last 18 years.

The worst vote I think I ever cast as an elected official was a vote that I really thought sounded good at the time as a State legislator, almost a quarter of a century ago, the deinstitutionalization of the mentally ill. Great on paper, great philosophy, but what I found, sadly, in my State and in State after State across the country, when the recession hit, the crunch time came, we forgot the commitment to make these community-based programs work.

So we in my State see them in a lot of other Members' districts, crazy people walking the streets with no help for their medication,

for their housing, and we have a problem that has erupted in the communities in terms of serious—in some cases, it involves problems with the law enforcement system, and it has made cities less safe, and it is a tremendous, I think, human tragedy.

I am concerned we have a lot of good intentions that have been expressed as we have been dealing with this issue. I think if we were able to somehow get past the election and have people of good faith roll up their sleeves, I think we could actually put forward a bipartisan solution on a number of these things to make significant improvements.

I wanted to just refer briefly to Ms. Daly because I was struck with her injecting a note of realism in terms of people who are on the ground now providing these services, and I am sorry my friend from Florida is not here; for example, him being dismissive of the concerns about some of the immigrant population. I was going to ask a question in terms of talking about some of the immigrants that Catholic Charities deal with; for example, the refugee population—of people who are political refugees who come here—elderly, sick, damaged by war, who have expected a promise from this country and what that might pose in some of the services that you are monitoring and providing around the country if this country now reneges on commitments to refugee populations, where you are already involved with people from the former Indochina.

Would you give a little dimension at least for the record so that that is part of this?

Ms. DALY. I would be happy to because this has been one of our major issues in welfare reform, both for the Catholic Bishops Conference and for Catholic Charities USA.

We do resettle refugees and asylees, and we have for many, many years. None of those people have sponsors. So, when they come to this country, there is not someone to sign to say they will take care of them.

Now, under the bill that is probably coming out of conference today, those people would be eligible only for 5 years. So people who have already been here for longer than 5 years or about to run out of their 5 years would no longer be eligible unless they somehow became citizens or worked in the United States for 10 full years.

Now, that is not going to be possible for somebody who is 60 or 65 years of age. Many of those people, it is very hard for them to naturalize because when you come to this country at an advanced age, it may be harder to learn the language. They may not have been literate in their own countries, and many people, though, have worked very hard, even though they didn't speak English very well, even though they had no education. They have worked hard cleaning the bathrooms in the hotels and restaurants where we go.

They scrub floors at night in the office buildings. They take care of our children and grandchildren while we are at work, and yet, those people very often are going to find themselves not able to work anymore and not eligible for Medicaid or food stamps or SSI or the things that people need to stay alive, and their families can't take care of them. Their families are back in China or Russia or Hong Kong or Vietnam. So we are very concerned about that group, but other people who didn't come as refugees and have worked very

hard, but maybe not 10 years, and some tragedy has befallen them, they have become ill, they can't work, they are injured, they are going to be told we are not going to help you. You have worked in this country for 6, 7, 8 years. Too bad, we are going to turn our backs on you.

These people are concentrated in certain States, like California, Texas, Florida, Colorado, and in certain communities, the communities who are least able to pick up that slack, either in the religious community or the other nonprofits.

The Federal Government is one way that the whole country shares a burden evenly, and when the Federal Government pulls back, those communities and those people are going to be at greater risk and not able to pick up the slack.

If I could, while I am talking to you, Mr. Blumenauer, one of our major concerns—Mr. Talent said what are we worried about with this bill, why aren't we for a tax credit. Well, tax credits can be great, but how do you figure out the problem of "buying the base"? The Ways and Means Committee, whenever you talk about tax credits, whether they are investment tax credits or whatever, you talk about buying the base, and the biggest amount of money that is spent on the new tax credit is spent paying for giving that would happen, anyway.

Mr. BLUMENAUER. Right.

Ms. DALY. That is our big concern.

If the Ways and Means Committee can figure out how just to subsidize increased giving to charities, I think we wouldn't have so many concerns.

Mr. BLUMENAUER. Thank you very much. I appreciate your helping us inject a note of on-the-ground realism in these discussions. It is very useful.

Ms. DALY. Thank you.

Mr. BLUMENAUER. Thank you, Mr. Chairman.

Chairman CUNNINGHAM. I thank the gentleman, and I find a lot of areas that we agree on.

Mr. BLUMENAUER. I hope so.

Chairman CUNNINGHAM. I think so, and I think we can sit down after the elections and maybe beat some of this stuff out.

Serving as the Subcommittee Chairman on education as far as refugees, I support strongly, for immigrants that are going to become U.S. citizens, I think it is a benefit for us as a country to educate those people and make student loans available to them. That means they have a better opportunity, and probably you won't have to support their children on welfare with the Catholic Charities.

My wife and children are Catholic. So I understand that aspect as well, but I think there are different categories. The asylum, the refugees, and those that bring in through sponsorship, we feel that someone like, say, Imelda Marcos that brings in and sponsors somebody, maybe they should be means tested, and we are trying to get the funds down to the people that really need it, just like in welfare.

Ms. DALY. You can count Imelda Marcos' income. You can deem that without making people ineligible.

Chairman CUNNINGHAM. We could just sell her shoes and make enough money.

I want to thank the panel. These things are all very educational, and we appreciate your coming and your time. Like I say, sometimes we disagree on how to get there, but at least we are trying to get to the same target.

Thank you.

I will bring up the third of four panels, Hon. Glenn O. Lewis, State Representative from Austin, Texas; Hon. Fannie Lewis, a member of the city council of Cleveland, Ohio—and though they have the same last name, I assume that they are not related since they live in Ohio and Texas—Alieze Stallworth, legislative chair, District of Columbia PTA, Washington, DC; and Asha Muldro, senior, Yale University, New Haven, Connecticut.

If the gentlemen would take your positions. We thank you for your patience of going through two other panels.

You will be recognized for approximately 5 minutes, and I will try and be a little bit lenient with some of the questions, but in reference to the next panel that follows, there will be a limit to the Chair's prerogative.

I will proceed in order. You may submit your entire testimony for the record, or if you have further questions of the panel or would like to submit those, you will be able to do that.

I will start off with Hon. Lewis, State Representative from Austin, Texas.

I want to tell you something first. I have a niece, 4 years old, and I asked her, "When are you going to come and live with Uncle Duke," and she says, "Uncle Duke come to Texas, I ain't never leaving Texas." So you engrain it in them early, but with that, Hon. Glenn Lewis is recognized.

STATEMENT OF HON. GLENN O. LEWIS, STATE REPRESENTATIVE, FORT WORTH, TEXAS

Mr. LEWIS. Thank you, Mr. Chairman. I appreciate the opportunity of being here.

The first thing I want to do is correct one small bit of information. I serve in Austin, Texas, but I represent Forth Worth, Texas. My constituents would never forgive me if I allowed you to say that. It is like saying all of you all are Congressmen from Washington, DC.

Chairman CUNNINGHAM. Thank you.

Mr. LEWIS. I do serve in the Texas legislature from Forth Worth, Texas. I represent an inner-city district that is about 60-percent African-American.

At the last session, we dealt with the school choice issue, which is the issue that I have come here to address. We had a bill in the Texas legislature that passed our Senate and came within 13 bills of passing in the House.

After much study and much agonizing over the issue, I was one of those votes in favor of that bill. I came to an inescapable conclusion. Number one, people who have resources in this country already have choice with regard to their children's education. They can send their children anywhere they want to send them to be educated. It is only the people who have limited resources, like many of those that I represent who have no choice. They are captives, if you will, of the public school system.

Ever since about 1954, people in communities like mine have found the public school systems to be increasingly less responsive to their concerns. Increasingly, they are unable to exercise a great deal of control over them.

The largest complaint I have from my constituents about the school system today is their children being channeled out are expelled from school for seemingly minor infractions.

The statistics in the Fort Worth independent school district bear that out that African-American and Hispanic children are expelled at a rate twice that of their white counterparts. I don't know the reason for that, and even though we have endeavored to learn why, we have not been able to learn the reason for it, but what I do know is that a child-centered funding plan will allow the parents much more control over the system in which their children are educated. It would give the parents the choice, and if, in fact, every one of those kids went out the door, their share of money goes with them. I can only guess that they would not be so quick to expel them from the schools in that situation.

I have heard the arguments before in the panels before me, and believe me, my colleagues and I in the Texas legislature have debated this issue as tirelessly as you all have debated it, I guarantee you, but I have just come to the conclusion we have to at some point regain control over the systems that educate our children, and yes, it would require parents to be much more responsive. Parents would then become the consumers of education for their children, and I believe parents are willing to assume that responsibility, and I believe they can, if given the choice to do so.

There are people within our community. When I was listening to the earlier panel, I heard an assumption being made that was made during the Texas legislature that somehow this is going to allow kids or parents to choose for their kids to escape the communities, to go elsewhere to go to school. I don't think that that is necessarily true.

First of all, I think the competition will improve the public school system, and second of all, I think it would allow creative people in our community who have found ways to do what we have been paying the public school system to do, but they have not been able to do it, to allow them to access dollars to do so.

I thank you for allowing me to address you. I am concerned about this issue not only as a legislator, but as a father of a first-grader and a second-grader.

Thank you.

[Mr. Lewis' statement was not available at the time of printing.]

Chairman CUNNINGHAM. Thank you, Mr. Lewis.

Hon. Fannie Lewis, member of city council from Cleveland, Ohio.

Fannie, if I may?

STATEMENT OF HON. FANNIE LEWIS, MEMBER, CITY COUNCIL, CLEVELAND, OHIO; ACCOMPANIED BY TYSON MITCHELL, HEAD OF EDUCATION COMMITTEE OF CITY COUNCIL

Ms. LEWIS. Thank you, Mr. Chairman. Giving honor to God who is the head of my life, it keeps me doing all I have to do every day.

To you and representatives and especially to my Congressman Louis Stokes, it is just nice to be here to be able to tell you about some of those things that we are doing in Cleveland.

Somebody mentioned whether Representative Lewis, he and I, were related. Well, God didn't make but two people. So all of us are related in one way or another, and that is what we have to deal with is people.

When we think in terms of neighborhoods where people are entrapped, we tend to talk about poor people, but there are rich people who are poor. It just depends on what they are poor in.

We are talking about people who are entrapped in the neighborhood where social services, jobs, all kinds of services have been pulled, and the people are left to die because they do not have the ability to do it themselves. This is like a neighborhood that I represent, which is in Huss, in Cleveland, one of the riot-torn cities that people said could not be rebuilt. Well, we are rebuilding that neighborhood. We are rebuilding it with government dollars, but the government dollars that are going into that neighborhood are going to the people. They are not going to somebody to be a director or to buy a building or to do consulting services. They are going directly to the needs of the people.

Having lived in that neighborhood from 1951 to 1971, I have seen $90 million spent on one corner, and when I started running for council, the corner was clean. There was nothing there.

So we need to quit wasting government dollars if we are talking about helping people who are trapped in neighborhoods where the lack of education and everything else is concerned. That is why I am interested in the choice.

Coming from the welfare roles, I could take my welfare check and spend it wherever I wanted to spend it, but somebody seems to think it is wrong to be able to get a voucher to go and buy education where you want to buy it.

We have been saved, slept, bathed, all kinds of food giveaways in the inner city, and let me tell you, poor people in a neighborhood like mine are no more than a place where people can come and count heads and get government dollars to take and give away in contracts and what have you. That needs to stop.

In my neighborhood, we looked at a goal. We set some perspectives, and we stay focused on them. Education is one of those goals because if people are uneducated, then they can never do things for themselves, and that is why we are interested in the choice situation. It is because it allows parents or whoever is responsible for a child to go and buy education where they feel they want it.

In Cleveland, we have a public school system that since 1951 has been losing 51 percent of this end product since 1952. The Board of Education has a $6-million budget, 66,000 youngsters, which comes out to something around $9,000 a year.

You can send your child to one of the best schools in Cleveland for $9,000 a year, such as St. Ignatius. You can send her out to Hathaway Brown or you can send him to some other school for $9,000 a year. We are talking about less than that.

We are talking about being able to educate youngsters in the kind of education that has been designed for them, and when you have a school system that has a teachers union whose representa-

tive is on one end fighting the issue and the husband who is a part of the teachers union is fighting on the other end and they are both exchanging money and what have you, it makes it very difficult to try to get through.

Let me say this to you. Legislators are the only ones who can make a difference in this because we are the ones who legislate the laws. We are the ones who make the difference, and we are the ones who are supposed to see that this money is going where it is supposed to go.

I heard somebody say that poor people don't vote. Well, I can move 320 people at a drop of a hat, and if I really work at it, I can get 1,000 to 2,000 people together because of them getting benefits. When we can begin to show people the benefit, that is what we need to do in education.

I have a grade school, Wade Park Grade School. I had, about 4 months ago, a young kid to die in that school because of the fact that it is so overcrowded. The teacher was so perplexed with what to do with that child because the brother said he was having to lay his head on the desk and the kid died. Discipline and safety is the key problem.

We talk about the money for vouchers or for choice going to parochial schools or what have you. I really don't care where it goes as long as it is educating the child.

We talk about the problem of church and State. Well, in Cleveland, the Catholic schools get almost 500-and-some dollars for every child that goes into the Cleveland public school, and so does the voucher. So the point is to educate children, and when you can educate children, then you are going to be able to change this country. You are going to be able to change neighborhoods, and you are going to be able to change communities.

I know according to the red lights that I have at home, that means shut up, but let me say this to you. I can't say to you in 5 minutes what you ought to do, but let me tell you this. You need to come out to my neighborhood, and let me show you what we have done. I am the only legislator in Cleveland that stood up and fought for the voucher, and now we have a lawsuit that is pending, the lawsuit down in Columbus as far as choice is concerned. It only takes one person to make a difference, and the people in the neighborhood.

I would invite you out because we have put together a K-through-12 school, and the house is burning and it is killing our children. So what do we do? Do we let them all die, or do we come up with some means or method by which to save some? That is what we are trying to be, is an example of what can be done when the money goes where it needs to go.

I have read your bill. Unfortunately, I came here, stubbed my toe, and I am wearing a different shoe today. Satan is really busy trying to keep you from saying what you need to say, but let me dare you to come out to my neighborhood and take a look at what we are doing in my neighborhood and what people can do when they have a mind to make a change in a system.

Poor people do vote, but one of the reasons why they don't vote as much as they do is because you can't show them the benefits. Everybody wants some benefits, and I don't care who gets the bene-

fits as long as we get some of it. Anything that comes into my neighborhood, we have to get a piece of it or it doesn't come.

Chairman CUNNINGHAM. I am going to have to ask the gentlelady that you can continue your conversation when we have questions, and I am very hesitant to cut off a relative of mine right in the middle of a sentence.

Ms. LEWIS. I am glad you admit that.

Chairman CUNNINGHAM. I thank the gentlelady.

Ms. LEWIS. But if I can just say this, this young man with me, who is Tyson Mitchell, who is a product of the Cleveland public schools, who is now a lawyer, who heads up our education committee, if you would be so kind before we finish to let him say a few words to you, I would appreciate it.

[Ms. Lewis' statement was not available at the time of printing.]

Chairman CUNNINGHAM. Thank you.

Alieze Stallworth, legislative chair, District of Columbia PTA, Washington, DC, the gentlelady is recognized.

STATEMENT OF ALIEZE STALLWORTH, LEGISLATIVE CHAIR, DISTRICT OF COLUMBIA CONGRESS OF PARENTS & TEACHERS, WASHINGTON, DC

Ms. STALLWORTH. Good afternoon. As you have heard, my name is Alieze Stallworth. I am the parent of three students currently attending public schools in the District of Columbia, and yes, I am a very active member of the PTA. But first and foremost, I am a mother.

As a mother, I oppose vouchers. I have heard a lot of talk here today from both panelists and the legislators on saving children. I think our job is to save all children.

I have heard a lot of people here today say how horrible things are for poor children, as if poor children are the only children suffering in our school systems. They are not. This bill doesn't benefit all of our children. We are talking about saving some and sacrificing most, and that is not acceptable to me as a mother.

I think the legislator's job is to go out, and if you want to do something with these renewal communities, and to look at model schools, public schools that are working. If they want to look at private schools that are doing a tremendous job, look at those and create model neighborhood public schools in their own communities.

It is not about funneling money and creating what I feel is a welfare system for private and parochial schools. When we talk about welfare reform, I agree with your press release that came out. Yes, this does go hand in hand with welfare reform.

While you are taking food and clothes from children, you are giving money to private and parochial schools, creating their welfare system. So, yes, it goes hand in hand. You are just taking from one and giving to the other, but as far as this program is concerned, I want you to look at what happens in terms of money.

A lot of people have stated how much public schools spend and how much is spent on the voucher program in Milwaukee. You said it is $3,000 of voucher money. How much of the title I funds do these schools get? What is the total amount of financial package connected to each one of these children? Because all of these programs focus on our educationally disadvantaged children, who have

Federal funds attached to all of them. So, above and beyond that $3,000, the voucher schools are getting more.

One of the earlier legislators said this doesn't take money from public schools. I beg to differ with you. It does exactly that because when you take a child, you take their funds. As Mr. Gingrich has said, if you are talking about $9,400 spent per child in the District of Columbia public schools, and he also said they may voucher 3,000 students, we are talking about $28 million. Tell me a public school that is going to do better and improve the conditions of our buildings if you are going to take away $28 million not 1 year, but every year. The schools are going to miss that money. Our children are going to suffer—the majority of the children.

I have sat here as a parent and heard that only the poor children can't escape. Those that are in the middle and upper incomes, they can get out. That is not true.

In this bill, you create vouchers for the lower income. Then you are going to get the argument from parents on the upper income level saying, We want a tuition tax credit. Then the upper income level is going to get a tuition tax credit, and that big piece in the middle income is going to be in public schools with less dollars.

So, if our problem is that we lack safety—we lack good, sound, physical structures for our schools—then let us fix those problems.

We know that from study after study that the most important piece of a child's education has nothing necessarily to do with the physical condition of the building, but with how involved their parents are and what they perceive the public opinion to be of the quality of education they are receiving.

As our children watch legislators constantly proposing vouchers and saying let us send some children to private schools, you have to worry about student morale. We have heard a lot about teacher morale. So, I want to talk about children and their morale.

Children see legislators day after day, discounting the quality of education that they are getting, and cutting and cutting at the school budget. They see every day that they need those funds. When my daughter sits in her english class and the roof is leaking, she knows that her school system, whose budget for capital improvements has been cut to the bare bones, needs more money to repair that system. But what they see and what they feel, as we are asking them to behave and they see all of these things, is a system telling them that their education is not important. That it is not important enough for the legislators to insist that the neighborhood public school is improved and empowering the parents to help do so.

Vouchers are going to seem to be really enticing to a lot of parents. But this program does not open the door to parent choice because, as it states in this bill, children are not going to be guaranteed admissibility to these private schools simply because they apply. They have to qualify. They have to fit the criteria of the private school. It also goes on to say that any private school or religious school that is located within that renewal district or a reasonable transportation distance of these communities must be allowed to participate if they want to.

So I ask you, whose choice is it, the parents' choice or the choice for these private and parochial institutions? In closing, I want peo-

ple to think about one thing. There was a time when schools in the United States were private, and what did they practice? Exclusion. And we will be going back to that. We will be going back to schools choosing who and who not to take. We working toward homogeneous school environments, with warehouses of children with disabilities all lumped together.

Our public schools are moving toward inclusion. They need your support. They need those renewal dollars to come into their communities, and they need you to work with them and have the Department of Education come in and help set up model schools. Plus, I see nothing in this bill that addresses what happens to all of the new schools that are being created, like the ones in Cleveland. Parents aren't just putting down their one choice, but they have to put down six choices because they may not be able to get the first five. Yes, a lot of them are sending their children to new schools. Are there rules and regulations here governing new schools? None. I don't see them in H.R. 3467.

Thank you.

[The prepared statement follows:]

STATEMENT OF ALIEZE STALLWORTH
LEGISLATIVE CHAIR
DISTRICT OF COLUMBIA CONGRESS OF PARENTS & TEACHERS

Good Morning. I am Alieze Stallworth, a parent of three children in the District of Columbia public schools and an active member of the D.C. Congress of Parents and Teachers.

During consideration of last year's federal budget, I, and other public school proponents, spent seven months opposing an education voucher proposal that some legislators wanted amended on to the city's federal appropriation package. Like many of those who oppose vouchers, the D.C. PTA believes that tax dollars should finance public schools that alone are accountable to the tax payer and accessible to every student.

Today I return to Capitol Hill to oppose H.R. 3467, the Saving Our Children, the American Community Renewal Act. I appreciate the opportunity to explain why this bill will not save our children, nor improve our neighborhood public schools. In truth, H.R. 3467 fails to address the real needs of public school students and neglects to provide incentives for strengthening neighborhood public schools. Instead, the bill forces communities in need of federal assistance to develop and implement education voucher plans benefiting private and religious schools, and to privatize public school services.

As you know, no state has authorized an education voucher proposal. In those states where vouchers faced public referendum or a vote in the state legislature, voucher plans failed. In all of the United States, only two cities have adopted voucher plans. Not only

do these proposals lack full community support, both plans are being litigated in the courts. Yet, vouchers for non-public schools continue to be the center piece of nearly every recent federal education reform proposal. Why is the solution to helping public school students to put money into non-public schools?

Through out the country, as in the District, there are many good public schools doing an excellent job preparing youngsters for higher education and employment. Despite assertions to the contrary, the numerous sources of data show that nationwide educational achievement has improved, particularly among minority students. In addition, high school students are taking more challenging courses, more students are graduating, and a high number of students are enrolling in college.

In the city, there are success stories as well. There are many parents who believe their children are getting a high quality education at the city's public elementary and secondary schools. In the District, numerous students are graduating with honors. For instance, this year, a young man in my daughter's school was awarded a scholarship to Harvard. Recently, D.C. public school students won awards in the international contest of Odyssey of the Mind, and a youngster from J.O. Wilson public school took first place in the National French Competition.

The District also provides non-compulsory, full day early childhood education programs for children in pre-K and kindergarten. This early childhood program is viewed by many to be a model program for the rest of the country. Actually, as news reports have indicated

there are many parents from neighboring states who are illegally sending their children to the city's public schools because they believe the programs are high quality.

This is not to ignore or minimize the problems that do exist. However, the solution is not to abandon neighborhood public schools by diverting tax dollars into vouchers for non-public schools. If the issue is student safety, then make the schools and the neighboring community safe. If the dilapidated buildings are the problem, then improve the facilities. If the schools lack computers and books, supply them. If teachers need additional training or families need support services then schools should provide them. Use the public schools where there are measurable successes as models for education reform initiatives in poor performing schools. Take the billions of dollars that would finance a private school voucher plan and use these resources to bring the deficient schools up to the same level as the good schools. Our nation's goal should be to ensure that every neighborhood public school provides youngsters with a high quality education.

The remedies will not always be simple, but success is achievable. Public opinion polls show that most Americans support public schooling and are willing to help bring about successes in their neighborhood public schools. Nationwide there is a growing resurgence of parent and community activism focused on enhancing the opportunities public schools provide students. Parents and concerned citizens are uniting to make good schools better and put the not so good schools on par with others. They know that the commitment is a long-term investment, not a short-term venture.

Also, an increasing number of parents and other public school advocates are mobilizing to counter the unfair and unbalanced distortions regarding the public school's successes. Armed with dozens of recent books, reports, and studies, these advocates are showing that many public schools are doing a good job educating children. Most Americans want government to maintain its commitment to public education. Just one month ago, some 3,000 National PTA members, representing every state and the District, rallied on Capitol Hill. Their message to Congress members: public funds for public education.

Public school proponents know that money is not the only answer. However, a critical factor of how well a school does is tied to the resources available. How well students do is often reflective of the value that others place on school success. Most frequently, students gain that perspective from parents or other important adults in their lives. We as a society send messages to young people as well. Therefore, I worry when elected officials and community leaders dismiss troubled public schools as so invaluable that the only alternative is to help a few students escape to non-public institutions. For the thousands of students who remain in those schools, the unspoken message is we do not value them or their education. Why should young people compete for academic success, when adults no longer strive to make the school, where these students spend the majority of their day, a priority?

There are many issues related to education reform —achievement levels, curriculum, safety, parent involvement, and others. Each is important. However, H.R. 3467 does

nothing to address the changes needed in these areas. H.R. 3467 is about public money for non-public school systems.

The voucher debate is not about improving or reforming public schools. The voucher issue is a matter of funding priorities. The fundamental question in the voucher debate is whether Congress wants to provide high quality public schools for children. Or will public funds be diverted to private and religious schools?

Vouchers are not about enhancing competition among public and non-public schools. Schools that can not adequately service students with their current budgets will not be able to compete any better with fewer public resources. Not only will schools lose the money that goes with the student, but schools will lose program funds awarded on a formula basis. At the same time, the non-public schools would not only get the money from the vouchers, they would get the other education dollars that follow the child – including funds targeted for educationally disadvantaged students, like Title I of the Improving America's Education Act.

This voucher program is not about parent choice, but about the non-public school's choice. Private schools are selective and have admissions criteria that students must meet. H.R. 3467 illuminates this fact by including language that states "students receiving vouchers are subject to the admission criteria of the determined school and nothing in this title shall be construed to guarantee the right of an eligible child to attend any voucher school." Parents only get to apply to the school, the school chooses who will be admitted.

Equally troubling is that the bill requires that any legally established non-public school, within the community or within a reasonable transportation distance, wishing to be a part of the program must be allowed to participate. Consequently, the community doesn't have the right to establish if the school is good or bad, even though the institution would get public money. The schools benefit under this plan, but there are no safeguards for the children.

The voucher mandate in H.R. 3467 will not improve neighborhood public schools. Actually, the bill further burdens communities by requiring that they develop programs to privatize school services, such as transportation and food services. Not only will neighborhood public schools not benefit from this bill, but H.R. 3467 puts more children at risk because the community will have fewer resources to educate students. Money should go to reduce class size, improve facilities, train teachers, and finance other classroom enhancing projects. Communities should not be forced to spend limited resources carrying out administrative mandates generated at the federal level.

H.R. 3467 incorporates many other objectionable provisions. For instance, the bill allows participating private schools to give preference to students previously enrolled over new students. Private schools are clearly the intended beneficiary of this plan.

In addition, tax dollars would finance voucher schools that discriminate in admitting students based on academic abilities, gender, religion, and disability. Also, schools could refuse to hire teachers based on their gender.

Another problem with H.R. 3467 is how the voucher plan will affect the education of students with disabilities. The bill requires that communities set a voucher amount based on a per pupil cost using the same cost for students with the same special needs. Yet, there are often considerable variations in the costs of educating students with disabilities. The structure of the voucher maximum may fall far short of covering the actual expenses for educating that child. Will the public schools pay the additional costs of the students getting vouchers or will the parents?

Further, H.R. 3467 limits the Secretary of Education from enforcing regulations and requirements on private or religious schools receiving vouchers. The provisions of the bill raise serious questions as to whether schools getting public funds must comply with such laws as the Individuals with Disabilities Education Act, civil rights statutes, and the Improving America's Schools Act. In short, private schools under this plan would not have to comply with the same requirements by which public schools must abide. Nor are private schools accountable to the public for the tax dollars appropriated to them.

Moreover, H.R. 3467 raises constitutional questions. The bill allows, and encourages, tax dollars to flow to religious schools. Over 85 percent of all students enrolled in private schools attend sectarian institutions. Vouchers will pay for religious instruction and

advance the sectarian mission of the schools, which violates the constitutional guarantee of church and state separation

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Finally, H.R. 3467, like any voucher proposal, raises questions about how, in a time of budget deficits and education funding cuts, Congress can subsidize private schools. How will Congress pay for this voucher package? Will legislators generate new money by imposing a tax increase on the American public or will the voucher scheme be paid for with existing federal dollars?

The problem with the voucher provisions of H.R. 3467 are numerous. I have noted just a few. The issue, however, is not about how to make a voucher plan work. The issue is public support for public schools.

Vouchers are about using tax dollars to finance private and religious education. Vouchers are about shifting our country's policy priority from supporting public education to providing funds to non-public schools. This bill has the very real potential of allowing discrimination against many students who could be denied access to federally funded private schools.

In closing, I urge you to evaluate the vouchers in the context of how the plan impacts **all children** in public schools. At first glance, vouchers appear to provide a simple solution -- move the child to a private or alternative public school. A closer look, however, reveals a complex situation that does not lead to equal educational opportunities. Instead

vouchers will likely place far more young Americans at greater risk by creating a wider gap in the distribution of school resources.

Vouchers offer assistance to a selected few. There are about 45 million public school students in the U.S. If Congress passes a private school voucher proposal how many of these children will get a voucher? More importantly, how many children will not. What happens to the vast majority of those children who remain behind in a school with fewer resources? How do we help them? H.R. 3467 does not provide the answers.

For the reasons enumerated in this testimony, I again want to restate the D.C. Congress of Parents and Teachers' opposition to H.R. 3467.

Chairman CUNNINGHAM. Thank you, Ms. Stallworth.

Asha Muldro, senior at Yale University of New Haven, Connecticut, and the gentlelady is recognized.

STATEMENT OF ASHA MULDRO, SENIOR, YALE UNIVERSITY, NEW HAVEN, CONNECTICUT

Ms. MULDRO. OK. Well, first, thank you, Mr. Chairman, for allowing me to be here today. I am going to testify on behalf of H.R. 3467, and I will focus specifically on title II regarding school scholarship vouchers.

I would like to submit my written statement for the record. However, right now I am feeling compelled to just speak from my heart.

I am here for a number of reasons. First, I represent the children of the future, and I am here to remind you that the future is quickly transforming itself to the present.

Second, I am here to represent the children we all so often forget about because of financial limitations, and mostly I am here as a living testament for the benefits that can be accrued from private and parochial schools.

You see, I am from a single-parent household. I grew up in a lower working-class section of the Bronx, and currently, I am a senior at Yale University. I am interning this summer on Wall Street at J.P. Morgan, and I am preparing to apply to law school in the fall.

It is actually a wonderful year that I am going into because I am faced with a wealth of opportunities and doors that are open to me. I am having a hard time actually deciding what to choose.

I know that I want to go in a direction where I can effect positive change for my community and be challenged, and I am excited for having such a wealth of opportunities. However, I know that there are so many people just like me who are faced with closed doors.

The fact is I am in a position of empowerment for myself, my family, my community, and America, but I don't know where I would be if I had not escaped from the public school system in my Bronx community.

You see, today there is widespread agreement that many of America's public schools, especially in underprivileged neighborhoods, are in shambles.

I was fortunate enough that my mother simply would not allow me to attend our local public schools. Rather, she did whatever she could to make sure I received a quality education. For me, that meant going to a school in Manhattan, a talented and gifted public school. It required, though, a 45-minute subway commute, or else I had to stay at my grandmother's house to use her Manhattan address, and it was hard. I was 8 years old, not at home, or else on a subway, but that was the best option that we had as opposed to going to the local school where I would be faced with violence, teachers that didn't care, and education that just simply was not sufficient for my needs.

The problem is a lot of the students that went to the talented and gifted public school didn't have the options that I had. Many of them were forced to stay in their public school system, and unfortunately, there weren't gifted junior high school options. Most of them desperately sought to switch districts in an effort to attend

some of the better public schools. Fortunately, my mother again insisted—in fact, it was more than insisting—that I apply to De Lasalle Academy.

You see, De Lasalle Academy is a private junior high school for academically talented children from lower income families with a needs-blind admissions policy.

When I was accepted, my mother was ecstatic because she knew that I was on the right track. The alumni from De Lasalle all went on to the best public, private, and parochial high schools. Some of them also went on to some of the best boarding schools on the east coast. The students genuinely loved their school, and De Lasalle pushed every student to reach her own personal degree of excellence.

While the competition was internal, the students at De Lasalle Academy strove to be their personal best. I can truthfully say I did more work at De Lasalle Academy than I have had to do even at Yale. Our development at De Lasalle was more than just academic. De Lasalle nurtured our minds, our hearts, and our spirits.

The principal of the school, Brother Brian Cartey, instilled in us a sense of values, morals, and commitment for ourselves and others at the school. Although De Lasalle is a private school and not a parochial school, it does have a religious base, and we were encouraged to keep in mind the tenets of all religions, to be good people, to give back to our communities, and to love, care, and respect one another.

We didn't necessarily say any particular prayers or so forth, but we did start every class saying, "Let us remember that we are in the Holy presence of God." For me personally, that allowed me to focus on what I had to do and remember my personal responsibilities to uphold a particular code of moral conduct. I tell you this to emphasize the value of religious-based schools and parochial schools because we are talking about America's future and a value system that often gets lost in too many of the public schools.

Continuing, the small size of the school at De Lasalle helped to instill a sense of community, and we were encouraged to perform activities of social justice.

I just want to quickly move on, to continue, to say that my foundation at De Lasalle is what helped me to be successful at the private boarding school that I attended, the George School in Newtown, Pennsylvania, in which I was able to take advantage of advanced placement courses and horseback riding for recreation. I don't know of too many public schools that offer those types of options, and I know I was given a wonderful college guidance process in which I found Yale, which turned out to be the perfect school that matched my needs.

At Yale, the majority of my grades are A or A-minuses, and I am president of multiple organizations and participate in extensive community service products.

I have had the opportunity to study in London and independently travel to France, Italy, and Egypt. I have been afforded an abundance of opportunities that many of my friends in the Bronx would not dare to even dream of.

As I sailed on a fulica in the Nile, they strolled through metal detectors in their local schools. Similarly, many of my friends from public schools went on to public high schools that didn't provide them with adequate attention to keep them on the right track or provide them with sufficient college guidance. Many of these talented and gifted students that I went to school with have since dropped out or are now selling drugs or are mothers already.

[The prepared statement follows:]

STATEMENT OF ASHA MULDRO
SENIOR, YALE UNIVERSITY

Before: Ways and Means Subcommittee on Human Resources & Economic and Educational Opportunities Subcommittee on Childhood, Youth and Families

My name is Asha Muldro. I am a living testament to the benefits that accrue from private and parochial school scholarships. I was raised in a single parent household in a lower working-class section of the Bronx in New York City. Currently, I am a senior at Yale University, interning this summer on Wall street at J.P. Morgan, and preparing to apply to Law School in the fall. I am about to embark upon my final year of college and I am faced with a world of opportunities. I am in the position to walk through any one of the multiple open doors that lay ahead in my path. Quite honestly, I do not know what to choose, I am trying to go in a direction in which I will be challenged and be able to effect positive change and give back to my community.

The fact is, I am truly in a position of empowerment for my self, my family, my community and America. I am one of those "children," America's future which is now transforming itself into the present. This is quite a scary statement, for it leads one to ask, what is America's future going to hold if our children, All of our children, are not prepared to handle it?

Today there is widespread agreement that many of America's public schools, especially in underprivileged neighborhoods, are in shambles. I was fortunate enough that my mother simply would not allow me to attend our local public school. Rather than have me go to school in a violent, unproductive environment my mother was willing to do whatever she could to ensure that I had a quality education. So instead, she enrolled me in a public school for talented and gifted students in Manhattan. Unfortunately this required that on some days I traveled forty-five minutes to the city, at eight years old, to go to school. On other days, I lived with my grandmother in her Harlem apartment allowing me to use her Manhattan address and get to school in twenty minutes. This New York City public school, one of very few of it's kind in the 80's and nearly extinct in the 90's was a wonderful experience for me. I was given challenging work in a safe, supportive environment surrounded by other intelligent and motivated students.

When we graduated in the sixth grade, most of my friends stayed in the public school system. While there were not any "gifted" junior high school options, most of them desperately sought to switch districts in an effort to attend some of the "better" public schools. While I wanted to go to public school with my friends, my mother encouraged (in fact she insisted) that I apply to De La Salle Academy.

De La Salle Academy is a private junior high school for academically talented children from lower income families with a needs blind admissions policy. When I was accepted, my mother was ecstatic because De La Salle had an incredible track record. The alumni went on to some of the best public, private and parochial high schools in the city and some of the best boarding schools on the east coast. Most importantly, the students genuinely loved their school. De La Salle Academy pushed every student to reach their own personal degree of excellence. While the competition was internal, the students at De La Salle Academy strove to be the best that they could be.

While I can truthfully say that I did more work at De La Salle than I have had to do even at Yale, our development at De La Salle was more than just academic. De La Salle nurtured our minds, hearts and spirits. The principal and founder, Brother Brian Carty, instilled a strong sense of values and community in us. While De la Salle is a private school it does have a religious foundation. They didn't teach us about any particular religion, rather we studied the theory of religion and we upheld the value system that is a tenet of all religions, to be a good person and to help and care for one another. Although there were students from different faiths, we began all of our classes with the phrase: "Let us remember that we are in the holy presence of God." Personally, this helped to constantly reinforce the moral code of conduct that was expected of me.

The quality of the teachers, the small size and the intimate atmosphere created a sense of family within the De La Salle community. We also learned the value of doing community service and our responsibility to be the "movers" and "shakers" in society. Most importantly, our achievements and social justice activity helped us develop an increased level of self-confidence and independence. With the academic and personal skills that we developed we were well equipped to face and conquer challenges.

Thanks to the foundation I received at De La Salle Academy I was able to flourish in my subsequent educational environments. I received a scholarship to a wonderful boarding school, the George School, in Newtown Pennsylvania. At George School I took advantage of a wide array of Advanced Placement courses, and horseback riding for recreation. Our college guidance office was superb and I was accepted to a number of Ivy League colleges. At Yale, the majority of my grades are A or A-. I am president and founder of multiple organizations and participate in extensive community service projects. I have studied in London and independently traveled to France, Italy, and Egypt. I have been afforded an abundance of opportunities that many of my friends in the Bronx would not dare to even dream of.

In comparison, many of my public school friends went to public high schools that did not provide them with adequate attention to keep them on the right track or provide them with sufficient college guidance. Some of the "talented and gifted" students that I went to elementary school with have since dropped out and are now selling drugs, others are already mothers. One of my best friends from elementary school, whose intelligence I admired, was not advised about college. Rather, she went to a six week business training program to become a secretary. Not that anything is wrong with being a secretary per se, she is just an example of a lot of the potential that gets lost in many public school systems. While I also have friends that have gone through the system and done quite well, it is sad that they are the exceptions rather than the rule.

Having reaped a myriad of benefits from my private school experience and seeing so much potential lost in the public school system, I am in strong favor of the American Community Renewal Act of 1996. As one of the many things that it will provide is the opportunity for underprivileged children to have a choice about their education and their future.

I hope that this bill will also provide the necessary incentive to improve some of the public schools. Nonetheless, we cannot stop here. There must continue to be major efforts to improve the conditions of the public school system. Similarly, there must also be measures put in place to help the children that do not live in one of the hundred 'renewal communities' or who may not be poor enough to qualify for the program yet still do not have enough money to pay for tuition. No matter what, we can never forget about the importance of "saving our children" ALL of America's children, our future.

Chairman CUNNINGHAM. The gentlelady's time has expired.

Ms. MULDRO. OK.

Chairman CUNNINGHAM. You can submit it for the record in the interest of fairness to the rest of the panel.

I would recognize Mr. Talent.

Mr. TALENT. I thank the Chairman.

Ms. Lewis, I would love for you to have a little extra time to add to your comments before, and you said you had your attorney. You wanted him to have the opportunity to make a comment. If you would do that, and if you want to respond to what I hear to be the theme constantly with those who oppose the scholarship provisions, it is a little hard for me to understand because the argument seems to be that we have this establishment that everybody knows is failing, and so if we let some people get out, it is liable to fail more.

I am trying to see that argument. Maybe if in the bill we provided that the States could not take any money away from these schools, even if students left, so that they would have as much money as they would have now, but fewer students—

Mr. FATTAH. Would the gentleman yield?

Mr. TALENT. Yes. We have been fairly loose on the time, and I want to give them a chance, but I will yield briefly, yes. I am really trying to understand.

Mr. FATTAH. The gentleman who represents Fort Worth, Texas, not Austin, stated that the legislature in Texas considered this issue, and like my own, Pennsylvania decided to reject the notion of full choice.

This proposal would essentially have the Federal Government step in and provide choice as an option. In that, you are suggesting we would further dictate to the State government that they would have to continue to supply aid to schools on a basis other than a perfect pool basis. Is that the compromise?

Mr. TALENT. No. I am saying if that would help create a consensus on the part of the opponents who are afraid that the schools would lose money, I would be willing or maybe we could say if you lose a child you lose half the funding. So maybe you start a classroom with 30 kids. Five of them leave. You get to keep the moneys of two and one-half of them were still there. So you have more money and fewer kids, and I don't see why that is going to lead to failure.

I have been in public life now for about 12 years, in the legislature for 8 years. I am going to let you comment. In the State legislature, education is even more a high-priority issue than it is up here because the States will have primary responsibility for it, and it just seems to me we have tried so many different ways, all of them involving spending more money, on a system that in certain areas is failing.

Now, I think the public schools are great in a lot of areas, and so it seems to me the argument against it is, in essence, it would be like saying if you really didn't like a Chevrolet that you bought, the way to deal with that problem is to try and take over General Motors, and a better way to deal with it is to buy a Ford, and then General Motors is going to have to and will improve. I think all of the schools are going to get better.

I would like to hear your comments on it. I have talked long enough.

Ms. LEWIS. Well, I do hope that the Subcommittees will consider hearing Mr. Tyson, but let me say this to you. People who are afraid have a fear about something, and you can't be afraid when you are talking about making a change. The name of the game in this country is politics and money. So, if somebody is afraid that it is going to not save some of the children, the house is burning, as I said, you let everybody burn down and you don't try to save anyone.

The question that I ask people is, If your mother or your child was drowning and you had a choice to save one, which one would you save, and in most cases, nobody says I wouldn't save either one, I would just swim back to the shore. OK? So that doesn't even make sense. All I need is 5 minutes with them, and I can tell you whether it is politics or money. OK?

I am talking about a system. The Cleveland public school system is a business, and as I stated earlier, any company that loses 51 percent of its business would go out of business. When you think in terms of $9,000 per child and nobody is getting educated—we had about 3,000-some youngsters who took the proficiency tests, and only 115 passed. I mean, that is asinine. That is criminal. Do you see what I am saying?

It takes people with courage and guts to do what I and others like myself are doing in order to begin to make a change. Somebody has to start to change.

I don't know whether this will make very much sense to some people. The children of Israel—and I always go back to the Bible. The children of Israel wandered around in the wilderness for 40 years, a journey that they could have made in 1 month if they had only paid attention, OK? The other thing is that all of them came out, and then they began to grumble. Everybody over 20 got killed. So what are we going to do here? This is the same world that was here from the beginning.

We need to help people, and there is only one way we can help people: it starts with one individual. One individual has to make up his mind that, come hell or high water, he is going to make a difference. Choice is the best thing for a failing system, and when people say they are afraid, you can't see what they see because you are not standing where they are standing.

I don't worry about seeing what other people said when I know it is going to work for the people that I represent. We have proved that it would work, and when you take most of the people who are opposed to trying to make a difference, when you really think in terms of it, it only boils down to two things—politics and money. It has to be one of the two.

Chairman CUNNINGHAM. The gentleman's time has expired.

Mr. Fattah.

Mr. FATTAH. Thank you, Mr. Chairman.

I want to, first of all, thank the entire panel. Race is a very sensitive subject in our country these days, but it is an important subject. I think it is very, very important that we take a keen interest in how these issues progress.

This is the third panel we have heard from this morning. In each of those panels, there has been a majority of African-American in terms of the witnesses that have testified. That is a historical occurrence here in the Congress.

Now, you would miss this point if you didn't know that African-Americans made up only 12 percent of our population. I have been coming to hearings like this forever. This has never happened. It is as if when we want to talk about welfare reform or poverty that somehow we have some either special insight or nobody else should be included. There are no people who represent concerns of the Appalachian region in our country or poverty and its impact and white America, Hispanics, Native Americans, and now you have proven that there is no monolithic viewpoint in the African-American community on any of these issues, choice, welfare reform, and the like, and I think that is important. But I do think that it is instructive to the Subcommittees that if we are trying to address the issue of poverty, if that is our concern, that the poverty and its impact is not focused on the African-American community. It is a broad-based problem in our Nation.

If we are looking at public education, there are 55 million students in public schools in our country. The majority of Americans, black and white, say they support public education. They want to invest more dollars in it.

Now, maybe there are those who disagree. Maybe there are people who support choice. There are people who, even like myself, have some difficulty with choice as it relates to religious schools and might be willing to support a choice that related to public and private schools, but the point is the issues around public education are not that our system is failing.

You will hear my Republican colleagues get up on the floor any day and tell you we are the greatest country in the world, that America is the greatest country in the world, we have got the biggest economy. Where do you think the majority of Americans were educated? Do you think they went to public schools? Absolutely. Do you think they went to public institutions that provided the wherewithal? Most of our young people don't get a chance to go to Yale, or—

I went to the University of Penn—the Ivy League schools. Most of them are going to go to the State-supported universities. Most of the Members of Congress who are here, who constantly complain about the last 40 years of our country heading in the wrong direction, had the prime of their life, their development, their opportunities to serve here in the Congress over these same 40 years.

We heard from Ms. Parker earlier who said she got a Pell grant. I got a Pell grant when I went to college. We have Members of Congress who want to cut Pell grants. They want to cut off the opportunity whether you are coming out of private schools or public schools to go on and get an education.

We need to be careful that as we deal with these issues on welfare, on whether we are going to move forward on renewal communities, that we don't allow people to box us into situations where the public has some perception that these changes are only going to impact on certain people because it is not.

The best thing and maybe the worst thing that could ever happen is for some of these proposals to actually become law. Look at what we are discussing here. We are talking about taking resources away from public education. We supply education for the majority of the people in our country, a system that desperately needs additional resources to provide the opportunity for some few, small number of young people to go on and get the best education available, supposedly.

Now, in reality, look at what happened with Pell grants when we provided them to for-profit proprietary schools. Look at the biggest scandal we have got. It is almost bigger than the S&L scandal because in every poor community, you want to be a cosmetologist, you want to be a welder. Come on down, $6,000 for a 3-month training program on how to be a dog groomer. People who are rushed into these situations, wasting precious public dollars, when they could be at a community college, they could be at a State university, they may not get to Yale, but they could find their way to a fairly productive life, are being conned into situations because people are chasing these dollars.

This issue of welfare for private and religious schools, my fear is not about the schools that exist today. My fear is about once this bill has passed, the people who ingenuously will go out and establish institutions that are convenient, but empty in terms of what they provide to young people.

This Congress is concerned about welfare. It is not across the board. We can't seem to do anything about the couple-hundred-billion dollars that we spend on corporate welfare. We don't mind farm subsidies. When it comes to helping people, somehow we have got big concerns. We need to be careful as we deal with these issues, and I think the Subcommittees and its work should be broader in its focus.

We should never see a situation where somehow we are painting some picture that is absolutely untrue in terms of the impact of this bill. Why all of a sudden do we have this kind of disparity in terms of the witnesses that are coming forward to talk to us about these issues?

Thank you, Mr. Chairman.

Ms. LEWIS. Can I address myself to that?

Chairman CUNNINGHAM. The gentleman's time has expired, and I would recognize Mr. Kildee.

Mr. KILDEE. I thank you, Mr. Chairman.

I would like to get back to a point that I raised earlier this morning before the other panel, and I think, Ms. Stallworth, you raised it in your testimony, where it says eligible children whose parents have applied to receive a scholarship under this title shall be subject to the admission criteria of each scholarship school, alternative public school, and nothing in this title shall be construed to guarantee the right of an eligible child to attend any scholarship school or alternative public school.

My fear is that a scholarship school, particularly, is going to, to use the term we use very often, cherrypick and take those students who are the better students, take the all-A student or the person who has the potential for all-As and not take the student who is maybe not academically doing as well.

Do you think there is a danger of cherrypicking in this bill?

Ms. STALLWORTH. Absolutely. I mean, private schools at this time already do that. You have children whose parents are interested in the international school, maybe not even be an academic reason. "Socially, we didn't observe the behavior we like" is what private schools can say. They have their criteria, unlike public schools. They are not told that enrollment has to be open, that you have to take all children who come to your door. They are not told that if a child comes to you after they have tested, you must take him or her. In many Catholic schools, in many religious schools, as well as parochial private schools, they do test. The child has to pass that test to get in. This says that if I choose the gifted and talented school, even though my child may be a C student, the school has the right to say my child can't enter, based on the academic criteria.

So it will happen. It is not something that might happen. It is something that will happen.

Mr. KILDEE. I think it is also a possibility of one of those scholarship schools actually recruiting, going out and seeking the very best students and recruiting them. What I worry about in that instance of where they are not required to take a student is this. I have said this for years. This is my concern. If parents make a decision to have their children leave public school B to go to school A, that may assist those students whose parents make that decision, but I worry about what happens to the students who are left behind in public school B as more and more students leave, draining resources from that school. I really worry about it. I think we have to try to make the quality of education for everyone.

Ms. STALLWORTH. I think a good example of that is shown by New Orleans, where they have created a public school choice system. What has happened with schools in certain neighborhoods is that students have left. For the ones that remain, the conditions of that school have deteriorated, but all the students can't go to all the best schools. There is no way that every child is going to be able to fit into the top school. That school is only going to have so many spaces.

What happens is that yes, the children are going to suffer because of the declining budgets in that particular school. We have school budgets. Each school gets a general budget that it has to operate on. So, as they lose students and they lose funds, then they can't fix the roof. They can't do the teacher training that they have to do.

We have definitely seen that impact in the last year in the District of Columbia because of the budget cuts. Our schools have suffered tremendously, and with the teacher furloughs and now teacher RIFs, class sizes are increasing.

I heard the student to my right say that she had the benefit of small classes. Well, this fall, our schools are going to have to increase class sizes because of budget cuts. So our classes aren't going to get smaller just because some students have the opportunity to leave. They are going to get larger. The classes are going to increase because there will be less money to pay all the teachers, and there are going to be more students in each classroom.

I also wanted to address the analogy of the house burning down. Well, in this case, I see it as: I have an opportunity to put water on the fire, or I can let it burn and save water. I want to put the water on the fire, not let the whole house burn at all.

Mr. KILDEE. It would seem that in most State-aid formulas, and I served 10 years in the State legislature, that the amount of money that goes to a given school depends on the enrollment there, and if you lessen the enrollment, then you lessen the dollars going there, and you just go into a real vicious cycle. I really worry about those students who remain behind in school B as people go to school A. I think we have to have quality for all of our students.

Ms. STALLWORTH. Right. You lessen not only the general fund, but you also lessen the financial funds that come from the Federal Government that benefit education. This will disadvantage the children, and some of them are still going to—many of them, most of them are still going to be in our public school system.

Mr. KILDEE. Thank you very much, Ms. Stallworth.

Thank you, Mr. Chairman.

Did Ms. Lewis want to get a comment in?

Ms. LEWIS. Yes, I did. To talk about budget cuts, Cleveland has the largest budget that it ever has had in the history of Cleveland, 600-and-some-million dollars. It has fewer students than it has ever had. It only has 66,000 youngsters, and it has been losing that.

I didn't come down here to debate. I came down here to tell you that as a legislator, I did not make a decision about my position until I talked to the 9,000 parents in my ward and until I talked to youngsters and asked them what we need to do to help them get an education. An 11-year-old child said to me, When I go home, I have got to fight, when I go to school, I have got to fight, and if I come to the community, I have got to fight, I want to get an education. I am not saying something to you about what I think.

I am talking about what the people in my neighborhood said, and most legislators, if you talk to their folks, they will tell you. I say that to you so you will know where my information comes from.

Mr. KILDEE. I think our intentions our pure. Your intentions our pure, and mine are pure. I always worry about what I call the principle of unintended consequences. We have some intentions, but very often there are some unintended consequences.

Ms. LEWIS. But the point is that if you monitored the government dollar as you were supposed to, you wouldn't have to worry about it. We don't monitor the government money. That is what put my neighborhood where it is because we put money out there but we didn't monitor it. You need to monitor where the money goes. You need to make sure that the youngsters are benefiting.

We can match wits all day long. We have children out there who are suffering, and if we don't invest in our children, who is going to be able to take your seat? What are these people going to look like that have to come up and run our country and what have you if we are here long enough? We need to take it seriously.

Mr. FATTAH. Most of the ones that are here now went to public schools.

Ms. LEWIS. You see, the public school was different when you went.

Chairman CUNNINGHAM. The gentleman's time has expired.

Ms. LEWIS. The public school was different when you went. It was different when I went because teachers were allowed to whip your bottom. Now they can't touch you. They go to jail. And I think you are too young to try that.

Mr. TALENT. Mr. Chairman, I know this request may not be the best—

Chairman CUNNINGHAM. I have just a few statements, and I will yield a little bit of time. We do have another panel coming. We have Hon. Jack Kemp waiting in the wings.

I would say to the gentlelady that instead of letting your friend speak, we have to have some order on the Subcommittees. If I did that, Ms. Stallworth could say, Hey, I want someone from my side, and we are trying to balance it as much as we can.

What I would like to do is, first of all, to say that during the last 2 years, as the Republicans have had the majority, that we have increased Pell grants. We haven't cut, not a dime. We have increased Pell grants. As a matter of fact, the exact figures, to be factual, in 1993, it was 2,300. In 1994, it was 2,300. In 1995, it was 2,340. In 1996, it went up to 2,470. In 1997, it goes up to 2,500. So we have not cut Pell grants, and I think the demagogue of folks saying that we have cut, when we come up with a figure and the President comes up always with a higher figure and then they take and say, Hey, you have cut; it is not a fact.

I would say also that when you talk about welfare reform, you should remember that the first time we attacked the problem of welfare reform, the President had the White House, he had the House and the Senate, and nothing was done. I think to uptake that and get bipartisan support for this is very, very important. I think from all indications that the President is finally going to sign a welfare bill.

I think he has taken a step in leadership because when he does that, his far left is going to give him a lot of heat at the convention, but the President is stepping up to the plate, and I think he is going to show his leadership, and I think he is going to sign this welfare bill.

I would also say to the witnesses, my first district was 70 percent minority, and I won in that district. I have a private school that is represented by 70 percent minority, much like, I assume the one that Ms. Muldro went to. Do you know that 97 percent of those children go to college? Not just 97 percent go, but about 95 percent of them stay and don't drop out of college. When it comes to proprietary schools, we have had a problem in the past. Unfortunately, not everyone is going to go on to a college education, and we need a strong vocational education system as well.

In my district, at many of the jobs, our children don't qualify even at an entry level, and they need somewhere to go. As we ask people to get off of welfare and they have not finished high school, in many cases, we are finding out that the only male figure that these folks have had is when that male figure got the younger female pregnant, and that in many cases the mom doesn't even raise the child, that it is the grandmother. I don't know how we solve that problem. I mean, it is a major problem, but we have got to work in that direction.

I think that the shining cases like Ms. Muldro, her mom, a single parent, had an emphasis—I look at a lot of the Asian community that come here. They don't have very much, but, boy, I will tell you, they stress education. I never went hungry in my life, except I ran away from home once and I got kind of hungry, and that lasted for about 1 week and I decided to come back because I was hungry, but I have never had to go through that. My parents didn't have a whole lot, but they sent my brother and I through college, and they spent every dime.

I would recognize Ms. Muldro.

Ms. MULDRO. I just want to say one thing. I am actually not special at all. I don't shine. There is so much untapped talent in the underprivileged communities, and when I look at the students that I go to school with, our only benefits are that we happen to be well educated. There are public school students, but they came from better public schools, from good neighborhoods, or from the specialized schools.

What we have to do, and one of the things that I like about this bill, is the fact that, hopefully, it will provide the necessary incentive for the public schools to improve because I understand the concern for kids that are left behind. If we don't try to save them or if we don't improve those public schools, what about all the students that are just trapped there, stifled by the public school system?

Chairman CUNNINGHAM. I would say, Ms. Stallworth, that in a school system, the average cost is $9,000 per student. In California, it is less than $5,000. When you have a system that is, in my opinion, a complete disaster, I don't blame the President for going to a private school. I wouldn't want my children in the District of Columbia system.

Ms. STALLWORTH. As Ms. Lewis said, I think maybe you need to come out and visit some of our schools—

Chairman CUNNINGHAM. I have. I have, ma'am.

Ms. STALLWORTH [continuing]. Because we are graduating students in my—

Chairman CUNNINGHAM. Regular order, Ms. Stallworth.

Ms. STALLWORTH. We are graduating students who are getting scholarships to Harvard.

Chairman CUNNINGHAM. I am asking for regular order, Ms. Stallworth.

Ms. STALLWORTH. Yes.

Chairman CUNNINGHAM. I have gone into your system, and I would also say that we have tried to provide some funding and scholarships for the District of Columbia children to allow them to escape that system.

Mr. Gunderson offered a good-faith bill to do that, which was rejected.

My time has run out.

I would say I thank the panel for coming, and I would recognize the fourth panel. I would recognize Hon. Jack Kemp, co-director, Empower America, Washington, DC, former Secretary of the Department of Housing and Urban Development and former Member of Congress. I would recognize Stuart Butler, Ph.D., vice president, Heritage Foundation, Washington, DC; Michael E. Porter, Ph.D., C.

Roland Christensen professor of Business Administration, Harvard Business School, Boston, Massachusetts; Helen Ladd, Ph.D., professor of Public Policy Studies and Economics, Sanford Institute of Public Policy, Duke University, Durham, North Carolina; and Terry Van Allen, Ph.D., director of Research Administration, University of Houston-Clear Lake, Houston, Texas.

If the gentlemen would please take their seats. As in the last panel, you will be recognized for approximately 5 minutes, and I will try to be a little bit lenient. You will also have time to respond, as 5 minutes goes by very, very quickly when you are having a good time. I would ask your indulgence that when I tap to try and at least summate your remarks.

You will also be able to submit questions for the record for the period of time.

With that, I would recognize Stuart Butler, Ph.D., vice president, Heritage Foundation, Washington, DC.

I will just go through the list as I read them, except Hon. Jack Kemp has not arrived yet.

STATEMENT OF STUART M. BUTLER, PH.D., VICE PRESIDENT, HERITAGE FOUNDATION, WASHINGTON, DC

Mr. BUTLER. Thank you very much, indeed, Mr. Chairman, for the opportunity to testify on what I consider an extremely important bill.

I have worked on the issues of inner city, urban problems and economic development for 17 years, and particularly have been involved in the development of enterprise zone legislation throughout that entire period, working initially with Jack Kemp and with others ever since. So I look at this bill from that vantage point.

All of us who have worked on these kinds of issues over the years have learned a great deal, and the legislation before us contains the crucial elements that reflect experience and the things that we have learned from it.

In particular, it not only has economic incentives within it, but it recognizes there are things that must compliment those economic incentives in order to prompt economic revival in the inner cities.

Particularly, the school choice provisions are extremely important. I happen to have two children in the District of Columbia public schools, but it is very clear that many public schools in many inner cities are destroying the lives of children. Parents must have the ability to move their children to schools that will help to improve their lives and give them the start they need, the start that includes the kind of values and this kind of dimension that is so often lacking in our public schools.

Even though I have chosen public schools for my children, I believe that others should have the right to choose the schools that are necessary for their children.

The provisions in the bill on drug prevention and treatment are also crucial, particularly using faith-based approaches to those concerns. They work, and that is absolutely essential to complement business and economic development in these areas.

Stimulating nonprofit organizations, the kind of community groups that we see all around the country as being at the spearhead of turning around inner-city areas, is absolutely crucial, and

the provisions in the bill would give strong incentives for people to support these. Unorthodox, in many cases, community-based organizations are essential to complement the economic incentives.

When you look at the economic incentives, which is what this panel is focusing on, it seems to me that our experience shows two things are absolutely vital. Number one, that we focus on small business development in these areas. Small business is where the jobs come from generally, and particularly in the inner cities of America. Small businesses are very often the extension of effective community-based approaches for dealing with the inner cities.

If you look, for example, at the experience of the tenant management movement in this country, we see that one of the natural developments, after control of the housing communities themselves is achieved, is that these organizations very quickly develop an economic component based on developing small businesses such as maintenance firms and other such kinds of businesses, which are small businesses, which are the next stage of development in these depressed areas.

We find also that small businesses can use old buildings. Small businesses are able to fit into the nooks and crannies of communities in ways which large companies cannot.

Small businesses also contribute in important ways to the street traffic and general life of the community. We see this in communities all over this country, successful communities. Small businesses are crucial to this, and small businesses typically tend to hire local people much more readily than large firms do.

So the first thing is that small business is absolutely essential. Second, is that in order to get small business developing in the depressed inner cities, it is important and vital to have a much stronger flow of capital into these firms.

Small businesses say over and over again that next to redtape and other kinds of bureaucratic restrictions, access to basic startup and working capital is the biggest impediment to moving forward. That is particularly true in the more depressed areas, particularly for first-time businesses. Therefore, it is necessary to address this.

It is important to understand that the sources of capital for these kinds of businesses are not usually banks or the Small Business Administration or large institutional forms of capital. These first-time small businesses in depressed areas will either survive or die from want of informal capital, typically from people that they know or small investors who are willing to take a risk in a high-risk area. It is this patient capital which is looking for an improvement in value that is the crucial thing. This focus on the capital need for small firms has been missing so far in enterprise zone legislation that has been passed by a number of Congresses.

We know there is overwhelming evidence to suggest that reducing the capital gains tax is the best and most effective way of channeling capital into these high-risk types of firms. That is why that element of the legislation is so important in tandem with the rapid depreciation schedule for stock purchases that is in the legislation.

I believe the bill we have before us really has it exactly right based on my experience looking at the problem of the inner cities. Because it understands the nature of the development process and why economic development goes hand in hand with other crucial changes in these areas. If enacted, this legislation could be one of the most important pieces of urban legislation passed during this century.

Thank you, Mr. Chairman.

[The prepared statement follows. The Heritage Foundation publications dated July 25 and 29, 1996, are being retained in the Committee's files.]

STATEMENT OF STUART M. BUTLER, PH.D.
VICE PRESIDENT
HERITAGE FOUNDATION

Mr. Chairman, my name is Stuart Butler. I am Director of Domestic Policy Studies at The Heritage Foundation. I am pleased to be invited to testify on this important bill. I must emphasize that my remarks are my own opinions, and should not be construed as representing any official position of The Heritage Foundation.

For over 16 years I have studied the causes of urban decay and the features needed for inner city economic revival, and have worked extensively on developing an effective enterprise zone program ever since Jack Kemp first introduced legislation in 1980. From what I have learned during that experience, I believe the "Saving Our Children" legislation incorporates the crucial elements needed to revive America's most blighted inner city neighborhoods.

Several Key Elements Needed: The legislation correctly recognizes that to revive these neighborhoods, economic incentives are necessary but not sufficient. It is vitally important to transform the opportunities for education and to make schools accountable by empowering families with school choice. It is equally vital to change the moral and social climate in the community. That is why extending school choice to religious schools is essential, and reflects the desires of inner city parents, who understand the need for religious values in education far better than most education "experts." That is also why it is important, as the bill does, to open the door wider to faith-based programs to deal with drug addiction. And it is vital to foster effective community-based approaches to assist the poor in these neighborhoods. That is why actions to promote citizen-supported private charity are needed.

The bill contains all of these crucial elements.

I have been asked to confine my observations to the issue of capital formation in the process of urban renewal. While this is only one element of the economic strategy in the legislation, I believe it is in may ways the most important one and the one most obviously lacking in federal enterprise zone legislation previously enacted into law. Without steps to encourage private capital to flow into renewal communities, or enterprise zones, their economic development will be anemic.

Importance of Small Business

To understand why capital formation is so crucial, and how legislation can encourage it, it is important to understand first that the central economic goal in inner-city revival must be to foster small business creation. Unfortunately, many federal and state officials still cling to the belief that the best way to assure economic growth in a poor neighborhood is to encourage large companies to locate there. They take it as self-evident that a firm employing 100 people must be better than one employing three. They also assume that progress is impossible unless a large firm is persuaded to become the nucleus or anchor for economic expansion.

In almost every instance this is an unwise strategy. The fact is that large firms are poor generators of new jobs. Research by David Birch at MIT and others indicates strongly that it is small firms that are the primary generators of jobs in the U.S. But large companies are not appropriate targets for another reason. Studies of location decisions of large firms indicate that chief among the factors influencing the decision are the availability of properly trained employees and an environment conducive to attracting and keeping skilled workers and managers. Tax incentives are well down the list of factors. Thus when a city attempts to retain a large company, or attract a new venture to a blighted neighborhood, through a package of tax and other financial incentives, the price to the city is extremely high. This price is increased by the understandable reluctance of other cities to accept the relocation of one of their large firms. Thus we see a "war of incentives" between competing cities with a very high cost for the taxpayer and yet very little real economic stimulus to the city that "wins" the location war. So a renewal program will be both expensive and largely ineffective if it seeks to recruit large companies to depressed urban neighborhoods. Instead the focus should be on creating the

conditions necessary to generate new small enterprises, preferably drawn from the underused resources within the neighborhood itself.

Other than the practical reasons of job generation and location decisions, there are many other reasons for focusing on small enterprises as the foundation for economic recovery in depressed areas. Among the reasons:

- ***Small firms tend to be more innovative and better able to adapt to unusual economic and social conditions.*** The urban analyst, Jane Jacobs, in her book, *The Death and Life of Great American Cities*, points out that risk-taking, innovative firms need to keep overhead costs as low as possible, so older buildings and low-cost neighborhoods are their natural habitat. Firms based on tried and trusted ideas locate in new buildings and neighborhoods.

- ***Small firms require modest capital and usually less sophisticated technology and worker skills.*** They recruit workers locally -- more often than not from people who walk in off the street. Clearly these firms are more appropriate for areas where capital and skills are in short supply.

- ***Small firms can be established by city-based organizations as part of their general program of reviving a neighborhood.*** One of the interesting features of the growth of tenant management in public housing, for instance, is that these management associations very quickly diversify and create businesses both to employ local residents and to improve the availability of goods and services to the neighborhood. By removing the red tape so often in the way of such ventures, the economic objectives of the enterprise zone strategy can be combined with a more general approach to addressing the conditions of an inner city.

The Obstacles Inner-City Small Firms Face

If we are to foster the growth of small enterprises within large dilapidated neighborhoods, we must pay close attention to what these firms say are the obstacles they face. One is the plethora of local taxes and red tape that frustrate owners and drive up the cost of opening and continuing a business. For large firms, these are irritants to be handles by one of their departments. But for small, financially-strapped firms, these local obstacles can be business-killers. That is why it is necessary to encourage local authorities to streamline zoning, building codes, and other regulations and permits that can be an enormous obstacle to a small firm. The "Saving Our Children" bill wisely includes this feature. Similarly, firms stress the lack of workers not just with the appropriate skills, but also the appropriate *attitudes* to work. That is why the bill's focus on improving education by providing more opportunity for children to go to schools. emphasizing values is so important.

Capital is Crucial: But the other crucial ingredient is capital, particularly start-up capital. People who have been in business successfully for years usually have little trouble going to a bank to obtain capital to expand. They are a known quantity and a known risk. People starting their first business are not known quantities, and are rarely able to raise funds from banks and other formal sources of capital. People trying to start businesses in the inner city are even less likely to be supported by financial institutions.

Other than personal savings, the main avenue open to these firms is direct investment from individuals they know or from individuals who are willing to take a chance on a high-risk venture. Thus what Congress needs to do is to provide investor incentives, in particular capital gains relief, to encourage outsiders to provide them with seed capital. "I cannot adequately stress the importance of capital incentives," said Senator Joseph Lieberman (D-CT) in his criticism of the lack of adequate capital incentives in the Clinton Administration's enterprise zone program, adding that "...they must be targeted toward small business."

Further, even when these firms get off the ground they tend to be chronically short of cash in their early years. Thus tax incentives to improve their cash flow, enabling them to take on labor and meet the other routine requirements of running a business, are crucial to success. What these firms need to keep going, in other words, are tax incentives to enable them to keep down costs, and to recoup as rapidly as possible the major expenses they make in buildings and equipment.

The bill includes provisions that would achieve these objectives. Individual investors in risky start-up businesses are not looking for a steady flow of income from their investment, they are interested in the business rising in capital value and their investment rising in value. They are interested in the final return. That is why the 100 per cent exclusion from capital gains tax in the bill is exactly the right incentive. The expensing of stock purchases complements the "cash out" benefit of the capital gains exclusion with "cash in" reduction in the effective price of their investment.

In conclusion, Mr. Chairman, this bill is in my view the most important piece of urban legislation in years. It correctly identifies the root issues in urban renewal and deals with them directly and effectively. If this bill becomes law, it will be a true lifeline to the children of our most depressed inner cities.

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Chairman CUNNINGHAM. Thank you, Mr. Butler.

Michael E. Porter, Ph.D., C. Roland Christensen professor of Business Administration, Harvard Business School, Boston, Massachusetts.

And I thought capital gains reduction was only for the rich.

STATEMENT OF MICHAEL E. PORTER, PH.D., C. ROLAND CHRISTENSEN PROFESSOR OF BUSINESS ADMINISTRATION, HARVARD BUSINESS SCHOOL, BOSTON, MASSACHUSETTS

Mr. PORTER. Thank you, Mr. Chairman.

In the interest of brevity, I have prepared written testimony, and I am also including two more extensive papers for the benefit of the Subcommittees.

I am not an expert on urban policy, but a professor at the Harvard Business School. I have spent my career working with companies all over the world on problems of competing more effectively. I have come to the issue of distressed communities out of frustration; much of our attention in trying to revitalize distressed communities has taken a social rather than economic approach.

I believe it is time to balance that equation better, to marry a social strategy to increase human capital and meet the immediate needs of urban residents with an economic strategy that creates genuine economic and job opportunities for inner-city based residents. That is what I have been working on for the last 3 years, and is the focus of an organization that I founded called the Initiative for a Competitive Inner City, which is trying to serve as a catalyst for private sector efforts around the country.

The basic message I would like to convey is that this bill is one of the very few to attack the problems of our distressed communities with an economic approach. I think title I, in particular, contains many useful provisions to improve the business environment in inner cities, to make it easier to start and build businesses in inner cities, to open the door for entrepreneurial activity that is accessible to inner-city residents, and to provide some economic incentives for capital to flow into inner-city areas.

I believe from my research that there are genuine competitive advantages of inner cities as business locations, and that these advantages have been ignored, untapped, and often eroded by a lack of attention or a lack of focus. This bill starts to recognize that possibility that the inner city could actually compete, that there could be a vital economy there if we create the right conditions, if we change perceptions and attitudes, and if we focus our attention on building businesses and creating jobs. It is a matter of balance, and I think the importance of this bill is that it starts to redress an imbalance.

Even well-intentioned efforts like the enterprise zone program, when you look at what actually happens in these cities, result in 98 percent of all the attention getting channeled not to an economic strategy, or to building vital businesses, but in putting more resources into the same kind of social programs that have produced marginal results.

So, I am in strong support of this bill. As you read my testimony and look at my articles on the subject, I think you will see why.

Let me comment specifically on the bill and on some of the areas that I particularly support as well as some areas where I think the bill can be improved.

First of all, I want to strongly support the regulatory relief provisions of the bill. Inner cities are the most regulated places on Earth from a business point of view. It is truly ironic that the places that need business expansion and new job creation the most are the places where regulation is greatest. This bill recognizes the problem and, for the first time that I am aware, starts to address it.

I strongly support the capital gains exclusion for businesses based in the inner city or "renewal community-based" businesses. This is a very powerful way to encourage investment in these areas that is based on economic logic. A capital gain does not occur unless a business is viable. There have been too many plans to subsidize businesses or give them tax credits of one sort or another that don't presuppose a viable business. The result is that we have stimulated a lot of unsustainable activity.

The bill could be improved if it would include, along with the capital gains exclusion, a 100-percent exclusion for dividends paid from companies based in the inner city. Many of the businesses that will grow up in inner-city areas will not be businesses that are good candidates for initial public offerings. These are not businesses that are going to be sold in the public capital markets. These are family businesses of moderate size. Such businesses are not likely to be bought and sold by venture capitalists.

There needs to be a way to get return to investors that doesn't require selling the business, and that is why a 100-percent exclusion for dividend payments from stock ownership in these businesses is important. It allows a return to investors without the need to sell the business.

I would raise cautions about the expensing provisions that are contained, I believe, in sections 8(b) and 8(c) of the bill. Whenever I see provisions like these, I worry that the tax benefit will distort the flow of capital into uneconomic activity.

Finally, the bill would benefit by being more broadly in terms of business development and not only in terms of personal or individual development. We need to send the signal that business and economic revitalization are what is needed to inner-city renewal, not just individual initiative.

Thank you.

[The prepared statement follows. The booklet entitled "The Competitive Advantage of the Inner City" and a paper entitled "An Economic Strategy for America's Inner Cities: Addressing the Controversy" are being retained in the Committee's files.]

Professor Michael E. Porter
Harvard Business School
July 30, 1996

Testimony before the Ways and Means Subcommittee on Human Resources and the Economic and Educational Opportunities Subcommittee on Early Childhood, Youth and Families

My name is Michael E. Porter. I am the C. Roland Christensen Professor of Business Administration at the Harvard Business School where I conduct research on competitive strategy for companies, and on the competitiveness of nations, states, and cities. I have led a major research effort over the last three years on the economic development challenges facing America's inner cities. I am also founder and chairman of the Initiative for a Competitive Inner City, a national organization whose mission is to catalyze private sector initiatives to foster business development in inner cities and employment opportunities for inner-city residents.

I welcome the opportunity to provide testimony to this Committee in support of HR 3467. The Bill takes important steps toward a new strategy for revitalizing America's distressed communities. In my testimony, I would like to place the Bill in a broader economic context, outline an overall strategy for inner city economic revitalization, relate the Bill to this strategy, and comment on some areas where the Bill might be strengthened. In addition to my written testimony, I am providing two more extensive papers to the Committees: *The Competitive Advantage of the Inner City* and *An Economic Strategy for America's Inner Cities: Addressing the Controversy*. These contain a more detailed discussion of the findings of my research as well as my recommendations for policy.

A Strategy for Inner City Economic Development

These hearings, and this Bill, could not be more timely. The economic distress of America's inner cities, as well as some rural areas, is one of the most pressing issues facing the nation. The lack of businesses, investment, and most importantly, jobs in these disadvantaged areas not only perpetuates a crushing cycle of poverty but fuels other social problems such as crime, drug abuse, and disintegrating families. I will concentrate in my testimony primarily on inner cities, although the same principles can be applied to depressed rural areas.

The time has come to recognize the revitalizing the nation's inner cities requires a radically different approach. We must stop trying to cure the problems of these communities by perpetually expanding social programs and hoping that economic activity will follow. What is needed is an economic strategy for inner cities, focused on business and job development, as a complement to (not a substitute for) the many programs designed to increase human capital and meet the basic human needs of disadvantaged populations. Today, the great majority of federal efforts and resources, as well as those at the state and local level, are targeted toward meeting the immediate needs of inner city residents rather than generating jobs and economic opportunity that will mitigate the need for social programs in the long run.

Past and present efforts at economic development in inner cities, where they have occurred, have too often attempted to defy market forces rather than harness them. A sustainable base in inner cities will only be created as it has been elsewhere—through private, for-profit initiatives and investment based

on economic self-interest and genuine competitive advantage—instead of artificial inducements, government mandates, or appeals to charity. An economic strategy for inner cities must focus on the position of these areas within the regional economy rather than treating inner cities as separate. While the challenges of global competition and technological advances have adversely affected inner cities, they have also created new opportunities. The future inner city economy will not look like the urban economy of many decades ago but will contain many different types of businesses suited to the modern economy.

Instead of starting with the premise that inner cities are devoid of business and cannot compete, an economic strategy must begin with the premise that inner cities can and must compete. There are many businesses present today in inner cities despite the well-known problems of these areas as a business location. Inner city businesses are concentrated in sectors such as food processing and distribution; recycling and remanufacturing; support services for corporations; entertainment and tourist attractions; logistics and transportation; and other fields where there are genuine competitive advantages of an inner city location. An economic strategy for inner cities must **enhance these competitive advantages**, while dealing frontally with the current disadvantages of the inner city as a business location. There is genuine economic potential in inner cities which is only just beginning to be recognized and tapped by the private sector. The private sector has already begun investing again in inner cities, led by retailers seeing an untapped market while facing saturation in the suburbs. With an economic strategy, this promising business activity could be multiplied many times over across the country.

The Competitive Advantages of Inner Cities

Our analysis of major cities nationwide has found that often-discussed advantages such as low-cost labor and real estate are largely illusory. Inner cities have available workers, but wages are not less than in rural areas or in other countries. Real estate costs may be lower than nearby high-rent downtown areas, but cheaper real estate is available in the suburbs and elsewhere. The changing nature of the world economy means that inner cities will not be able to compete if low-cost labor and cheap real estate are the only advantages.

Instead, we must recognize that the genuine competitive advantages of inner cities fall into four areas:

Strategic location. Inner cities occupy what should be some of the most valuable locations in their respective regions, near congested high-rent areas, major business centers, entertainment complexes, and transportation and communications nodes. As a result, inner cities can offer a competitive edge to logistically sensitive businesses that benefit from proximity to downtown, proximity to transportation infrastructure, and a central location amid concentrations of companies. The just-in-time, service-intensive modern economy is only heightening the time and space advantages of such a location. This powerful advantage, which has not been fully developed or utilized, explains the continued existence and growth of the many food processing, printing, business support services, warehousing and distribution, and light manufacturing companies in most inner city areas.

Unmet local demand. The consumer market of inner city residents represents the most immediate opportunity for inner-city-based entrepreneurs and businesses. Despite low average incomes, high population density translates into an immense local market with substantial purchasing power. Making the market even more attractive is the fact that there tend to be few competitors serving it. At a time when suburban markets are saturated, inner city markets remain poorly served—especially in many

types of retailing, financial services, and personal services. Inner city-based businesses which serve this demand, especially those focused on meeting its unique needs, will have an advantage over more distantly located establishments.

Integration with regional clusters. Longer-term opportunities for inner cities lie in capitalizing on nearby regional clusters of firms and industries—unique concentrations of competitive companies in related fields. The ability to access competitive clusters is much more far reaching in its economic implications than simple proximity to the city. Building on local clusters involves tapping powerful external economies and leveraging private and public investments in skills, technology, and infrastructure. A effective economic strategy for inner cities must focus on better linking them to nearby clusters. For example, Boston is home to a world-class healthcare cluster that abuts the inner city. There are opportunities to link inner city companies to this cluster as well as to develop focused programs for training and the development of job opportunities for inner city residents.

Human resources. While inner city populations present many workforce readiness challenges (discussed in greater detail later in this paper), inner city residents can be an attractive labor pool for businesses that rely on a loyal, modestly skilled workforce. There is the potential to build on this resource, with new approaches to education, job placement, and training. However, this requires debunking deeply entrenched myths about the nature of inner city residents. The first is that inner city residents do not want to work and opt for welfare over gainful employment. Although there is a pressing need to deal with inner city residents who are unprepared for work, our survey of businesses in inner cities nationwide shows that many inner city residents are industrious, loyal employees.

A second myth is that the inner city lacks entrepreneurs. In fact, there is a demonstrated capacity for entrepreneurship among inner city residents, most of which has been channeled into microenterprises and the provision of social services. For instance, inner cities have a plethora of social service providers as well as social, fraternal, and religious organizations. Behind the creation and building of those organizations is a whole cadre of local entrepreneurs who have responded to intense local demand for social services and to funding opportunities provided by government, foundations, and private sector sponsors. The challenge is to create a climate whereby other inner city residents, with similar talent and energy, build for-profit businesses that become meaningful employers, and create wealth.

The third myth is that skilled minorities, many of whom grew up in or near inner cities, only look for businesses and employment in more affluent areas. Today's large and growing pool of talented minority managers represents a new generation of potential inner city entrepreneurs. Many of these managers have developed the skills, networks, capital, and confidence to join or start entrepreneurial companies in the inner city. We know of some—including former students of mine—who are doing so. As the awareness of the economic opportunities in inner cities grows, more will follow.

Improving the Business Environment in Inner Cities

As business locations, inner cities suffer from many disadvantages: discrimination, high taxes and business costs in areas such as utilities and insurance, crime, poorly maintained logistical infrastructure, burdensome regulations and permitting requirements, environmental pollution, and a weak education and training system. A few general principles about improving the business environment in inner cities should be highlighted.

First, the inner city's disadvantages as a business location must be seen as an economic problem and must be addressed as part of an economic strategy. Too often, addressing weaknesses such as a

poorly trained workforce or deficient logistical infrastructure are approached with only the social welfare of residents, not the needs of business, in mind. For example, inner city training programs often fail to screen applicants—and even give priority to the least prepared residents in the name of fairness. Employers are then disappointed with the graduates.

Second, attempting to offset disadvantages with operating subsidies to businesses is futile. A more effective approach is to address the impediments to doing business directly. We must reduce unneeded regulatory hurdles, simplify permitting, reorient environmental clean-up requirements, and so on. There is simply no other solution.

Third, our research indicates that many of the inner city's disadvantages are not inherent, but the result of poor strategies and obsolete public policies. There are many best practices nationwide that could be adopted in every inner city. For example, the permitting process can be streamlined, as the case of Indianapolis illustrates. There, Major Stephen Goldsmith formed a panel comprised of ten local business leaders and entrepreneurs as well as 150 volunteers and charged it with examining all of the city's permitting and regulatory requirements. For each requirement, the panel asked, "Is there something unique about Indianapolis that would justify additional regulation above and beyond what is already required by the state and federal government?" The result was that entire volumes of antiquated regulations and permits were eliminated.[1]

Implications for Federal Policy

The federal government has an important role in inner cities, but a different role than has been played previously. First and foremost, the federal government must make economic and business development in inner cities a central priority, and allocate resources accordingly. Otherwise, inner city communities will never become self-sustaining.

The essential task of government is to do its part in improving the environment for business. Many aspects of this environment are influenced by governments at the federal, state and local level. By and large, government policy has driven up business costs in inner cities, or ignored them. Government has also stood in the way of business formation or expansion in inner cities, despite the pressing employment needs of distressed communities.

To improve the business environment in inner cities, the following areas take on high priority.

- **Physical infrastructure.** The quality of transportation and logistical infrastructure is essential to the competitive position of inner cities. Investments to improve the flow of people, goods, and services into and out of inner cities, and to better connect these areas with airports, highways, waterways, and railways, are essential to leveraging the most important strength of inner cities. In addition, modern, high-capacity telecommunications serving inner cities will unlock their potential as locations for additional support services for congested downtown business districts.
- **Regulatory streamlining.** It is ironic that the areas in the United States that are the most in need of business development are the most over-regulated. In areas such as zoning, permitting, environmental regulation, and elsewhere, regulations deter or drive up the cost of business activity with little benefit to health and safety. Businesses seeking to expand and increase employment are thwarted; competitive, low-cost retailers who would bring jobs and

[1] *City Journal*, Spring 1994, page 54.

lower prices to local residents are blocked from opening. A systematic effort to streamline regulatory processes and eliminate duplicating and unneeded regulations is necessary. One particularly pressing area is environmental regulations, where current approaches have unnecessarily deterred precluding much-needed real estate development.

- **Security.** The perception and the reality of crime are major deterrents to inner city business development. Current policies often neglect property crime and largely ignore commercial and industrial areas, however, which drives away jobs and stabilizing businesses. The burden of crime on residents only gets worse.
- **Training.** The problems of public education for inner city residents are well known, and the Bill makes positive recommendations in this area. As important, in many respects, is the ineffectiveness of the current programs for training residents of inner cities which are largely ineffective and disconnected from the needs of business. As in so many areas, programs to benefit inner cities have been disconnected from the needs of the economy.
- **Capital.** We need some creative approaches to stimulate sound business investment in inner city areas. Past approaches have focused too much on providing operating subsidies. These are dangerous, because they encourage unsustainable businesses. The Bill takes some important steps in the right direction about which I will comment further.

Commentary on the Bill

The Bill represents an important step in the direction of an economic strategy for distressed communities. Title I contains a wide array of steps that will enhance business and economic development in distressed communities which I strongly support. Its stress on regulatory relief is extremely important. There are many restrictions on entry into occupations and businesses that represent natural first steps for residents of distressed communities, which the Bill would eliminate. I also strongly support the 100% exclusion from capital gains for investments in "renewal community" assets held for more than five years. This is one of the single most powerful ways to encourage sound investments in these communities that are tied to profit—capital gains only arise from genuinely sustainable businesses. I also support the principle of the work opportunity tax credit, provided that the credit is only useable if the individual involved is employed for a minimum period (at least one year).

The Bill could be extended or improved in a number of ways which are entirely consistent with its objectives. First, I would recommend that the Bill also include a 100% exclusion for dividends paid by renewal community businesses or subsidiaries. Many of the businesses that are and will be based in inner cities are not businesses that are candidates for public stock offerings. In addition, many of these businesses are family owned and often family managed. Thus it is important to find a way to encourage investment in such businesses in distressed communities without requiring sale of the business to take advantage of the incentive. My proposal seeks to do so by eliminating the taxation of common or preferred stock dividends. Accompanying rules would be necessary to ensure that these dividends are not liquidating.

I would recommend that relief from taxation on dividends be substituted for the expensing provisions in Items 8b and c. Expensing runs the risk of encouraging uneconomic investments that are made largely for the tax benefits. This approach has failed repeatedly, and will not produce sustainable benefits to distressed communities. I would also suggest some modifications in the discussion of bank lending. The current provision is unnecessarily narrow, in its focus on CRA credits and on community development financial institutions. Our research suggests that a broader strategy is needed to encourage business lending in distressed communities which taps the expertise and resources of private sector, mainstream financial institutions. I have recommended the concept of a transaction fee to compensate

banks and other lenders for the added cost of making business loans in distressed communities, but leaving lenders with the default risk to ensure that the loans they make are economic. This and other approaches will be more effective than creating a new class of financial institutions and non-market driven lending incentives for these communities. Community development financial institutions should be encouraged and allowed to participate in inner city business lending, but only where there are adequate incentives to ensure that the companies funded are sustainable.

Most generally, I would suggest that the Bill be framed more broadly in terms of business development in addition to personal economic development. While greater participation in the economy by individuals is crucial, it is essential to recognize that businesses that can become significant employers will also be essential in these communities. A broader focus on business development could be accompanied by additional sections of the Bill in areas such as environmental regulation, urban transportation and communication infrastructure, and others. In some cases, there is existing legislation pending or under discussion which could be drawn together in a more comprehensive strategy.

Finally, I want to comment briefly on Title II and Title IV. These portions of the legislation encourage the use of alternative institutions for schooling and drug treatment and counseling. While I strongly support this principle, I would caution the Committees to include strong provisions relating to performance standards for the institutions involved. In the area of training, where I have extensive knowledge, there has long been a wide variety of training providers authorized to serve inner city residents. Unfortunately, however, these institutions have rarely if ever been held accountable for their performance. Most lack the expertise and relationships with the business community to either provide effective training, produce graduates that meet the needs of companies, or connect the training to employment opportunities. The result is that much of the money we spent on training has been wasted. It would be truly a tragedy if badly needed additional resources for education and drug treatment and counseling yielded the same outcome.

Chairman CUNNINGHAM. I thank the gentleman.

Helen F. Ladd, Ph.D., professor of Public Policy Studies and Economics, Sanford Institute of Public Policy, Duke University, Durham, North Carolina.

The gentlelady is recognized.

STATEMENT OF HELEN F. LADD, PH.D., PROFESSOR OF PUBLIC POLICY STUDIES AND ECONOMICS, SANFORD INSTITUTE OF PUBLIC POLICY, DUKE UNIVERSITY, DURHAM, NORTH CAROLINA

Ms. LADD. Thank you. I very much appreciate the opportunity.

Chairman CUNNINGHAM. Do you prefer "Ms. Ladd" or "Dr. Ladd"?

Ms. LADD. Either one, "Ms." or "Dr."

I appreciate the opportunity to testify here today. Central to the topic of this panel is the targeting of tax and regulatory relief to the 100 community renewal areas, areas characterized by high rates of poverty and high unemployment.

In this brief summary of my written testimony, I would like to make four main points. The first one is that given the overall purposes of H.R. 3467, I take the main goal of its geographically targeted subsidies to be improving the economic condition of the disadvantaged residents of those areas.

Implicit in that strategy is the reasonable view that community, as defined in geographic terms, plays an important role in a resident's well-being. However, I note that the English model of enterprise zone, on which this strategy is based, was designed primarily to invigorate small, economically distressed areas in which few, if any, people lived, and I have referred to that type of strategy in my written comments as a pure place strategy.

Now, that raises the question of whether the tax and the regulatory relief used as the appropriate tools in the English model are appropriate for your place-based goal of helping disadvantaged people.

That leads me to my second point. For a number of reasons, I believe that geographically targeted tax breaks and regulatory relief are not an effective strategy for helping the disadvantaged residents of the designated areas. There are a number of reasons.

One reason is that given some of the characteristics of the targeted area, such as high crime rates, for example, tax breaks may not be very effective in encouraging firms to locate in those areas.

Another reason, and this is the reason I want to highlight, is that if the tax breaks do generate new investment and new jobs in the designated areas, there is no guarantee that the new jobs will go to the local residents, and especially to the disadvantaged residents who have limited education, limited skills, and limited work experience.

In addition, given the goal of providing economic opportunity to local residents, tax rates designed as subsidies to capital and investment, as is the case with many of the tax provisions in this bill, are less appropriate than tax subsidies that encourage firms to use more labor; that is, to hire more workers.

Finally, targeted tax breaks may simply encourage firms and jobs to move from one area to another with no net gain in jobs.

Now, I recognize that H.R. 3467 addresses this last concern by trying to promote small firms and entrepreneurial activity, and this is the point that Mr. Butler was referring to.

In my view, though, while I agree with some of Mr. Butler's arguments, I think the small-firm strategy is oversold, and we can talk about that a bit more. The problem, in part, is that small firms are much riskier than larger firms and much more likely to fail.

My third main point is that evidence from the States' experiences with enterprise zones indicates that the cost in terms of foregone revenue of providing an additional job to a zone resident can be very high, on the order of $40,000 to $50,000 per job, per year.

Thus, I conclude that the enterprise zone approach, at least given how that approach has been implemented by the States, is not a cost-effective way to generate jobs for disadvantaged local residents.

My fourth point is that the use of tax incentives as a policy tool deserves as much or more scrutiny than policy implemented through the expenditure side of the budget. Such a strategy appeals to many people because it appears to be costless and it operates through private sector decisions rather than through the public sector. Clearly, however, there are large costs in the form of foregone tax revenue.

Another reason for close scrutiny is that the beneficiaries of such a tax-oriented strategy are often unclear. The benefits from various tax provisions, such as the elimination of capital gains taxation, are likely to accrue to the owners of the business firms, rather than to the local disadvantaged residents who you are trying to help.

To summarize, as should be apparent, I am quite skeptical of the claims of many of the supporters of an enterprise zone-type strategy for helping disadvantaged residents in distressed urban areas. Some of my concerns can be mitigated, in part, by attention to the design of the program. For example, tax breaks that favor the use of labor rather than capital would be more consistent with the goal of helping disadvantaged residents.

My greatest concern about such programs is that the low skills and social isolation of many of the disadvantaged residents in the targeted areas are likely to keep them from benefiting in any major way from whatever new jobs are attracted to the area. Thus, I would prefer that any policy initiative be much more heavily focused on education, and that is education for all of the children, and training than on tax breaks and regulatory relief for firms.

Thank you very much.

[The prepared statement follows:]

TESTIMONY OF HELEN F. LADD*

ON H.R. 3467, "SAVING OUR CHILDREN: THE AMERICAN COMMUNITY RENEWAL ACT OF 1996"

Hearings sponsored by the Subcommittee on Human Resources of the Committee on Ways and Means and the Subcommittee on Early Childhood, Youth and Families of the Committee on Economic and Educational Opportunities.

Tuesday, July 30, 1996.

*** Professor of Public Policy Studies and Economics, Sanford Institute of Public Policy, Duke University, Durham, NC, 27708. Tel. 919 613-7352. E-mail: hladd@pps.duke.edu**

Thank you for inviting me here today to talk about the use of geographically targeted tax breaks and regulatory relief as a strategy for economic development in distressed urban areas. An economist by training, I have spent the past 20 years teaching and doing research in the field of public policy, first at Harvard University and, since 1986, at Duke University. My particular expertise with respect to the topic of this panel is based on my 1994 article about the experience of state governments throughout the country with enterprise zones and also my essay about the use of the tax code to promote social and other goals.[1] My current work in the

[1] Many of the arguments in this testimony are developed more fully in Helen F. Ladd, "Spatially Targeted Economic Development Strategies: Do They Work?," in *Cityscape: A Journal of Policy Development and Research*, volume 1, number 1, August 1994. (U.S. Department of Housing and Urban Development). Also see Helen F. Ladd, "The Tax Expenditure Concept After 25 Years," Presidential address to the National Tax Association, Nov.

area of education policy may also be relevant.

Central to the discussion of this panel is the targeting of tax and regulatory relief to 100 community renewal areas, with such areas being characterized by high rates of poverty and high unemployment. I want to make four main points about this type of economic development strategy.

First, it is useful to distinguish what I refer to as pure place strategies, that is, strategies designed to improve the physical and economic condition of a specific geographic area, from strategies designed to help disadvantaged residents in distressed areas. Given the overall purposes of HR 3467, I take the main goal of its geographically targeted subsidies to be improving the economic conditions of disadvantaged residents of those areas.

Second, for a variety of reasons, geographically targeted tax breaks and regulatory relief may not be an effective tool for helping the disadvantaged residents of the designated areas. This conclusion is especially true when the tax incentives are oriented toward increasing investment rather than toward increasing the employment of disadvantaged residents.

Third, evidence from the state experience with enterprise zones indicate that the costs in terms of revenue foregone of providing an additional job to a disadvantaged zone resident can be very high, on the order of $40,000 - $50,000 per job per year.

Fourth, the use of tax incentives as a policy tool deserves as much or more scrutiny than policy implemented through the expenditure side of the budget.

In sum, while I fully support the goal of trying to improve the economic condition of disadvantaged residents in distressed areas, I urge you to reconsider the faith that this bill places in geographically targeted tax breaks and regulatory relief as a policy tool for that purpose.

Place-based strategies to help disadvantaged people versus pure place strategies.

The enterprise zone approach to local economic development concentrates tax abatements and other subsidies in small geographic areas. Originating in England, the idea of enterprise zones captured the imagination of U.S. Federal government policy makers such as Jack Kemp and others in the early 1980s as a potentially powerful strategy for promoting economic development in pockets of urban distress. Importantly, however, the goal of the English version of enterprise zones differed significantly from the goals of HR 3467. In particular, the term was used to refer to a policy for dealing with small areas in the most derelict and depressed sections of British cities. The areas, about 1-mile square in size, were typically old industrial areas, often near ports, which became vacant and rundown as economic forces reduced the demand for the warehouses or other businesses that once formed the economic basis for the area. Most of the zones housed very few residents; indeed, residential areas were often explicitly excluded from the zones. English policy makers hoped that a program of tax breaks and regulatory relief limited to the zone would produce a small urban industrial park that would yield economic benefits to the larger geographic area. I refer to such an approach as a pure place strategy.

In contrast, I understand the purpose of HR 3467 to be oriented toward helping the disadvantaged households who live in areas of concentrated poverty or unemployment. Central to this place-based strategy for helping people is the view that community plays an important

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13, 1994 in Charleston, South Carolina.

role in residents' well-being and that many low-income households define the relevant community in geographical terms. Starting from the finding that many communities in the nation's urban centers are places with high levels of poverty, high rates of welfare dependency, high crime rates, poor schools, and high levels of joblessness, the bill tries to change some of those conditions by targeting assistance to the 100 renewal communities. The question, however, is whether the policy tools of tax breaks and regulatory relief, which are the centerpiece of the English pure place strategy, are appropriate for achieving the goal of helping disadvantaged people. For reasons that I elaborate below, I think they are not.

Limitations of tax breaks and regulatory relief as a place-based strategy to help people.

My research suggests that there are four potential limitations of a policy of tax breaks as a place-based strategy to help people.

First, tax breaks may not be effective in encouraging firms to move to locate or expand in the designated area given other potentially undesirable characteristics of the zone such as high crime rates. As a result, many of the benefits of tax abatements may simply accrue to firms that would have located in the area anyway.

Second, even if the tax breaks do generate new investment and jobs in the designated area, there is no guarantee that the new jobs will be given to local residents and especially to disadvantaged local residents. Few local residents will be hired if firms require skill levels not generally present in the local population or if they continue to fill jobs by relying on existing labor market networks from which ghetto residents are isolated.

Third, the tax breaks are typically designed as subsidies to capital and investment rather than as subsidies to hire more labor. That is certainly the case for many of the tax breaks included in HR 3467. For example, the bill includes exclusions for capital gains, expensing of certain stock purchases, additional expensing of capital purchases, and a credit for rehabilitating buildings.

This focus on tax breaks for capital is unfortunate. A subsidy to capital is most attractive to firms that use a lot of capital relative to labor and gives firms an incentive to use fewer workers and more capital, neither of which is particularly desirable if the goal is to generate more jobs. Only by reducing the costs of production and thereby inducing more production can such a subsidy generate jobs. In contrast, a subsidy to labor would be more attractive to firms that rely heavily on labor and would encourage more use of labor relative to capital.

A more pointed strategy would provide financial incentives for the selective hiring of zone residents or disadvantaged workers. The work opportunity tax credit included in the bill appears to be consistent with this preferred approach.

Fourth, geographically targeted tax breaks may simply move firms and jobs from one area to another rather than generating new jobs, especially when the subsidies are designed to appeal to existing firms. In some cases the benefits of having more jobs in an area where lots of people are unemployed can exceed the costs of losing jobs in other areas. However, the more likely scenario is that additional jobs in the designated area simply mean fewer equivalent jobs in other areas.

Concern about displacement of jobs has led proponents of enterprise zones to support subsidies that appeal, not to existing large firms, but rather to small, entrepreneurial firms, a strategy that HR 3467 seems to be striving for. A focus on small, entrepreneurial firms is intuitively appealing because small firms may be more likely than large firms to hire local residents and to unleash their latent entrepreneurial energy. Proponents argue that such a

strategy not only increases the possibility that the jobs will represent a net addition to the stock of jobs but also has the advantage of giving residents a larger stake in the economic stability of the community provided that some of them have ownership shares in the new firms. The downside is that small, start up firms provide few non-wage benefits to their workers, involve a lot of risk, and face a high probability of failing.

State experience with Enterprise Zones indicates that the costs per job for a disadvantaged resident can be very high.

During the past 15 years, many states have enacted enterprise zone programs. Most of the 38 programs that were in place by 1993 can be categorized as place-based strategies to help people within the zones although some also have characteristics of the English pure place strategy in that they were also intended to revitalize areas regardless of who received the jobs and other benefits. Many of the state programs included property tax abatements, new-job tax credits or grants, and sales tax exemptions for construction materials and machinery. Other incentives available in some states included investment tax credits, corporate income tax deductions or exemptions, and low-interest loans. Two states (California and Indiana) included tax credits for hiring zone residents. Importantly, many of the programs also included some components on the expenditure side of the ledger such as improvements to infrastructure, technical assistance, and administrative staffing.

Various studies of these programs have yielded a wide range of conclusions about their impacts on job creation and the costs per job created, where the costs are the direct expenditures plus the revenues foregone as a result of the tax subsidies. Much of this variation can be attributed to two methodological challenges facing the researcher: distinguishing the effects of the zone and its various incentives from what otherwise would have occurred in the zone and determining whether the jobs in the zone are new or simply have been moved from nearby locations.

My review of many of the better studies provides the following range of basic estimates of the annual cost per job generated: $1633 per job in Evansville, Indiana to an infinite amount in Maryland. The estimate for Maryland reflects the conclusion of the U.S. General Accounting Office that the Maryland enterprise zone program generated no new jobs. Based on the information provided in the various articles, I adjusted the figures to develop a more comparable set of estimates of the cost of generating a job for a resident in the zone. My preferred estimates are in the range of $40,000 to $50,000 per job per year. Thus, I conclude that the enterprise zone approach, at least given how that approach as been implemented by the states, is not a cost effective way to provide jobs to disadvantaged urban residents.

The need for close scrutiny.

Implementing social policy through the tax side of the budget in the form of tax breaks appeals to some people because it appears to be free and because it operates through private sector decisions rather than the public sector. That such an approach is not free is now quite well understood. The costs of such subsidies are now explicitly embodied in the annual tax expenditure budget which lists all revenue foregone as a result of special provisions or incentives built into the tax code. The argument that tax breaks used to promote economic development are costless because they generate new jobs and hence new tax revenue that otherwise would not have existed deserves close scrutiny. Even with some form of dynamic accounting for revenue estimating, tax revenue would fall if, as is often likely to be the case, the new jobs in an enterprise zone or renewal area simply displaced jobs elsewhere.

Also, close scrutiny of this strategy is needed to determine who benefits from the strategy. While the stated goal of Congress may be to help disadvantaged households, the tax

abatement strategy is likely to generate the greatest benefits to high income households in their capacity as owners of the firms receiving the tax breaks. Even if a place-based strategy were successful in generating jobs for local residents, some of the benefits of the higher wages for local residents might still be transferred away in the form of higher land prices or higher rents that residents might have to pay to nonresident landlords.

A final reason for close scrutiny of any policy that provides benefits through the tax side of the budget is the open-ended entitlement aspect of the subsidy. As long at the program is in effect, anyone eligible for the tax breaks can receive them whether or not the desired benefits are generated. To me it seems a bit strange that Congress would be interested in replacing one form of entitlement, namely welfare benefits, with another entitlement for which the distribution of the benefits is so unclear.

Summary

As should be apparent, I am quite skeptical of the claims of many of the supporters of an enterprise-zone type strategy for helping disadvantaged residents in distressed urban areas. Some of my concerns can be mitigated in part by attention to the design of the program. For example, tax breaks that favor the use of labor rather than capital would be more consistent with the goal of helping disadvantaged residents. My greatest concern about such programs is that the low skills and social isolation of many of the disadvantaged residents in the targeted areas are likely to keep them from benefitting in any major way from whatever new jobs are attracted to the area. Thus, I would prefer that any policy initiative be more focused on education and training than on tax breaks and regulatory relief for firms.

Chairman CUNNINGHAM. Thank you.

Mr. Talent.

Mr. TALENT. I want to thank the panelists, especially for their patience.

Mr. VAN ALLEN. Excuse me?

Mr. TALENT. I am sorry. Did you say "Mr. Talent"?

He hasn't spoken.

Chairman CUNNINGHAM. Oh, I am sorry.

Mr. TALENT. I thought something was missing. I was waiting, just reading your testimony.

Chairman CUNNINGHAM. The Chair apologizes.

Terry Van Allen, Ph.D., director of Research Administration, University of Houston-Clear Lake, Houston, Texas.

We were just testing you.

STATEMENT OF TERRY VAN ALLEN, PH.D., DIRECTOR OF RESEARCH ADMINISTRATION, UNIVERSITY OF HOUSTON-CLEAR LAKE, HOUSTON, TEXAS

Mr. VAN ALLEN. OK, thank you.

Chairman CUNNINGHAM. I apologize.

Mr. VAN ALLEN. Sure.

Well, thank you very much for inviting me. My name is Terry Van Allen. I am director of Research Initiatives at the University of Houston and Clear Lake. I am one of the few people in the country who has actually researched enterprise zones and the outcomes of enterprise zones, especially at the State level.

Let me say that I am very excited about this bill because I do find that States are being very successful when they do have substantial incentives. My testimony has much of the data that has been collected, and I will review short parts of it here.

My number one goal in being involved with enterprise zones is creating jobs and creating jobs for low-income and needy individuals. So that is where my heart lies.

Let me say that I feel that the best long-term answer to community renewal and economic growth is enterprise zones. My studies have shown that there are strong incentives that unemployment totals are being cut down and reduced at a rate of 38 percent over 12 years. So there are communities where this is working.

Again, I wrote a book on this. It is called The Impact of Enterprise Zones on Employment. I feel that this bill by Watts and Talent, again, is a very exciting and meaningful bill, and one of the key elements has to do with capital because capital is the life blood of job creation, business investment, and economic development.

In fact, most of these areas, one can term them as capital-deprived and capital-starved areas. So, again, I appreciate this bill, and I appreciate Dr. Porter's comments on how to enhance capital formation in this area because this is the only way we can unleash capital into these areas.

There has been much publicity, for instance, with Magic Johnson's movie theaters going into low-income areas. Well, with capital incentives and capital gains tax exemptions, Magic Johnson and a multitude of other investors will be investing in these areas, and they will find them to be extremely attractive.

Let me also say I am very interested in the local residents being economic stakeholders; they are stakeholders as businessowners, investors, and as employees in these businesses.

I find the current enterprise zone program to be rather weak. It mainly stresses social service grants, and it only makes a modest difference. In fact, the only way that the current program can make any difference at all is to combine it with a strong local and State program.

Let me quickly talk about some of the points in regards to my research. My research work dispels the myth that most of these new jobs go to residents outside of the designated low-income areas. It shows that residents in the indigent communities are directly benefited. Many of these jobs for low-income residents are good paying with good benefits.

In Portland, Oregon, the average entry level job pays $10 an hour with full benefits. Sixty-seven percent of these jobs went to zone residents, and 72 were formerly at the poverty level before being hired.

There are also other important studies that I have referenced in my work, and one is that the majority of these businesses have either expanded or been created within the zones. I think this is a big key to understanding enterprise zones.

Fifty-five to 66 percent of all business activity is by business expansion. Enterprise zones help businesses that currently exist there to expand. So many of them are on a shoestring, and this can help make a big difference.

The data also shows that 21 to 31 percent of the firms are new, and only 7 percent to 16 percent are from relocating. So we do not have a problem of a zero-sum gain where you are trying to steal somebody else's business from the outside. This program is to help increase the economic growth within the zone.

There are other misnomers, such as big businesses exploit the benefits. Whereas, the evidence shows that the vast majority is small business, and many of them are owned by local residents.

Many of the buildings in the area are boarded up, and many of the residents are on welfare. So there is not a huge loss of tax revenue because there is not a lot of tax revenue to begin with in these areas.

Let me just quickly say, since my time is running out, that I have studied 60 zones across the United States, and I find this bill is a promise of a new day. So I support this bill immensely, and I also support the one in the Senate by Abraham and Lieberman.

Thank you.

[The prepared statement follows:]

STATEMENT OF TERRY VAN ALLEN, PH.D.
DIRECTOR OF RESEARCH ADMINISTRATION
UNIVERSITY OF HOUSTON-CLEARLAKE
HOUSTON, TEXAS

July 30, 1996: Joint Hearing on "Saving Our Children: Renewing American Communities Act of 1996" (H.R. 3467)

The best long-term answer to community renewal and economic growth in low-income areas is **Enterprise Zones**. By reducing high tax burdens and heavy regulatory barriers, state Enterprise Zones are succeeding in creating good jobs and reducing unemployment in low-income areas. The average zone has reduced its unemployment rate by "one-fourth" in three years after designation. Throughout the country, those state zones that have "strong" economic incentives are cutting at least **38%** off of their overall unemployment totals over twelve years. These facts are well-documented in my research book, *The Impact of Enterprise Zones on Employment.*

Now, low-income areas (and their residents) have been given a valid reason for greater hope and opportunity. These localities can *far exceed* the positive impacts of successful state zones with the provisions of the federal bill by congressmen J.C.Watts (R-OK) and James Talent (R-MO), if it were to become law. This dynamic bill is entitled, the "Renewing American Communities Act of 1996" (H.R. 3467). One key element of this bill is the *capital gains* tax exemptions, as capital is the *lifeblood* of job creation, business investment, and economic development. Capital gains tax exemptions for owners and investors would *unleash* huge amounts of investment into and within these "capital-deprived" or "capital-starved" areas. There is *no other way to effectively* unleash venture capital into and within urban and rural blighted areas, except through capital gains tax exemptions.

For instance, there has been much publicity with basketball legend Ervin "Magic" Johnson's theater enterprises. With capital gains tax exemptions, Magic Johnson and a multitude of other entrepreneurs in all industries will eagerly find that investing into more of these low-income areas to be *very attractive*. These capital gains incentives will reduce risks and increase marginal profits for business owners and investors, plus create good jobs and increase wages for employees. All sectors of the local economy will *flourish* and the community will benefit greatly. Most importantly, zone residents will have more and more opportunities to become economic *stakeholders*--as business owners, investors, and employees.

Other business and job development provisions of the bill are greater *expensing* tax credits for capital equipment, *income* tax credits for new hires who are getting off of public welfare, and *regulatory* relief. Additional incentives for facilitating individual and community empowerment were demanded by low-income citizens throughout the nation who were asked in focus groups as to what they wanted for their communities. These include educational scholarships (school choice) for children of low-income residents, tax incentives for charitable giving to organizations that primarily serve low-income residents, and funding for drug counseling and treatment centers (including religious-based organizations) that successfully help low-income residents.

The current federal Empowerment Zone program is rather weak with meager incentives for economic development, and puts much of its effort into social service community grants. The program is largely dependent upon local initiatives to put together special deals with businesses to produce any results. At best, the federal program provides supplemental support and only makes a modest difference on the margins.

The wonderful thing about the Watts-Talent bill, as well as the Senate Bill (S. 1252)

by Spencer Abraham (R-MI) and Joseph Lieberman (D-CT), is that *strong* incentives are provided for businesses across-the-board. No special public-private packaged deals will be made for specific businesses, which often are counterproductive to policy goals. The strong economic incentives in these bills will open up the *floodgates* of entrepreneurial initiative and investment.

In a recent Empowerment Zone teleconference sponsored by HUD, Assistant Secretary Andrew Cuomo talked about the urgent need for improved performance, but he then emphasized the process for "making the deal" to attract businesses. Mr. Cuomo is well-meaning but mistaken about deal-making as being the cure, although I appreciate the fact that he is trying to make the best out of the current legislated configuration. Again, with *strong economic incentives*, no one has to worry about finagling special deals. The worry will be between competing businesses, as to which ones will succeed in capturing an ever-expanding market. This healthy competition between businesses to produce goods and services demanded by the marketplace will be ongoing and dynamic. Government's role is to be an encouraging facilitator and a fair referee, and not to be a kingpin or deal-maker.

The Watts-Talent bill does something vitally important that the Senate bill does not do, which is to open up the *opportunity for new zones* to be designated. The Abraham-Lieberman bill is an excellent piece of legislation with comparable economic incentives, but it applies only to the existing 100 or so Empowerment Zones and Communities. (In the existing program, only about nine Empowerment Zones have any meaningful incentives and these are rather modest. The remaining Empowerment Communities essentially have no meaningful incentives. There are also two Supplemental Zones and four Enhanced Communities with very modest incentives. However, the Watts-Talent bill repeals the existing program and provides for up to 100 new designations, but includes the nine Empowerment Zones for two years before they must submit for renewed designation. Thus, all needy localities in the congressional districts across America will have an opportunity to seek a possible designation. Future amendments could provide for even more designations.

My research work *dispels the myth* that most of the new jobs go to residents outside of the designated low-income areas. It shows that residents in the indigent communities are directly benefitted with significant increases in employment. Many of these jobs for low-income residents are "good paying with good benefits," as can be cited in the designated area in Portland, Oregon, where the average new *entry level* job has paid $10 an hour along with full benefits (health care, retirement, sick leave, and vacation). Sixty-seven percent of these *entry level* jobs went to zone residents and seventy-two percent of the new hires were at the poverty level.

There are other important studies that are referenced in my work that dispel other myths, such as the misnomer that most businesses relocate to the Enterprise Zones from other communities, whereas the evidence shows that the vast majority of businesses have either been expanded or newly-created from "within" the designated communities. The evidence shows that between 55-66% of the activity is by business *expansion* within the zones; between 21-31% of the activity is by *newly created* firms within the zones; and between 7-16% of the activity is by businesses *relocating* from outside of the zones. Thus, the evidence shows that there is an "ever-expanding or growing" economy with Enterprise Zones, and not a zero-sum equation where one community wins while another loses.

When it is realized that the *key* to economic development is from *expansion* and *creation* within the zones, especially through *capital formation*, then public bureaucrats, committees, and boards will no longer be the focus for making deals with *outside* private firms. At the HUD teleconference previously mentioned, Vice President Al Gore spoke about the goal to attract relocating businesses from the outside into the zones. Mr. Gore is also well-meaning but mistaken about the zero-sum economic cure being primary instead of

secondary, and I do appreciate the fact that he is trying to make the best out of the current legislated configuration. Thus, the first step in turning our policies around, is to educate our policy-makers on the successful results of business expansion and creation.

Another misnomer is that large corporations or big businesses exploit Enterprise Zones, whereas the facts show that the vast majority of participating businesses are *small* entrepreneurial firms, many of which are owned by *local* residents. Another misnomer is that there are high costs in providing tax incentives, whereas poverty areas already generate low tax revenues from boarded-up buildings and high welfare costs from the unemployed, so the benefits *far outweigh* the costs. Another misnomer is that tax incentives should only be given to individuals to increase employment, whereas most of these jobs are created when businesses get the reduction in onerous tax burdens to cut costs and increase production (including labor).

My national study of 60 *state* Enterprise Zones with *state-mandated* incentives shows that property tax abatements have the *greatest impact* on reducing unemployment. This impact is due to the fact that this incentive, more so than any other incentive, has a *greater dollar value* for businesses--especially small and medium-size businesses. The next important incentive was income tax credits for businesses, but it was not as strong as property tax abatements, since many small firms do not make profits in the first few years of operation or have little income to report. Property tax abatements help to immediately cut down on costs, which utilizes investment capital for increased production; whereas income tax credits have an impact, but not as great of an impact as property tax abatements. This is why federal capital gains tax exemptions are so *vital* for investment, since they would have an *immediate* and *enormous* impact, and a *greater* impact than the state incentives.

I also found that the zones with the greatest reduction in unemployment had a large amount of incentives, instead of a small amount of incentives. As a result, having a good incentive program was essential for small to medium-size businesses to *help offset* the large costs of *training* new hires and zone residents with limited job skills, and the costs of processing and filing *administrative* applications.

Based on my studies, there is one recommendation that I would make to improve the Watts-Talent bill (besides amending the bill in the future to increase the number of designations), that is, to encourage the local entities to implement a *formal* job bank specifically for their zones. This job bank should be primarily made up of private outreach organizations, and consist of referrals for job openings and training opportunities within the zone. There is a successful network in place in Portland, Oregon. The job bank is *facilitated* by the Portland Development Commission and it has over 200 private affiliates along with a few public agencies, such as the community colleges. This insures that zone residents will be included in the program.

Enterprise Zones provide hope and opportunity to low-income communities, and have *not* yet reached their enormous potential, due to mediocre federal incentives. If the U.S. congress is *serious* about reversing urban and rural poverty, then providing strong economic incentives, along with social empowerment, is the answer. Unless the current federal program is *changed*, most of the federal Empowerment or Enterprise Zones will *flounder indefinitely*. The Watts-Talent bill is the *promise for a new day*. Many Democrats and Republicans are ready to target capital gains tax exemptions, as well as other investment and empowerment incentives, into desperately blighted areas. Those legislators and community leaders who have the courage and foresight to lead this revolution will be the heroes in making the American Dream a possibility for everyone. If a new, *substantive* bill is passed and implemented at the federal level, which can be *unobtrusively* combined with state and local incentives, then **Enterprise Zones will shine as the greatest economic success story of community renewal in American history**.

Chairman CUNNINGHAM. Thank you.

Mr. Talent.

Mr. TALENT. I thank you for this very interesting discussion. I thank you all for sticking around. I am sorry that more Members are not present. There are many reasons for that.

This hearing is very important and the first of its kind on a bill as comprehensive as this. This is the first opportunity we have really had to discuss a very important section of the bill, the economic development side of it.

If you wouldn't mind, and Mr. Van Allen talked about this as well, we have a difference of opinion here, and I wonder if Mr. Porter or Mr. Butler would now address the four objections that Professor Ladd had, and then I would be happy for you to have an opportunity to get a rejoinder. I don't want this to be the McLaughlin Group or anything like that.

The four points she mentioned that tax breaks may simply go to businesses which would have located there, anyway; second, that there is no guarantee that jobs will be given to local residents. Professor Ladd thinks that encouraging capital investment may discourage labor-intensive businesses which works against employment in the area. Then, also, to the extent that it does cause firms to move, it may cause them to move from one area to another rather than generating new jobs.

Would you all like to comment on those points?

Mr. BUTLER. Maybe I can take a crack at it first. A number of those points were addressed in Dr. Van Allen's comments in terms of just looking at what actually happens in these areas.

Let me just start, though, in terms of answering your question and draw a distinction between the British objective and experience of what has happened in this country. The approach in Britain, which was launched in the early eighties, was really designed at vacant sites. It was designed at literally vacant sites or areas of very low population, very depressed areas, like the east end of London, for example, and in that strategy, the objective was to turn around and, in a sense, to create an industrial park within these cities.

The approach in this country has been very different, and the approach embodied in this legislation is very different, which is why so many of the other elements are so crucial to it and are very different from the whole approach in Britain.

As for some of the other specific points, it is necessary to have legislation with incentives that look at both the development of capital and the accumulation of capital and reduce the cost of hiring people. This legislation does both of those, and it corrects the imbalance in previous approaches and in existing enterprise zones, which have focused too much on the notion that people will hire if you just reduce the cost of labor. It is an old proverb that nobody goes into business to hire anybody. They go into business to make money.

It is very important to have these capital provisions that encourage people to start up businesses, to complement the other provisions that reduce the cost of hiring. So when you look at what has actually happened in practice, and when you look at the combina-

tion of approaches in this bill, it addresses those kinds of objections.

The last point I would like to make is that to have an educated work force, and employment-prepared work force is, of course, crucial, which is exactly why the other provisions in the legislation dealing with education, with drug problems, and so on are exactly what is needed to deal with the difficulty of recruiting people.

Mr. TALENT. Dr. Porter, did you want to make any comments?

Mr. PORTER. I had a little bit of trouble conjuring up what in the world Dr. Ladd was talking about.

I have actually talked to several hundred businesses based in inner cities. Thousands of such business already exist.

Many have an image of the inner city as an economic wasteland, with no businesses and no people able to work. It is false. There are many businesses there, and the problem is how to build on this base and help those businesses expand. They can't expand because they can't find industrial sites. They can't expand because they can't get permits.

There are many, many large retailers in America wanting now to establish locations in inner cities because the suburbs are saturated. However, they can't get permission.

The question is how to get more capital flowing and more business activity taking place. So, while I understand the concerns, I have trouble seeing them as compelling arguments against the idea represented in this bill.

I would support a condition for obtaining the tax incentives requiring some minimum percentage of local residents employed because I agree with Dr. Ladd that there is not necessarily a link between the business located in the area and employees located in the area.

In retailing and in services there tends to be a link, but in manufacturing, the link is weaker. A way of strengthening that link would be a useful addition to the bill if it could be added without creating unnecessary complexities.

My view is that the cost of this bill is going to be minuscule compared to the cost of a typical enterprise zone bill, which has massive tax relief and all kinds of subsidies.

Given this bill's concept of a capital gains exclusion, the higher the cost of the bill, the more money the Nation will save in the long run because of the economic activity, the jobs and the property tax revenues that will be created by businesses located in these areas.

Mr. TALENT. Mr. Chairman, could I ask that Professor Ladd have the opportunity to respond?

Chairman CUNNINGHAM. Absolutely. What I was going to do is take back the gentleman's time, and no one controls the Chairman's time and I was going to yield to Ms. Ladd.

Mr. TALENT. I thank the Chairman, and I am sorry that I went on too long.

Chairman CUNNINGHAM. I saw that she wanted to comment, and nobody can control my time. So I was going to yield to the gentlelady to respond. I think that is only fair, Dr. Ladd.

Ms. LADD. I just have a few comments. I, too, have spent a lot of time looking at the State enterprise zone programs. I am an aca-

demic, and the way I have looked at most of them is by considering the academic studies that have been done of these enterprise zones.

I would like to emphasize that there are a number of methodological challenges for any person trying to figure out how effective the enterprise zones are. You have to figure out what would have happened in the absence of the enterprise zone strategy, and then figure out what percentage of the jobs went to local residents and that can sometimes be difficult. So the studies differ in their methodological sophistication, and that may lead to some of the differences.

I must admit, though, I am not familiar with Dr. Allen's work, and I would question some of his conclusions.

Let me just give you a couple of counter examples. Indiana is a State with an extensive State enterprise zone strategy, and lots of people refer to Indiana as a State that has a successful enterprise zone program.

One of the interesting things about the Indiana program is that one of its big tax breaks is a 100-percent exclusion from the inventory tax. As a result of that provision, a lot of the firms that have moved into the enterprise zones are warehouses, which have lots of inventory.

Now, I don't think that is the type of business activity that Mr. Butler or any other supporter of enterprise zones has in mind, when they think about community renewal. There are lots of other examples like that.

People cite the New Jersey experience with enterprise zones as a positive experience. That interpretation is problematic because the period which most people study was a period of dramatic growth of jobs in New Jersey. The challenge there is to sort out what would have happened in the absence of the enterprise zones.

I have a brief comment on one thing that Dr. Porter said. That has to do with whether venture capitalists are likely to respond. He implied that venture capitalists weren't likely to come in. I don't understand that sort of logic. If you do away with a tax on capital gains in these areas, I don't understand why venture capitalists are not going to find the area attractive and why they aren't going to be the beneficiaries rather than the local residents who you are trying to help.

Finally, I just want to emphasize the point that I made at the end of my initial remarks. I am not against geographically targeted programs. I would like them to be focused more on helping to increase the opportunities for the local disadvantaged residents. That may mean providing tax breaks for firms to hire labor in addition to expanding training programs. I believe the additional training and education for the local work force and opportunities to link them more closely with the labor market are an essential part of any program of this type.

Chairman CUNNINGHAM. Mr. English, did you have a question?

Mr. ENGLISH. Thank you, Mr. Chairman. Actually, I have a series of them.

I want to compliment the panel on the expertise that you are bringing to this examination of what is, after all, a piece of legislation that demands this sort of survey that requires, really, a multi-

disciplinary approach. It has been very difficult for us in this hearing today to get our arms around how many of these issues.

First of all, Dr. Ladd, in talking about State experiences, you have used some examples, including Maryland, which has an enterprise zone program base, just on a sales tax preference. It has never worked very well, and I would argue it is not a very good model for what might come out of this legislation.

Can you generalize on whether you feel, given the impact of changes in the Federal Tax Code versus very different tax structures at the State level, that it is fair to say that the State programs are not really strong enough to give us any sort of predictor of what would happen with a Federal enterprise zone program?

Ms. LADD. I understand the point you are getting at, and it is an interesting one since the States were all very hopeful during the eighties that the Federal Government would come along with a major enterprise zone program that would enhance the State efforts.

Mr. ENGLISH. If I may interject, I think that many of the programs that I know—Pennsylvania's program was modeled on the idea that Congress would ultimately pass enterprise zone legislation, and this was an attempt to essentially position the States to receive those tax benefits.

Ms. LADD. Yes. I think the notion there was with the corporate income taxes and various other taxes at the Federal level that those tax breaks would be more powerful than some of the breaks that the State and local governments could give.

I would emphasize, though, that most of the State programs do give some sort of property tax relief, and property taxes are heavy taxes at the local level and can impose heavy tax burdens on business.

Mr. ENGLISH. Sure.

Ms. LADD. It is hard to say what the effects of a Federal program would be. It would vary with the specific tax relief provisions.

Mr. ENGLISH. Dr. Ladd, in your testimony, you also mentioned that undesirable side effects of certain locations, such as high-crime rates, would be a serious deterrent for development. This legislation attempts to address that by creating an infrastructure that stabilizes neighborhoods and in a nonbureaucratic way gets at some of these core problems that affect locational decisions, like encouraging investment in locally based charities, like encouraging investment back in neighborhoods. Do you think that will actually strengthen the economic appeal of enterprise zones?

Ms. LADD. That is a hard question for me to answer because I am not sure I agree fully with the premise that those sorts of programs will succeed in improving those neighborhoods as much as you would like them to do, although I, like you, would like to strengthen those local communities.

If they are as successful as you think they are going to be, then it is not clear to me that you need the tax breaks on top. To follow the logic of the people from the Harvard Business School and other economists, that we don't want to interfere with the efficient location decisions of firms, and so if you can develop those communities and get rid of some of these problems that lead to externalities and may keep firms out, you might not need the tax incentives.

Mr. ENGLISH. Dr. Porter, you have also referenced security as one of the reasons why firms make certain locational decisions. Do you believe that the provisions in this bill will stabilize neighborhoods and actually make them more attractive so that combined with the tax breaks there is going to be a much better prospective of encouraging growth and opportunity and job creation in some of these neighborhoods?

Mr. PORTER. I believe the provisions in the bill are likely to move in the direction of creating a better business environment as well as creating an environment in which there is better public safety.

I would stress that we have to see the choice facing a firm holistically, and we have to recognize that right now we deal with both the reality and the perception that inner cities are not favorable places in which to locate business.

Until such time as those perceptions change, there will be the need for some kind of an extra incentive. But, at the same time, we are going to have to improve the environment itself, so that businesses as successful as this start to grow and develop or try to expand in these areas. Ultimately, if businesses in inner cities are not profitable, they won't survive. They won't stay.

The thing I like about this bill is it tries to deal with both incentives to prime the investment pump, if you will, but also tries to improve the environment for business.

Mr. ENGLISH. Mr. Chairman, my time has expired. I have a few more questions if the opportunity presents itself after others have asked questions.

Chairman CUNNINGHAM. I thank the gentleman, and I will make just a couple of statements, and then I will yield additional time, and hopefully, Mr. Kemp—I have heard Jack speak before on enterprise zones.

What I would tell Dr. Ladd is that my background—I flew fighters for 20 years, but before that, I was a teacher and a coach. Two of my kids won Gold and Silvers in the Olympics. So I have got an education background. My bachelor's and master's degrees are in business and education.

That all kind of went out the window when I met an African-American from Dallas-Forth Worth on an airplane, a very bright guy, very much a Democrat, but he told me—he said, "Duke, the cities, the inner cities like Watts and Harlem and others used to be very proud," and he said at that time they mainly had large businesses within the districts or in the community itself.

I understand your concern about small business, but anywhere with small business, it is very difficult, especially in the State of California, to get started with all of the rules and regulations. I mean, it is unbelievable, the forms, the permits.

Listen to Sonny Bono's story sometime about the time he tried to start a restaurant in his area.

It is difficult, and I truly believe that the economic model toward the inner city is the only way that we are going to turn that back around.

He told me, though, that unfortunately after the welfare system started, those areas started declining. The businesses went out of the area. The crime was very high. Businessowners didn't want to

stay where crime was high or where their employees were getting hassled.

I live in Northeast Washington right now. I walk down the street saying, "I'm bad, I'm bad," and it is a pretty tough area, but do you know on every street corner there is a mom-and-pop's? I will bet there is a grocery store on every street corner. There is a pizza shop, very bad pizza I had last night for the first time. There are gas stations.

I look at Los Angeles just last year when they burned a lot of those small businesses down in some pretty tough areas. How much State revenue were those small businesses bringing in, and how much Federal revenue? Zero because they were burned down.

Governor Wilson went in and established some pretty stringent rules on enterprise-type zones and tax breaks for those particular areas to stimulate them, and now there are people working in those areas. They are small business. Not all of them made it, but not all of them make it in a rural area as well, but I think we have got to do something.

I don't know if enterprise zones is the right way or what the capitalization is. I am very appreciative of today. This panel has been very nonpartisan. It has been on the facts and basics, just difference of agreement, but I have learned a lot.

If you can't put the economics and invest in small business, into an area, I don't know how we are going to get there because a lot of times people don't even qualify for an entry level job.

In my block, I watched a lady mending a bicycle yesterday. I went over and helped her. She did it better than I did, but the children that I see there, they don't have a whole lot of hope in the District of Columbia system, and unless we change that, that delta, that difference between those that are successful and those that are poor, I think you would agree that education, welfare reform, jobs associated, all of those have got an integral part in what all of us are trying to do, change the system.

I don't know what the magic formula is, and I think that is why we have these hearings. I truly believe that the only way we can do it is to improve education, more dollars like you want, but not through the Federal Government. The Federal Government is wasting those dollars and cutting education because it is not focusing the dollars down to the classroom. That is what we are trying to do, and cut a lot of the rules and regulations and empower the States, instead of Members of Congress that get themselves reelected all the time by having to spend here in River City, but I want to thank the panel.

Without having you respond, it really is a concern, I think, by both sides of the aisle. There are politics involved on both sides of the aisle, unfortunately, in this thing. It shouldn't be that way. It should be bipartisan because it benefits all of us.

I would yield to Mr. English to ask his questions.

Mr. ENGLISH. Thank you, Mr. Chairman.

Dr. Porter, going back to some of the things you had covered in your testimony, you have made a fairly eloquent argument for the need for perhaps a tax incentive for dividend income for enterprise zone entities. You say that would be a more effective tax preference

than the one contained in this bill for expensing for small businesses.

On the second point, can you elaborate on why you think that expensing provision would not be an effective use of our limited tax resources?

Mr. PORTER. Let us talk about what expensing means. Expensing means when you buy an asset rather than having to depreciate it over its life, you can write it all off up front. Instead of reporting income and paying taxes on it, you can essentially shelter the income.

In contrast, a dividend exclusion means that if a business is profitable, it can pay a dividend to its shareholders who will not be taxed on that dividend. So they will earn, given normal tax rates, almost twice as much return.

Mr. ENGLISH. Sure.

Mr. PORTER. I favor the economic incentives of the second approach versus the first approach. The first approach is one in which companies may buy assets or behave in ways that are only rational because of the tax benefit. Whereas, in the second case, the incentive required a profitable business.

I believe, in general, we ought to make sure that all incentives presuppose profit. It is counterproductive to create businesses that are not viable, just like we did not want to create housing projects that were not viable. This does more harm than good. That was the point I was trying to make.

Mr. ENGLISH. That is a point well taken.

Dr. Butler, do you want to comment on that argument?

Mr. BUTLER. Yes. I wouldn't really agree with that, although in a sense, now we are talking about fine-tuning the incentives, and there is a lot of uncertainty about how some of these things would occur. Very often we are talking about the kind of business that is almost certainly not going to be making a profit in its early years, which is a very typical situation in small business anyway, but particularly in these areas.

A lot can be said for an incentive that encourages somebody to be able to put money into a firm and to get a real benefit up front as well as a benefit if the business appreciates in value, which is what a capital gains tax deduction or exemption allows you to have.

So I can see the point being made, but on the other hand, if you look at the real world in terms of the kinds of businesses that we really are talking about, I believe that the expensing will be an important incentive and will allow a real return to an investor during a period when there normally is not going to be a return, when profits are not being made, which is a normal situation that we expect in an ultimately successful business in these areas.

Mr. ENGLISH. Let me ask one more question, then, very briefly.

Dr. Butler, you have also heard Dr. Ladd's argument that by creating an expensing provision, you are creating an incentive for a displacement of low-skilled jobs within those companies and that that is somehow mutually exclusive. Would you comment on whether you think that argument is how firms would operate in an enterprise zone context?

Mr. BUTLER. No. When you look at what happens when a firm begins and operates, it is a combination of factors of production. It is the cost of doing business related to the real estate involved, which primarily, should be addressed at the local level in terms of cost and permits and so forth.

It is a question of having working capital to hire people, which is addressed in the provisions of the bill, and it involves providing people with the tools and equipment that they need not only to make the business viable, but to make the employees themselves productive, which in turn is important in helping them to achieve wages in line with their level of productivity.

So that an incentive to encourage capital to be put into these businesses and tools to be obtained and so on is a necessary agreement for the benefit of the employees, as well as the benefit of the employer.

Mr. ENGLISH. Thank you.

Mr. Chairman, I appreciate the opportunity to ask those additional questions, and I thank the panel for your wonderful testimony.

Chairman CUNNINGHAM. I do, too. I wish for this particular panel that I had more time. Unfortunately, I have a tuna/dolphin bill coming up, and I have to attend to that.

I want to thank you, and I appreciate it. I still don't know what all the right answers are. From both sides of the aisles, I have concerns about small business, as I said as well, but I also think we have to empower people to at least have the opportunity to survive, and I think incentives economically are the best direction to go.

Thank you, and I declare this hearing adjourned.

[Whereupon, at 3:04 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATEMENT OF DANIEL E. KATZ
LEGAL COUNSEL
ON BEHALF OF AMERICAN CIVIL LIBERTIES UNION

The American Civil Liberties Union (ACLU) appreciates the opportunity to provide this testimony. The ACLU is a private, nonprofit organization of more than 275,000 members, dedicated to the preservation of civil liberties enshrined in the Constitution's Bill of Rights. The ACLU believes that H.R. 3467, "The American Community Renewal Act" violates both the First Amendment's religion and speech clauses.

Three sections of the Community Renewal Act present these constitutional problems. The substance abuse treatment section of the bill would violate the religious liberty rights of those seeking treatment, and would violate the Establishment Clause's prohibition on government funding and oversight of pervasively sectarian institutions. The "scholarship," or school voucher, program in the bill would also violate the Establishment Clause of the First Amendment. Finally, provisions in the tax credit scheme would chill the free expressive rights of charities that serve people in low income communities.

The Substance Abuse Title of the Legislation

The title of the legislation called "Prevention and Treatment of Substance Abuse," (hereinafter "Substance Abuse provisions") would force states, under threat of lawsuit, to grant funding awards to "pervasively sectarian" institutions, such as houses of worship. The provisions would also allow religious institutions to grant "subawards" of taxpayer funds to other religious entities. This is a serious departure from current law, under which *religiously affiliated* organizations are permitted to provide government-funded services in a *secular manner*. Although the Supreme Court has ruled that "religiously affiliated" organizations, such as Catholic Charities, are not *per se* prohibited from receiving government grants for social work, the Court has not permitted government funding of institutions that are "pervasively sectarian" because it would violate the Establishment Clause.[1]

Furthermore, many state constitutions prohibit such funding, and the Substance Abuse section explicitly preempts state constitutional provisions that are designed to prohibit the government from entangling itself in the affairs of religious institutions. The legislation contains a preemption section[2] that would override many state constitutional provisions that prohibit taxpayer funds from being diverted to religious institutions.[3] This section would also require individual religious institutions to segregate federal and state

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[1] *See Bowen v. Kendrick*, 487 U.S. 589, 612 (1988). In *Bowen*, the Court explained that "[o]nly in the context of aid to 'pervasively sectarian' institutions have we invalidated an aid program on the grounds that there was a 'substantial' risk that aid to these religious institutions would knowingly or unknowingly, result in indoctrination." *Id.* In various cases, the Court listed among the factors to be used to determine if an institution is "pervasively sectarian": 1) location near a house of worship; 2) an abundance of religious symbols on the premises; 3) religious discrimination in the institution's hiring practices; 4) the presence of religious activities; and 5) the purposeful articulation of a religious mission. *See Wolman v. Walter*, 433 U.S. 229, 234 (1977); *Grand Rapids School District v. Ball*, 473 U.S. 373, 384 n.6 (1985); *Hunt v. McNair*, 413 U.S. 734, 743 (1973); *Roemer v. Maryland Public Works Board*, 426 U.S. 736, 755 (1976).

The Substance Abuse provisions would: 1) permit the provision of government-funded substance abuse services *in*, not merely *near*, a house of worship; 2) explicitly grant a *right* to religious providers to display religious "art, icons, scripture" and "other symbols" in any abundance in areas where substance abuse services are provided; 3) allow religious substance abuse providers to discriminate in all aspects of employment, including the *off-the-job* conduct of employees. Additionally, The Substance Abuse provisions would actually allow religious providers to *require* beneficiaries to engage in religious worship, regardless of the religious beliefs of the beneficiary. The religious provider would also be permitted to require the beneficiary to follow *off-site* rules of religious behavior.

[2] H.R. 3467, Title III Sec. 301, amending 42 U.S.C. 290aa et seq., Sec. 584 (b), (104th Cong.) (1996).

[3] One example of such a constitutional provision can be found in the Constitution of the State of Missouri: "no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, ..." MISSOURI CONSTITUTION, Article 1, Section 7. *See also e.g.* CALIFORNIA CONSTITUTION, Article XVI, Section 3 and Article XVI, Section 5; FLORIDA CONSTITUTION, Article I, Section 3; ILLINOIS CONSTITUTION, Article X, Section 3; INDIANA CONSTITUTION, Article 1, Section 6; MICHIGAN CONSTITUTION, Article I, Section 4 ; PENNSYLVANIA CONSTITUTION, Article III, Section 29; TEXAS CONSTITUTION, Article I, Section 7.

funds if the religious institution resides in a state in which the state constitution prohibits the diversion of state funds to religious institutions. Aside from this section's obvious states' rights problem, the requirement that religious institutions segregate certain funds in order to get around state law violates the First Amendment by excessively entangling the government in the "details of administration" of religious institutions.[4]

The Substance Abuse provisions would leave states with a "Hobson's Choice" in deciding whether or not to fund particular religious institutions. If a state abides by its state constitution and the federal Establishment Clause and declines to fund particular religious institution because it is "pervasively sectarian," then the state will be sued by the religious institution for "discrimination" under the Substance Abuse provisions. On the other hand, if the state funds the institution, it will face lawsuits for violating the federal, and possibly state, constitution. Either way, the provisions create a litigation nightmare for state governments and attorneys general.

The Substance Abuse provisions would also egregiously violate the First Amendment religious liberty rights of people seeking treatment. The provisions explicitly allow a taxpayer-funded religious substance abuse program to *require* beneficiaries "to actively participate in religious practice, worship, and instruction" and to follow off-site rules of religious behavior.[5] Such a requirement would obviously violate the religious liberty rights of many beneficiaries seeking substance abuse treatment, especially those whose religions are different from that of the provider.[6] This requirement is a direct affront to individual religious liberty, as it would authorize the use of taxpayer funds to directly coerce government beneficiaries to practice certain religious beliefs.

The Supreme Court has made it clear that such a scheme would be unconstitutional, as the Establishment Clause of the First Amendment "absolutely prohibits government-financed or government-sponsored indoctrination into the beliefs of a particular religious faith."[7] The Court has explained that "[i]t is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise..."[8] In order to comply with the Establishment Clause, the Court has stated that government grants to religious institutions must be limited to "secular, neutral, and nonideological purposes."[9]

The provisions would further deteriorate states' rights by overriding state educational and licensing standards for substance abuse counselors and forcing states to include religious practice as a critical element in substance abuse treatment. The "Education Requirements for Personnel in Drug Treatment" section of the title would preempt state educational qualification standards for substance abuse treatment, and order states and local governments to "treat religious education and training of personnel as having a critical and positive role in the delivery of program services."[10] The section would also direct state and

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[4] *Lemon v. Kurtzman*, 403 U.S. 602, 615 (1971).

[5] H.R. 3467, Title III Sec. 301, amending 42 U.S.C. 290aa et seq., Sec. 582 (g)(2), (104th Cong.) (1996).

[6] Supporters of the legislation will likely point to language that states that the beneficiary must have "elected" to receive services from a religious provider "in accordance with subsection (e)" before the beneficiary could be forced to engage in worship. However, an examination of subsection (e) reveals that no election mechanism exists. Rather, a beneficiary only has a right to "object" to religious providers in general, although the beneficiary is not given any *notice* of that right to object. Thus, it specious to argue that this generic right to object, of which a beneficiary is never informed, constitutes an affirmative election to receive substance abuse treatment by a religious provider. Furthermore, it is fundamentally unfair (as well as unconstitutional) to force a beneficiary, who may not have objected to a religious provider in general, to worship a deity or practice a religion which differs from his or her own personal beliefs.

[7] *Grand Rapids*, 473 U.S. at 385.

[8] *Lee v. Weisman*, 112 S.Ct. 2649, 2655 (1992).

[9] *Committee for Public Education v. Nyquist*, 413 U.S. 756, 780 (1973).

[10] H.R. 3467, Title III Sec. 301, amending 42 U.S.C. 290aa et seq., Sec. 585 (1), (104th Cong.) (1996).

local governments to change their education requirements to "give credit for religious education and training equivalent to credit given for secular course work in drug treatment or any other secular subject that is of similar grade level or duration."[11] This section of the legislation dictates federal criteria a state *must* adapt in their educational and certification standards, thereby overriding the state's carefully crafted personnel requirements for substance abuse professionals. This federal mandate to modify state certification standards also raises serious Establishment Clause concerns by inappropriately advancing religion.[12]

The Substance Abuse provisions would allow a religious substance abuse treatment provider to engage in religious discrimination against employees who are being paid with taxpayer funds. The inappropriately-titled "Nondiscrimination in Employment" section of the Substance Abuse provisions would allow religious organizations to require that employees paid with government dollars adhere to the "religious tenets and teachings of" the religious institution.[13] This would permit a religious organization not only to exclude non-believers from government-funded employment, but also to advance religious doctrines with taxpayer money. Although religious organizations are currently granted an exemption from the prohibition on religious discrimination in hiring in Title VII of the federal civil rights law, this exemption should not extend to employees who are hired to work on, and are paid through, government-funded programs.

State governments would be powerless to ensure that its citizens are not subject to proselytization by religious substance abuse treatment providers. Aside from not allowing states to enforce their own constitution, the Substance Abuse provisions contain other measures that limit a state's ability to protect the religious liberty rights of its citizens. The legislation explicitly prevents states from guaranteeing that taxpayer-funded substance abuse services be provided in an environment without an undue amount of "religious art, icons, scripture, or other symbols."[14] As explained above, the provisions would also allow religious providers to force beneficiaries seeking substance abuse treatment to participate in the institution's form of religious worship, regardless of the beneficiaries' personal beliefs.

The Substance Abuse provisions explicitly call for federal government audits of participating religious institutions. As in the case of any private group that receives direct government benefits, the provisions require religious institutions to undergo a Federal financial audit.[15] Such excessive entanglement into the affairs of a "pervasively sectarian" religious institution by the government would violate the Constitution,[16] and would, for the first time, invite "Big Government" into the internal books of our nation's churches.

The Substance Abuse provisions also lack adequate protection for the religious liberty rights of those seeking substance abuse treatment through the Community Renewal program. As explained above, beneficiaries would be subject to forced worship and proselytization, and state and local governments would be powerless to intervene. This, of course, would lead to innumerable violations of religious freedom and conscience of beneficiaries who seek substance abuse treatment in their "renewal" community. Despite these obvious problems, the legislation does not provide for notice to be provided to beneficiaries informing them of their right to object to a religious provider.[17] Even more

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[11] *Id.*

[12] *See Lemon*, 403 U.S. at 612.

[13] H.R. 3467, Title III Sec. 301, amending 42 U.S.C. 290aa et seq., Sec. 582 (f)(2)(A), (104th Cong.) (1996).

[14] *Id.* at Sec. 582 (d)(2)(B).

[15] *Id.* at Sec. 582 (h).

[16] *See Lemon*, 403 U.S. at 613-15.

[17] *See* H.R. 3467, Title III Sec. 301, amending 42 U.S.C. 290aa et seq., Sec. 582 (e), (104th Cong.) (1996).

problematic is the legislation's treatment of the failure to object as an affirmative election for religious-based treatment.[18]

Additionally, even if a beneficiary objects to a religious provider, the Substance Abuse provisions do not require that an alternative provider be set up within a specific time framework and there is no requirement that the alternative provider has to be as equally accessible to the beneficiary as the original provider. The alternative provider could be set up across the state from where the beneficiary lives.

School Vouchers

Under the school vouchers title of the bill, all renewal communities would be required to set up a school voucher scheme, deceptively deemed "scholarships" in the legislation. These taxpayer-funded vouchers could be used for tuition at private and religious schools.

The "community renewal" school voucher scheme would undermine public education and violate the Constitution's Establishment Clause, which prohibits the use of taxpayer dollars to fund elementary and secondary parochial education.[19] Furthermore, the Supreme Court has held that this prohibition still holds even if the funds are provided to the parents as a reimbursement rather than a direct payment to the schools.[20]

Additionally, the only "school choice" that may be exercised under the "Community Renewal" bill is a private school's ability to choose the students they will admit. The bill makes clear that a student holding a voucher would not be guaranteed admission to any "scholarship" school. In fact, the bill would allow students who are *currently* in private school to receive vouchers. The voucher provisions would inevitably divert resources away from the public schools – the only schools that welcome *all* students in a community

The Tax Credit Scheme would Chill the Free Expressive Rights of Charities

Title II of the bill contains a dangerous provision that is designed to chill the political expression and activities of charities. This provision, similar in spirit to the Istook "Silence America" provisions, would affect the ability of individuals to receive a tax credit for contributions to charities in "renewal communities."

The bill would allow for individual tax credits for donations to "qualified charities" that aid low-income people in "renewal communities" – with some major exceptions. A charity would not be eligible for the tax credit if it engages in voter registration, political organizing, public policy advocacy or research, or litigation on behalf of the poor. This would force a charity to forgo constitutionally-protected political activity in order to attract contributions through the tax credit scheme. Such restrictions on fundamental political rights are antithetical to the idea of "empowering" communities.

Conclusion

The "American Community Renewal Act" would have the effect of stripping constitutional rights not just from the communities the bill seeks to empower, but for all Americans. The bill is ridden with federal mandates that override state and local law and policy. Most problematic is the legislation's egregious violations of constitutional and civil rights. Financial rewards for a community cannot come at the price of waiving First Amendment religious and expressive rights. For these reasons, the ACLU vigorously opposes H.R. 3467.

Thank you for the opportunity to present our comments to the committees.

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[18] *See* note 6.

[19] *Meek. v. Pittenger*, 421 U.S. 349, 366 (1975).

[20] *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756, 786 (1973).

Written Statement of the American Counseling Association, submitted to the House Ways and Means Committee's Subcommittee on Human Resources and the Economic and Educational Opportunities Committee's Subcommittee on Early Childhood, Youth and Families regarding H.R. 3467, "The American Community Renewal Act of 1996"

Submitted by Gail Robinson
President, American Counseling Association

The American Counseling Association (ACA) is the largest non-profit organization representing the nation's professional counselors, including mental health and substance abuse counselors. Professional counselors are master's or doctoral-level health practitioners, and are licensed or certified in 42 states and the District of Columbia. ACA greatly appreciates the opportunity to submit a written statement for the hearing record. Our comments are confined to Title III of H.R. 3467, regarding educational standards for substance abuse professionals and the provision of substance abuse treatment services by religious organizations.

The American Counseling Association applauds efforts by the federal government to increase Americans' access to effective substance abuse treatment. Substance abuse disorders are a major public health problem in the U.S., with an estimated 10% of American adults and 3% of adolescents suffering from a form of drug addiction, and millions of others categorizable as substance abusers, if not addicts. It is estimated that alcohol and other drug abuse problems cost the nation $165.5 billion in 1990. Adequate substance abuse treatment services can also help in efforts to constrain health care spending: studies show that alcoholics spend twice as much on health care services as people without alcohol problems, and that effective treatment leads to dramatic reductions in general health care spending. Alcohol and other drug abuse is closely tied to violence, accidents (including drunk driving), and to crime. According to a 1993 report by the Department of Justice, half of individuals arrested for assault and homicide test positive for illicit drugs, and two-thirds test positive for alcohol.

Substance Abuse—Causes and Treatments

Researchers are making tremendous strides in understanding substance abuse, including its origins, causes, diagnosis, and treatment. Substance abuse disorders are understood to arise from a complex set of factors, including psychological and social factors and biological predispositions. As the Department of Health and Human Services' *White Paper on the Effectiveness of Substance Abuse Treatment* states: "The roots of addiction are both organic and environmental. Like hypertension, atherosclerosis, adult diabetes and other medical conditions, addiction is caused by genetic predisposition, social circumstances and...personal behaviors.... Interpersonal relationships also have an impact on substance use and abuse. Certain drugs are highly addictive, rapidly causing biochemical and structural changes in the brain."

Scientists now know that like mental disorders such as depression and schizophrenia, substance abuse disorders affect the brain. Researchers supported by the National Institute on Drug Abuse have identified the separate sites in the brain where every major drug of abuse produces its initial

effects. A large number of Americans—according to studies as many as 9.9 million—have both a mental disorder *and* a substance abuse disorder, thus complicating their treatment considerably.

As with mental disorders, scientists are pursuing pharmacological treatments for substance abuse disorders. Prescription drugs are used in detoxification or acute treatment and in later stages of treatment for substance abuse. Disulfiram (Antabuse) and naltrexone are often used to prevent relapse among recovering alcoholics, and methadone, naltrexone, and LAAM (levo-alpha-acetyl methadol) are used in the treatment of heroin addiction. As with pharmacotherapies used in treating other health conditions, researchers are attempting to find more effective medications with fewer side effects. (As an example, 5-10% of individuals treated with naltrexone suffer such side effects as depression, nausea, and vomiting, even without drug use relapse.) No equivalent to methadone or naltrexone (for heroin) currently exists for treating crack and cocaine abusers.

Behavioral and psychosocial interventions form the basis for much substance abuse treatment, and are involved in the key treatment components of detoxification, rehabilitation, continuing care, and relapse prevention. A number of different therapies are used in drug abuse counseling, including individual or group therapy, behavior therapy, cognitive therapy, family therapy, skills training, and vocational rehabilitation. Tailored to the individual, drug abuse treatment therapies may focus on changing the thought processes underlying an individual's substance abuse, may focus on the life experiences and situations which lead the individual to substance abuse, may help the substance abuser to identify warning signs or "triggers" for relapse, or may seek to more closely integrate the substance abuser with his or her family or community. Treatment may involve all of these components, and more. These interventions work. Research has shown that even for heroin addicts, providing regular counseling, family therapy, and other services in addition to methadone maintenance significantly reduces drug use.

Spirituality is recognized as an important component of treatment for some individuals. A brief study which appeared recently in the *Journal of Addictions and Offender Counseling* stated that while much further research is needed, "it does seem clear that the association between recovery and...the use of prayer and meditation, is an important one." One of the most well-known and widespread treatment support programs for alcohol abusers, Alcoholics Anonymous, is spiritually based, although its appeals to participants' spirituality focus on a "higher power" as opposed to any one religious sect's definition of God. It should be noted that participation in AA meetings is usually used as one component of a more broad-based treatment program including additional educational and therapeutic interventions.

Given the large number of factors at play in substance abuse disorders, treatment must be flexible. To quote again from the *White Paper on the Effectiveness of Drug Treatment*, "It is...important to remember that while treatment is generally effective, no single treatment approach is effective for all persons with alcohol and other drug problems. In other words, 'one size does not fit all.' Treatment and related services must be tailored to meet the individual needs of clients, and should be culturally relevant to the population being served. An integrated system of treatment programs, containing a full range of treatment types, intensities, and cultural competencies is also a necessary goal."

Substance abuse treatment *cannot* be thought of as a one-shot, be-cured-or-else event. As with general medical conditions, substance abuse treatment cannot guarantee lifelong health. Just as individuals with hypertension or epilepsy may fail to comply with prescription drug administration or other treatment requirements, individuals in treatment for substance abuse

disorders may relapse. This does not mean that treatment should be discontinued. Research has shown that the length of time an individual spends in treatment strongly correlates with the degree of effectiveness of that treatment, even for individuals who may relapse. An individual who is spared even one relapse episode by treatment is spared a considerable amount of pain and suffering, as is his or her community.

H.R. 3467 and Substance Abuse Treatment

The American Counseling Association recognizes the importance of working with individuals' spirituality in helping them overcome a substance abuse disorder, and strongly supports the H.R. 3467's goal of increasing Americans' access to substance abuse services. Unfortunately, the legislation focuses all of its attention on religiously-oriented treatment, responding to all substance abuse and addiction problems as if they were caused by a lack of sectarian religious faith in the individual. While anecdotal evidence of the effectiveness of religiously-oriented treatment programs exists, ACA is unaware of any controlled, rigorous study which justifies placing such faith in faith-based programs, and in turning away from current approaches to substance abuse treatment and provider education. ACA believes that the Title III provisions of H.R. 3467, if enacted, will have a direct, negative impact on the quality of substance abuse services available to Americans.

- **Education qualifications for substance abuse counselors**

  The legislation expresses the sense of Congress that establishing "formal educational qualifications for counselors and other personnel in drug treatment programs may undermine the effectiveness of such programs."

  This provision adopts the "ignorance is bliss" approach to medical/social services. This extremely counterintuitive "sense" of Congress is presented for adoption without a single piece of supporting evidence.

  The legislation requires States to recognize religious education as equivalent to "secular course work in drug treatment" in defining education requirements for substance abuse practitioners.

  Despite the complexity of substance abuse disorders, their neurochemical and behavioral factors and effects, their symptoms and effects on general health, the frequent co-occurrence of mental disorders along with substance abuse disorders, and the myriad treatment modalities used in helping move the individual substance abuser toward abstinence, the legislation inexplicably seeks to *prevent* States from requiring their substance abuse counselors to be educated regarding substance abuse disorders and addictions. States have traditionally retained the right to determine qualifications and standards for medical practitioners and social services providers within their boundaries. H.R. 3467 would override this function. Again, the recognition by federal order of the religiously-trained as fully-qualified substance abuse professionals is presented without any substantiating research.

ACA is startled that the education of substance abuse counselors would be attacked by Congress at a time when researchers are learning more and more about the etiology, diagnosis, and treatment of substance abuse disorders.

- **Religious Discrimination Against Employees**

  H.R. 3467 would allow religious organizations to require that employees hired with public funds adhere to the religious tenets and teachings of the organization, and to obey any rules of the organization regarding the use of drugs or alcohol.

  Under current law, religious organizations are not required to adhere to Civil Rights Act provisions regarding nondiscrimination in employment. With their private money, churches can require that employees adhere to their religion, and place other, additional requirements on employment. While ACA firmly supports the ability of religious organizations to use private funds in this way, we firmly oppose this practice *when using taxpayer funding*. Public funds must not be used to discriminate against fully qualified and effective substance abuse counselors.

- **Religious Discrimination Against Individuals Needing Services**

  The legislation does not contain adequate protections from religious coercion for individuals receiving services.

  H.R. 3467 requires religiously-oriented treatment programs to make "alternative services" available to individuals who object to the religious character of program services. However, religiously-oriented treatment programs are *not* required to notify individuals of this right to alternative services, the alternative services are *not* required to be non-sectarian or appropriately sectarian in nature, and the alternative services are *not* required to be as accessible as religiously-oriented treatment to the individual needing help. These three requirements must be met if individuals in need of substance abuse treatment are to be free from taxpayer-sponsored religious coercion in the guise of treatment.

  ACA is also concerned that the legislation allows use of taxpayer funds for religious indoctrination and education as "substance abuse treatment." While it is undeniably important to address clients' spirituality in providing substance abuse treatment services, it is also important to recognize and respect individuals' religious freedoms. The ACA Code of Ethics and Standards of Practice states that "Counselors are aware of their own values, attitudes, beliefs, and behaviors and how these apply in a diverse society, *and avoid imposing their values on clients.*"

ACA opposes H.R. 3467 due to the above provisions, and urges the committees with jurisdiction over this legislation to address these provisions in any work undertaken on the bill.

555 NEW JERSEY AVENUE, N.W.
WASHINGTON, DC 20001-2079
202-879-4400

ALBERT SHANKER
PRESIDENT

EDWARD J. McELROY
SECRETARY-TREASURER

STATEMENT OF
THE AMERICAN FEDERATION OF TEACHERS
ON
H.R. 3467, SAVING OUR CHILDREN:
THE AMERICAN COMMUNITY RENEWAL ACT

SUBMITTED TO
THE SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS
AND
THE SUBCOMMITTEE ON EARLY CHILDHOOD, YOUTH AND FAMILIES
COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES
FOR THE HEARING RECORD OF
JULY 30, 1996

The American Federation of Teachers, on behalf of its 900,000 members, strongly opposes H.R. 3467, Saving Our Children: The American Community Renewal Act. This legislation would undermine public education by forcing poor communities seeking renewal status to carry out a number of federal mandates including implementing private school voucher programs and privatizing school services.

The approach to education reform taken by H.R. 3467 is misguided and destructive. The bill would subject children in poor communities to yet another round of unproven education fads instead of giving them what we know works: high standards of conduct and academic achievement. In the name of "parent choice" the bill ignores what parents across all demographic groups really want: to improve, not abandon our public schools.

H.R. 3467 authorizes $5 billion over 7 years to establish private school voucher plans in 100 renewal communities. This will simply divert attention and scarce resources away from efforts to raise standards and improve achievement in public schools. These funds would be far better spent on programs like Title I, Goals 2000, Safe and Drug-Free Schools, and School -- programs which will help all schools to improve and all students to increase their achievement.

Vouchers, by contrast, will do nothing to improve student achievement. Despite the claims of voucher proponents, there is no evidence that private schools outperform public schools. Numerous studies provide proof that private school students do *not* do better than public school students, once student background characteristics are taken into account. Milwaukee's high-profile experiment with vouchers supports this fact. Four years of independent evaluation results show that voucher students do no better academically than their counterparts in public schools.

Vouchers create incentives for private schools to attract customers, not necessarily improve achievement. So there is no assurance that what schools would sell--and parents would buy--would be a better education. For example, selling points could be convenience, religious, ethnic, gender, or cultural homogeneity, winning sports teams, or even the promise of easier programs and better grades. In the post-secondary sector, the aggressive marketing of federal student aid by "trade schools" to would-be bartenders, hairdressers, and disc jockeys has produced one scandal after another at taxpayer expense. Attracting students is not the same as educating them.

Voucher proponents also claim that a voucher system would break up the public school "monopoly" and make schools more responsive to parents. But the truth is that private school vouchers would *reduce* accountability in education. Private schools don't have to account to the

public for whom they admit and whom they expel, whom they hire and whom they fire, what they teach and how they teach it, where they get their money and how they spend it, or how many students are learning and how many aren't.

Although public schools should be more accountable for their performance, they do account for how they spend taxpayers' money, follow regulations about discipline, safety, equal opportunity, curriculum, and teacher credentials, and publish information about student performance, good or bad. And they are governed by the people's elected representatives. If we want stricter accountability, that's what we should demand--rather than giving public dollars to schools that don't have to answer to the public.

Finally, voucher proponents claim that vouchers will increase parent and student choice. But what does choice mean? Many public school systems already offer school choice, and parents' options are expanding every day. H.R. 3467, on the other hand, places most of the choice in the hands of private schools. Parents may choose a private school, but that doesn't mean the school will choose their child. Thus, the term "private school choice" is misleading, because money isn't the only barrier to choosing a private school, especially one with a good reputation. In Milwaukee, for example, 40 percent of poor children who sought to participate could not find a school that would take them. And very few private schools serve children with disabilities.

H.R. 3467 would also require renewal communities to develop plans for establishing "quasi-public" charter schools and for privatizing school services. A leading assumption behind privatization efforts is that private-sector know-how will make public schools more efficient. But once again, there is no evidence supporting this claim. Let's look at the track record of the major private company that has tried to manage public schools, Education Alternatives, Inc. (EAI). In Baltimore, EAI promised a dramatic improvement in student achievement for less money . What happened? During the first year, test scores for EAI schools went down, while they went up in other Baltimore schools. Eventually, scores in EAI schools inched back to about the pre-EAI level, while EAI schools received about $500 more per student than other schools. At the same time, EAI increased class size, cut special education services, and released inflated test scores and attendance figures which they later claimed to be "clerical errors." They also laid off dozens of community residents who worked in the school system as paraprofessionals. Who replaced them? Inexperienced "interns" who were paid barely above minimum wage with no benefits. Is this the kind of community renewal our cities need? After three and a half years, the Baltimore school board finally voted to terminate EAI's contract.

In Hartford, the story was similar. Before being kicked out by the city, EAI engaged in accounting maneuvers that made the company look more successful on Wall Street than it really was. EAI also enraged taxpayers when it billed the city for thousands in first class travel for its staff, public relations fees, and condominium rent. Of course, when all was said and done, EAI did not save Hartford a penny. The assumption that private companies can educate children more effectively for less money than public school officials is without foundation. Clearly, the case for privatization rests more on fads than on hard evidence.

No one denies the fact that our schools must do a better job. But vouchers and privatization are not the panaceas that will improve education in our urban areas or other poor communities. They are simply educational fads with no evidence of success behind them, which will erode, not improve the quality of education and student achievement. The solution is to focus on what we know works: an educational system driven by clear and challenging standards, student assessments tied to those standards, accountability for student and school performance, and enough discipline to make school count. This is what works in other industrialized countries whose students outperform our own, and it is also what American parents, teachers, and the public want for our schools.

Parents and the public want our public schools fixed, not abandoned. Two-thirds of Americans oppose allowing students and their parents to attend a private school at public expense, according to the 1995 Phi Delta Kappa poll on attitudes toward public education. However, Americans do want safe, orderly public schools where children can learn challenging material in the core subjects. According to a 1994 survey by the non-partisan Public Agenda Foundation, 82 percent of all respondents and 92 percent of all African-American parents supported setting up "very clear guidelines on what students should learn and teachers should

teach in every major subject." The 1995 Phi Delta Kappa poll, reinforces this view, showing that 87 percent of respondents favor setting higher standards in basic subjects than are now required. Let's give the American people what they want, and what we know works. Real education reform is possible, but it requires support, not abandonment.

Public education is a democratic society's principal means of introducing our youth to the common values of our society and the duties of citizenship. It is society's most important investment in the future. To jeopardize this investment though vouchers and privatization as H.R. 3467 proposes would be a dangerous mistake.

Where We Stand

By Albert Shanker, President
American Federation of Teachers

Risky Business

NEW YORK TIMES
FEBRUARY 18, 1996

Charter and voucher schools are the educational equivalent of small businesses.

How can we improve U.S. education? One answer that gets a lot of applause is to introduce some form of private enterprise. Some people call for vouchers—using public money to pay for children to attend private, and largely unregulated, schools. Others tout charter schools, which are set up under state law to be independent of state and local control though they are funded by public money. Either way, supporters say, we would bypass the regulation that is strangling education. And we'd create competition among schools, causing excellent schools to flourish, good, new schools to spring up, and bad schools to close—just the way it happens in the business world.

All this sounds good, but voucher programs are rare and charter school legislation is relatively new. So we haven't had a chance to test these confident assertions against real-life examples of how the market works. Now, though, we are beginning to get some striking evidence about the down side of market schools.

In Los Angeles, a charter school for troubled teenagers was closed last year by the district. According to stories in the *Los Angeles Times*, district funds were used to lease a $39,000 sports car for the principal and pay for his private bodyguard. Expensive furniture was purchased for the administrative floors, and a "secret retreat" was held to the tune of $7000. The district started investigating the school's finances when an auditor found a discrepancy between the number of students the school was claiming—and receiving payment for—and the number that appeared on the rolls. By the time the school closed, four teachers were left to teach more than 200 students, and there was $1 million worth of unpaid bills. The school had a board of directors, but its members apparently did not pay much attention to how things were going with the students—or how the school district's money was being spent.

In Milwaukee, two schools in its voucher program for low-income students recently shut their doors, and, as I write, two more are in danger of closing. Competition? No, poor financial management, according to stories in the *Milwaukee Journal-Sentinel*. The principal at one of the failed schools was charged with passing $47,000 worth of bad checks. The other school ran out of funds and was reportedly unable to pay its teachers for several weeks. The financial problems in all four schools, three of which were new this year, arose when they enrolled fewer students than they had counted on. An official in the state education department said that administrators of the new voucher schools could have used training in financial procedures and school administration but that legislation governing these schools did not permit his department to offer it.

No one should be surprised. These charter and voucher schools are the educational equivalent of small businesses. Many of them are new, and everybody knows that the failure rate for small businesses over the first several years is very high. (According to the Small Business Administration, 53 percent of small businesses fail within 5 years of starting up, 79 percent by the end of 10 years.) Failure is usually related to what has troubled these schools—financial problems and, often, lack of experience in running a business.

The difference is that when a small business fails, it's the owners who pick up the tab. When a voucher or charter school goes out of business, it is the taxpayers' money that is thrown away. But the chief victims are the students; they are the ones who lose school time that cannot be replaced. John Witte, the evaluator for the Milwaukee voucher project, put it this way when a school closed during the first year of the experiment:

> There are those who would argue that the failure of that school is to be expected in a market system of education. Whether one believes that that expectation outweighs the fact that approximately 150 children essentially lost a year's education is a value issue that we cannot resolve. Whatever one's values are, the price was high for those families involved.

The costs and implications of charter and voucher school failure do not stop here. Where do students go when their school has shut its doors? Must taxpayers also spend money to keep public school spaces for youngsters in voucher and charter schools in case there are school closings? If not, would we put them in classes that might already be filled to overflowing? Or send them to a school with available space, no matter where the school was located? Or should we make them wait in line until the following year—the way voucher and charter schools would do?

The people who want us to embrace vouchers and charter schools pretend that doing so is as easy as saying "free enterprise." The failures in Los Angeles and Milwaukee remind us that these ventures are risky—and that all the risk falls on people who have no influence over the outcome.

STATEMENT OF AMERICAN HEART ASSOCIATION

The American Heart Association, is pleased to submit the following statement regarding certain provisions of H.R. 3467, "Saving Our Children: The American Community Renewal Act of 1996."

The American Heart Association is a non-profit, voluntary health organization funded by private contributions. The mission of the Association is to reduce disability and death from cardiovascular diseases and stroke. Cardiovascular diseases cause almost as many deaths as all other causes of death combined, at an estimated cost in 1996 of $151 billion in medical expenses and lost productivity. To combat and prevent more deaths from cardiovascular diseases, the AHA places a special emphasis on cardiovascular research, cardiovascular education and revenue generation. It is in these areas that the AHA invests its resources.

The AHA opposes Section 202 of the Talent/Watts legislation, which would establish a tax credit for certain charitable contributions and limit the allowable levels for public advocacy. As has been the case with a number of proposals during the 104th Congress, this legislation would appear to unfairly segment charitable giving by giving tax benefits to one particular sector of the nonprofit community, in essence, awarding favorable tax treatment to one category of nonprofits over all others. Second, in order to qualify for such a credit, an organization would be banned from influencing legislation, sponsoring litigation on behalf of individuals served by the charity and conducting public policy advocacy or public policy research.

We do, however, support Section 203 of the legislation, establishing a deduction for charitable contributions for taxpayers who do not currently itemize their tax deductions. Data shows that the amount of charitable giving is clearly related to the deductibility of the contribution. Itemizers earning $30,000 - $39,000 contribute 3.0% of income, compared to 1.1% for non-itemizers. For those earning $75,000 - $99,000, the ratio is 2.2 to 1.

Advocacy Prohibitions

Similar in scope to the various "Istook" amendments which failed to secure final House/Senate approval during the 104th Congress, this proposal would serve as a disincentive to the right of nonprofits to represent their constituencies before legislative and regulatory bodies. Congress has long encouraged public charities to bring their expertise and perspectives to bear on public policy issues. This proposal runs contrary to that philosophy.

On the opening day of the 104th Congress, Speaker Gingrich expressed the need to "create a partnership" and make Congress "more accessible to the American people." Charities and government agencies have long worked as partners in addressing social needs. Groups like the American Heart Association bring their expertise and experience to bear upon the legislative and rulemaking processes, and in turn we benefit from the expertise and experience of the policymaking bodies.

It is disturbing to us that the 104th Congress comes to an end the same way it began concerning this politicization of charitable organizations and their ability to raise funds and advocate their memberships' positions before Congress and the regulatory agencies. Early in the 104th Congress House Majority leader Dick Armey wrote to House Republicans asking them to contact their corporate contributors to urge them to "challenge your contacts in the corporate world to change this disturbing patter of contributing to 'liberal' advocacy groups." A copy of *Patterns of Corporate Philanthropy*, published by Capital Research Center, accompany Mr. Armey's letter. According to the book's authors, "corporate money can obscure the radical economic and political agenda of an advocacy group (and) corporations undermine traditional charities by giving to advocacy groups." We were disturbed at the time, and

continue to be, that the House Majority Leader would use his elected office to carry out this type of an agenda.

Further, for more than 25 years, the Combined Federal Campaign has been the primary means through which employees of the federal government may contribute to private voluntary organizations such as the AHA. In 1995 Congressman John Mica discussed the exclusion of certain advocacy groups from participating in the CFC. This despite 1987 legislation that requires that eligibility "shall not, to the extent that such requirements relate to litigation, public policy, advocacy, or attempting to influence legislation, be any more restrictive than any requirements established with respect to those subject matters under Section 501(c)(3) of the Internal Revenue Code of 1986."

Tax Credit Provisions

Tax Credits for poverty-fighting charities. Sounds like a good idea on the surface, but one with grave potential ramifications. The proposal by Representatives Watts and Talent, as well as similar proposals placed on the table by Representatives Kasich, Kolbe, Knollenberg and Senator Coats, redirects charitable contributions away from charities that serve the entire community despite their provision of equally important services such as disaster relief, counseling, education and health care.

In addition, the tax credit may well create a paperwork nightmare for eligible charities. Many charities that serve the poor, such as religious organizations, especially those that do so with contributions rather than government funds, do not regularly inquire into or keep records of the income of those they serve. Under this legislation they would have to begin doing so to establish their eligibility for tax credit contributions.

While such incentives clearly would encourage certain types of charitable giving, they would not raise nearly enough revenue to offset proposed federal budget cuts to programs that predominantly serve the poor. Poverty-fighting charities will still struggle to meet increasing demands with fewer resources.

What is particularly surprising about these proposals is that they come during a period of great debate over simplification and fairness in the current tax code. Simpler flat tax, consumption tax and sales tax proposals have been embraced by many in Congress, some of the same legislators who wish to establish these new credits. At the same time, several of these proposals would eliminate the across the board charitable deduction. Congress can't have it both ways!

According to a recent study by the Beacon Hill Institute (BHI), contained in *Giving Credit Where Credit is Due: A New Approach to Welfare Funding* (December 1995), non-itemizers give $38.5 billion in charitable donations each year, $6.3 billion of which goes to charities that would be eligible for the tax credit. This means that approximately $32.2 billion would potentially be transferred to the targeted charities. The potential effect on the non-profit community might well be significant. The tax credit creates a situation where many taxpayers could easily reason that taking the credit means they are giving more to charity.

The idea of the credit raises a number of potential concerns by the American Heart Association and its non-profit partners. The credit:

- divides the charitable community into "worthy" and "less worthy" categories
- provides an incentive to "switch" from welfare spending through taxes to donations to private charities. It does not provide an incentive to give more.
- creates an incentive for all taxpayers to substitute donations to charities eligible for the tax credit for donations they currently make to charities that would be ineligible for the credit

On the positive side, the Talent/Watts legislation extends the charitable deduction to non-itemizers, unlike the Coats-Kasich legislation which extends the tax credit to non-itemizers, but not the charitable deduction, providing an additional incentive to non-itemizers to substitute eligible for ineligible donations.

But is an organization like the American Heart Association, less worthy? In 1994-95, the AHA raised $317.9 million. Of that total, $256.5 million came from public support. Public support includes income from contributions, special events, legacies and bequests, and other funds received indirectly from fund-raising agencies. The AHA receives no direct funding form the federal government.

To support its mission the AHA has contributed almost $1.4 billion dollars to cardiovascular research since 1949, and has developed educational programs designed to promote health, and to prevent and reduce the risk of heart disease and stroke. In 1994-95 the AHA spent $93.9 billion on research; $61.2 million on public health education; $37.8 million on professional education, and $43.4 million on community services. With those funds, the AHA informed 47.7 million Americans about what they can do to prevent heart diseases and stroke. The AHA also serves as the public's unwavering advocate in the fight against heart attack and stroke. More than four million volunteers are active in the work of the AHA.

We agree with our over 800 partners at Independent Sector, a coalition of voluntary organizations, foundations and corporate giving programs with national interest and impact in philanthropy and voluntary action, in expressing our concern with certain aspects of allowing a tax credit only for charities which serve the poor.

The proposed tax credit may establish a precedent for much greater government control over how charities spend their private resources. As previously mentioned, charities receiving tax credit contributions would have to accept new limits on the types of programs they offer, and how much they may spend on advocacy, fundraising and management.

Unfortunately, the tax policy stimulation for giving to organizations serving the poor would not nearly offset the proposed cuts in welfare spending. In 1994, private contributions from individuals, corporations, foundations, and bequests totaled an estimated $105 billion. Research prepared by Alan Abramson of the Aspen Institute and Lester Salamon of Johns Hopkins University earlier this year found that charities cannot come close to filling the gap for proposed cuts in the funding of social programs. For 1996, all things being equal, the projected growth in giving was $3.3 billion. On the other hand, the projected cuts in social programs alone was $14.1 billion.

In conclusion, rather than limiting the nonprofit community's ability to provide expertise to policymakers and its obligation to represent its individual constituencies, the Congress should approve additional incentives for the full spectrum of charitable giving. The American Heart Association supports legislation introduced by Representatives Philip Crane (R-IL), Charles Rangel (D-NY) and Christopher Cox (R-CA) which would permit a partial charitable deduction for non-itemizers and would eliminate the 3% floor on charitable tax deductions for high income taxpayers.

STATEMENT OF JOHN D. SPARKS
DIRECTOR OF GOVERNMENT AFFAIRS
AMERICAN SYMPHONY ORCHESTRA LEAGUE

NEW TAX CREDIT PROPOSALS MAY NOT HELP CHARITIES

Several members of Congress have introduced proposals to create a new tax credit for taxpayers who donate to nonprofit organizations that directly serve the poor. Though they differ in scope and detail, all of these proposals seek to reduce or phase out government-provided welfare. They assume that centralized, bureaucratic anti-poverty programs have failed, and that private charitable and faith-based organizations can achieve more success. The proposed tax credits offer taxpayers the choice of helping the poor through government-based programs (by their tax obligation) or private charities (by their donations to eligible charities).

No one knows for sure precisely how a new credit would affect giving to charities. Proponents of the proposed legislation rely on a study by the Beacon Hill Institute (BHI) at Suffolk University in Boston. The study is presented in Giving Credit Where Credit is Due: A New Approach to Welfare Funding, a BHI document produced in December 1995, and makes the general case for replacing government welfare programs with individual donations to private charities. This document is supplemented by Tax Credits for Charitable Contributions: Alternatives, Projections and Comparisons, produced by BHI in March 1996 to answer some of the objections raised to the original proposal.

BHI maintains that the total amount of social service to the poor rises with a targeted tax credit because tax incentives for charitable contributions lead to:

(1) Increased Giving. The provision of a tax credit amounts to a reduction in the "price" of giving. A 100% tax credit reduces the price to zero. They estimate that the provision of a tax credit would cause private giving to *expand* by an amount greater than tax revenues *contract* and thus cause the total amount of social services to the poor to expand.

(2) Increased Voluntarism. BHI asserts that a tax credit that spurs increased giving would result in increased voluntarism because of the positive correlation between giving and volunteering. (They assume a reverse-causation effect.)

(3) Increased Efficiency. Because nonprofit organizations rely more on volunteers than either government agencies or private sector businesses, they are more efficient at delivering services.

(4) Reduced "Crowd Out". BHI contends that government spending "crowds out" private giving. BHI estimates that every dollar of government spending reduces private giving by about 10 cents, and that decreasing government spending would, therefore, result in increased giving.

Each of these contentions begs the question of whether or not a tax credit for charitable donations to selected nonprofits would increase giving overall. We believe that the BHI study is unpersuasive. Indeed, the study raises more questions about the viability of a charity tax credit than it answers. Nevertheless, it appears to be the *only* research document used by the authors of the Kolbe-Knollenberg (H.R. 2225), Talent-Watts (H.R. 3467), and Coats-Kasich (S. 1904) versions of the credit.

To determine whether the BHI conclusions are supported by other research, we have contacted the American Enterprise Institute, the Aspen Institute, the Brookings Institute, the Cato Institute, the Center for Budget and Policy Priorities, Citizens for Tax Justice, the Heritage Foundation, the Hoover Institute, the Hudson Institute, the National Center for Policy Analysis, the Progressive Policy Institute, and the Urban Institute. In nearly every case we were referred back to the BHI study.

We think the study is weakest on the issue of *substitution* - the potential for taxpayers to substitute donations to charities that are eligible for the tax credit for the donations they currently make to charities which would be ineligible for the credit. The BHI study performs a number of "empirical" tests which purport to show that individuals do not substitute one form of giving for another. These tests may be inadequate measures of the likely outcome of the credit.

Revealingly, the BHI proposal for the charity tax credit includes a restriction on the reduction of giving to ineligible charities. The BHI version requires that those taking the credit meet or exceed their charitable deductions from the previous year. Despite the practical questions such a proposal raises, the inclusion of this "penalty for substitution" undermines BHI's assertion that substitution would not occur.

The tax credit, as currently proposed, provides an incentive to substitute by creating the perception among taxpayers that "switching" their personal outlay for welfare from tax obligation (for government-provided welfare) to donations to private charities results in increased "giving." Most individuals do not perceive paying taxes as "giving." But they do perceive an upper bound limit to the amount they can/will give to charity. The tax credit creates a situation where many taxpayers could easily reason that taking the credit means they are giving more to charity. Consequently, they could justify reducing their total outlay for all (welfare and other) charities, essentially pocketing the difference as a reduction in taxes.

In addition to suffering a lack of evidence to support its economic assumptions, the tax credit insinuates a dangerously narrow definition of charity, with government dividing the charitable community into "worthy" and "less worthy" charities. Current deductions for charitable contributions do not judge the worthiness of nonprofit organizations in relation to one another. The tax credit targets a specific, narrow group of charities, creating a hierarchy of charitable interests.

We are equally concerned that, like the Istook-McIntosh-Ehrlich amendment, the limitations on public policy advocacy included in the Talent-Watts version of the charity tax credit raise serious constitutional and administrative questions. As one example, on a practical level, placing restrictions on activities defined as "public policy advocacy" and "public policy research" may restrict charities from meeting with a member of the city council, the mayor, or the department of social services about programs that affect the individuals and families they serve.

Many nonprofit organizations are critical sources of information about the communities they serve. Gathering and disseminating such information could be seen as a form of advocacy or public policy research. The Talent-Watts bill precludes this essential function of the very charities that Talent-Watts purports to help.

The proposed tax credit raises several other philosophical and logistical questions which are not directly addressed by the BHI study. Nonetheless, it seems to be the only study, to date, offered as evidence of the efficacy of the tax credit proposal.

We urge members of Congress, especially those members on the House Ways and Means and House Economic and Educational Opportunities Committees with jurisdiction over H.R. 3467, to recognize the limitations of the charity tax credit, and instead support measures that would *truly* help the nation's charities meet their community service goals: extend the current deduction for charitable contributions to non-itemizers, and eliminate the 3% floor on deductions for charitable contributions.

THE AMERICAN SYMPHONY ORCHESTRA LEAGUE
John Sparks, Director of Government Affairs
Christopher Cooper, Government Affairs Assistant
July 29, 1996

STATEMENT OF INDEPENDENT SECTOR

H.R. 3467, "Saving Our Children: The American Community Renewal Act of 1996"
Section 202 - Credit for Certain Charitable Contributions

INDEPENDENT SECTOR is a national leadership forum, working to encourage philanthropy, volunteering, not-for-profit initiative and citizen action that help us better serve people and communities. Founded in 1980 and based in Washington, D.C., INDEPENDENT SECTOR is a national coalition of 800 voluntary organizations, foundations and corporate giving programs.

The organization of INDEPENDENT SECTOR and its mission derive from its Members' shared commitment to fundamental values related to the creation and maintenance of a truly free society.

We discuss below the potential positive and negative aspects of establishing a tax credit for contributions to charitable organizations that predominantly serve the poor as defined in Sections 202 and 203 of H.R. 3467. First, we want to explain why charitable organizations are important to America.

THE IMPORTANCE OF CHARITABLE ORGANIZATIONS TO AMERICA

Nearly one million charitable, cultural, educational, environmental, religious, health and social welfare organizations create, nurture and sustain the values that frame American life. They promote altruism, in a society that reinforces self-interest; community, in a society that rewards individual achievement; and pluralism, in a society sometimes threatened with divisiveness. They provoke, challenge, and question. They also teach meditate, and heal.

Collectively, these organizations represent an increasingly important sector of our society: the independent sector. They function on a not-for-profit basis, entrusted with public purposes and barred by law from private gain. They are exempted from tax on their assets and on income from their public-purpose activities. Those who support them with gifts can deduct those gifts from their own taxable income. Volunteers provide their boards with essential leadership, stewardship and accountability, and play vital roles at all levels.

The independent sector receives support from both private contributions and volunteers. In 1994, private contributions from individuals, corporations, foundations, and bequests totaled an estimated $105 billion. It is also estimated that 55 million people volunteered their services to the independent sector in 1994, or the equivalent of $115 billion. In the same year, the sector expended a sum approaching $500 billion in providing vast and varied services.

Organizations of the independent sector create, nourish, enlarge, and sustain communities. Education equips individuals with scholarship, discipline, and creativity to contribute effectively to community life. Arts, culture and the humanities stimulate community self-discovery, self-awareness, and self-definition. They preserve a community's heritage, challenge its assumptions, and refine its perceptions.

Human service, health and religious groups bring commitment to the community's welfare. They instill compassion for community members in need, and provide the mechanisms to address particular community problems. Human rights, environmental and public policy groups teach leadership, consensus-building, and citizen participation skills that ensure community vitality. They empower individuals to lead, and offer them leadership opportunities.

In summary, business and government alone cannot sustain altruism, pluralism, and community - principles fundamental to American society - nor the underlying values of trust, compassion, justice and moral behavior that bind us together.

The independent sector has become America's linchpin. Business, government and, in fact, all Americans have a fundamental stake in preserving and strengthening it.

THE IMPACT ON THE INDEPENDENT SECTOR OF ESTABLISHING A TAX CREDIT FOR CHARITABLE CONTRIBUTIONS TO 501(c)(3) ORGANIZATIONS THAT PREDOMINANTLY SERVE THE POOR

Section 202 of the bill establishes a tax credit for charitable contributions for up to 75% of the qualified charitable contributions which are paid by the taxpayer during the taxable year. The credit is limited to $200 for single filers and $400 for joint filers.

The tax credit may only be redeemed if the charitable contribution is made to a "qualified charity aiding the poor." To meet this definition and be eligible to accept tax credit redeemable charitable contributions an organization must meet the following conditions:

a) The organization must be tax- exempt under Section 501(c)(3) of the Internal Revenue Code;

b) the predominant activity of the charity must be the provision of direct services to individuals whose annual incomes generally do not exceed 185% of the official poverty line. Charitable organizations that provide temporary donations of food or meals or temporary shelter to homeless individuals would not have to adhere strictly to the 185% of the poverty line standard, but would have to "reasonably conclude" that the beneficiaries of their services are the poor. (185% of the poverty line is equal to an income of $28,860 for a family of four), and;

c) qualified organizations may spend up to 25% or less of their annual aggregate expenditures on administration, support of their services and fundraising.

INDEPENDENT SECTOR'S POSITION ON TAX CREDITS

INDEPENDENT SECTOR has not taken a position for or against the use of tax credits as a tax incentive for charitable giving. Following are our comments on the legislation.

THE POTENTIAL POSITIVE AND NEGATIVE IMPACTS ON INDIVIDUAL CHARITABLE GIVING:

Positive:
Providing a tax credit to nonitemizers may help increase the total amount of contributions by supporting increased giving by the approximately 71 million taxpayers who do not presently benefit from the tax deduction for charitable contributions because they do not itemize their deductions. If people increase their contributions in response to the tax credit, rather than simply switching contributions from one type of charity to another, everyone will benefit.

INDEPENDENT SECTOR is supportive of Section 203 of H.R. 3467 which establishes a charitable deduction for nonitemizing taxpayers. IRS data from 1981-1986 show that extending the charitable deduction to nonitemizing taxpayers would provide a significant incentive for increase charitable giving by middle and low income taxpayers (see attachment A).

Negative:
Targeting the tax credit injects government into what is traditionally, the individual taxpayer's decision-making process about which charities to make charitable contributions. Further, the tax credit is structured so that the government subsidizes charitable giving to some organizations over others.

One of the fundamental principles regarding why the tax code permits a charitable deduction

is that government should encourage private giving to a wide variety of organizations that serve a broad spectrum of needs and causes. The proposed tax credit targeted for contributions to strictly poverty-fighting organizations usurps the individual taxpayer's freedom to determine the recipient of the gift.

THE IMPACT ON INDEPENDENT SECTOR ORGANIZATIONS

At a time when charities are being asked to take on more responsibilities from government for public services, it is important that tax incentives for charitable giving benefit charities equally, regardless of their mission. The proposed tax credit divides charities into two groups. It favors groups that predominantly serve the poor over those that do not. Moreover, the tax credit may redirect charitable contributions away from charities that serve the entire community regardless of income, such as YMCAs, Girl Scouts or Lutheran Social Services, or it may redirect contributions away from organizations that provide equally important services such as disaster relief, education, culture and safety-training, as do the American Red Cross, the Studio Museum in Harlem and Mothers Against Drunk Driving.

Federal tax exemption incorporates a broad historic definition of charity that includes a wide range of activities and services that benefit the public. It is in our common interest to maintain the broad definition of charity and not accede to a definition that implies that charity is restricted to serving the poor, important as those services are. We can ill afford any measure that has the effect of pitting charitable organizations against one another.

Limitation on Public Advocacy

Section 202 of H.R. 3467 states that charitable organizations may only become eligible for the tax credit redeemable contributions if they have not engaged in the following public policy related activities:

a) activity for the purpose of influencing legislation;

b) litigation on behalf of any individual served by the charity (i.e. the poor), and;

c) voter registration, political organizing, public policy advocacy, or public policy research.

Like the Istook Amendment heatedly debated in the 104th Congress, the limitations on public advocacy activities, included in this bill, may raise similar constitutional questions. On a practical level, placing restrictions on activities defined as, "public policy advocacy" and "public policy research" may limit a local charity from convening the public to address public policies that affect the poor. Further, the limitation may restrict a charity from meeting with a member of the city council, the school board, or the department of social services about programs that affect the poor, and may restrict charities from studying how a law or ordinance affects those they serve.

INDEPENDENT SECTOR opposes this provision, as it would have the effect of silencing charities' voice in the public debate over how laws affecting those they serve are implemented. Advocating, critiquing government, and offering alternatives are sometimes a charity's best service. Placing restrictions on how charitable organizations spend their private resources to serve clients and communities establishes an unacceptable precedent of government control over charities' use of private contributions. INDEPENDENT SECTOR strongly urges that this restriction be dropped from the bill.

New limitation on management and fundraising expenses:

The bill also states that a charity qualifying for tax credit contributions may not spend more than 25% of annual expenses for administration and fundraising related to their direct poverty fighting services. Although the decision to qualify for tax credit contributions is ultimately

optional for charitable organizations, this is an arbitrary limitation on the amount of private funds which a charitable organization may spend on mission related functions. The Supreme Court has ruled that government may not impose a flat percentage limit on the fund-raising costs of organizations raising money in the community. [1]

New administrative burdens for charities to qualify for tax credit:

The proposed tax credit will create a paperwork nightmare for eligible charities. Many charities that serve the poor, especially those that do so with contributions rather than government funds, do not regularly inquire into or keep records of the income of those they serve. Except for soup kitchens and homeless shelters and similar facilities, charities will have to begin means testing their clients to establish their eligibility for tax credit contributions. Religious organizations that do not qualify will have to establish separate organizations, complicating governance and adding to the paperwork burden. Organizations would have to keep two sets of books, one that conforms to current accounting guidelines and one that uses the expense allocation rules dictated in the tax credit proposals.

New disclosure requirement:

The bill states that all "qualified charities" upon request of an individual made in person must provide a copy of their annual tax return (Form 990) without charge other than a reasonable fee for any reproduction and mailing costs. If the request is made in person, copies must be made available immediately, and if made other than in person, shall be provided within 30 days.

INDEPENDENT SECTOR is supportive of this requirement which will be enacted into law shortly as part of the Taxpayer Bill of Rights legislation now awaiting the President's signature.

Paying for a tax credit and the limits of private philanthropy:

While H.R. 3467 does not state how the proposed tax credit would be paid for with current federal budget offsets, it should be known that even with new charitable tax incentives, such as the targeted charity tax credit as proposed in Section 202, or the nonitemizer deduction in Section 203, private philanthropy cannot come close to filling the gap for proposed cuts in the funding of social programs. Moreover, if the tax credit is paid for by cutting federal spending on social programs, it simply shifts the burden of responsibility for providing social services to charities. As charities are already attempting to meet increased demands with fewer resources, tax policy related to charitable giving should not be viewed as a mechanism for shifting ultimate welfare responsibility to charitable organizations, for it runs the risk of ending charities' role being different from government.

In their most recent research of June 28, 1996, Alan J. Abramson (The Aspen Institute) and Lester M. Salamon (Johns Hopkins University) state:

> "What is the likelihood that private philanthropy, including charitable giving by individuals, foundations and corporations, could make up for the spending cuts proposed in the FY 1997 Congressional budget resolution?
>
> "Our analysis indicates that private giving would have to rise by rates far above its historical rates of increase to fill the gap created by proposed federal spending cuts. Thus, just to offset the direct revenue losses that nonprofit

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[1] *Regulation of Charitable Fundraising: The Schaumburg Decision, A Summary Report from Independent Sector, Independent Sector, 1981.*

organizations are projected to experience under the Congressional budget plan, private giving would have to increase by an added nine percent over its projected rate of giving in fiscal year 1997. This is three times greater than its recent average. By 2002, the increase would have to be 27 percent, 10 times greater than has typically occurred in recent years (see table 6). To offset the entire reduction in federal spending in fields where nonprofits are active, the added increase in private giving by the year 2002 would have to be even higher -- 68 percent -- or 20 times faster than its projected rate."

SUMMARY

INDEPENDENT SECTOR applauds Congressmen Talent and Watts for their interest in encouraging charitable giving. However, the proposed tax credit contains significant problems for charities and may result in a redistribution of current charitable giving rather than encouraging charitable giving nationally that will serve the entire independent sector. We support the establishment of a charitable tax deduction for nonitemizers as it would provide a tax incentive for charitable contributions to all of America's important causes, including those that serve the poor. It is important to underscore the point that new charitable tax incentives will not raise enough private funds to offset proposed budget cuts. To shift the service delivery responsibility to charities even if it were possible for charities to fill the service delivery gap with the help of new tax incentives for charitable giving - overestimates the capacity of charities to provide services to all those who are in need and runs the risk of ending charities' role to be different from government.

INDEPENDENT SECTOR looks forward to working with Congressmen Talent, Watts and both the Committee on Ways and Means Subcommittee on Human Resources and the Committee on Economic and Educational Opportunities Subcommittee on Early Childhood, Youth and Families on ways to encourage charitable giving to all organizations of the independent sector.

Attachment A

A CHARITABLE TAX DEDUCTION FOR NONITEMIZERS SHOULD BE ENACTED BY CONGRESS

Since Congress permitted the charitable tax deduction for nonitemizers to sunset in 1986, seven of ten taxpayers, the nonitemizers, can no longer deduct their charitable contributions and the resulting loss in charitable giving has been substantial. This becomes obvious when a comparison is made of the amount contributed by itemizers and nonitemizers who are in the same income groups.

Income Group	Amount Contributed by Itemizers	Amount Contributed by Nonitemizers	% of Income Contributed by Itemizers	% of Income Contributed by Nonitemizers
0 - $10,000	$317	$244	1.3%	2.8%
$10,000 - $19,000	$795	$421	3.0%	2.1%
$20,000 - $29,000	$813	$505	2.2%	2.9%
$30,000 - $39,000	$726	$543	3.0%	1.1%
$40,000 - $49,000	$1,289	$692	1.9%	0.6%
$50,000 - $74,000	$1,341	$898	1.9%	1.3%
$75,000 - $99,000	$1,612	$1,899	2.2%	1.0%
$100,000 +	$2,491	$2,199	3.8%	2.0%

The average annual amount contributed by itemizers is $1,313; the average by nonitemizers is $509.

Eighty one million taxpayers are nonitemizers. It is clear that if all nonitemizers raised their contributions to the amount given by itemizers, giving would increase greatly. In fact, charitable contributions by nonitemizers increased by 40% or $4 billion from 1985 to 1986, according to Internal Revenue Service data. Nonitemizers were permitted to deduct only 50% of their charitable contributions and they gave $9.5 billion that year. In 1986, they could deduct a full 100% and, according to the IRS, they gave $13.4 billion - an increase of 40%. The message from that experience is apparent. Charitable tax deductions do stimulate substantially increased giving from middle income Americans.

Nonitemizers are low to middle income Americans (65 million have incomes under $30,000 a year) who support services such as the Red Cross and the American Cancer Society. They give to churches and synagogues, environmental organizations, schools, colleges, hospitals, food programs for the homeless, and the Boy Scouts and Girl Scouts. They give to advocacy organizations, health research, the arts, international development, and myriad activities in the public interest that enrich our society and protect its people. Congress should enact a legislation that will permit these moderate income Americans to take a deduction for their contributions to charity.

April 17, 1995

A NATIONAL FORUM TO ENCOURAGE GIVING, VOLUNTEERING AND NOT • FOR • PROFIT INITIATIVE
1828 L Street, N.W. • Washington, D.C. 20036 • (202) 223-8100
FAX: (202) 457-0609

THE FEDERAL BUDGET AND THE NONPROFIT SECTOR: FY 1996 AND FY 1997

by

Alan J. Abramson, The Aspen Institute, and
Lester M. Salamon, Johns Hopkins University

Prepared for INDEPENDENT SECTOR

Following their takeover of the House of Representatives and Senate after the November 1994 election, Republicans in Congress proposed to make substantial cuts in federal non-defense spending in order to eliminate the federal deficit by fiscal year (FY) 2002 and also pay for sizable tax cuts.[1] As it turned out, presidential resistance made it impossible for the Republican majority in the Congress to enact all of its proposed reductions, particularly those affecting entitlement programs, such as Aid to Families with Dependent Children (AFDC), Medicaid, and Medicare. However, the omnibus appropriations act that passed the Congress in the spring of 1996 did make a significant downpayment on the proposed reductions for FY 1996, at least with regard to many nondefense discretionary programs.[2] In the meantime, President Clinton submitted a budget plan for FY 1997 and beyond that would make significant cuts in federal domestic spending in order to balance the budget by FY 2002, and in mid-June, Congress approved its own budget resolution calling for even larger cuts in both discretionary and entitlement non-defense spending. The purpose of this report is to analyze the implications of this recent budget activity for nonprofit organizations.

The federal fiscal year runs from October 1 through September 30. The current fiscal year, FY 1996, began on October 1, 1995 and will end on September 30, 1996.

"Entitlement" programs are programs in which spending is essentially automatic, and spending levels depend on benefit levels and eligibility requirements set in authorizing legislation and also on other factors, such as the state of the economy. "Discretionary" programs are programs in which spending levels are set annually through the appropriations process.

FY 1996 Federal Budget

Thanks to the action taken on appropriations bills for FY 1996, overall federal spending in budget functions of particular interest to nonprofit organizations is projected to decline by $2.7 billion between FY 1995 and FY 1996, after adjusting for inflation, despite continued growth in spending for entitlement programs in the areas of income assistance and health (see table 1).[3] Indeed, in some areas, such as education, training, employment, and social services and international assistance, the reductions in outlays in this one year are projected to be quite a bit higher–nine percent and six percent respectively.

Behind these aggregate figures lie even sharper cutbacks at the individual program level, particularly with respect to many programs of special interest to nonprofit organizations. Thus, as shown in table 2, aggregate spending on the discretionary programs of greatest interest to nonprofit organizations is projected to decline by 12 percent between FY 1995 and FY 1996, after adjusting for inflation.[4] Included here are cuts of:

- 20 percent in selected programs of the Department of Housing and Urban Development;
- Nine percent in selected programs of the Department of Education;
- Eight percent in selected programs of the Department of Health and Human Services; and
- 20 percent or more among such agencies as the Corporation for Community and National Service, the National Endowments for the Arts and Humanities, the Corporation for Public Broadcasting, the Legal Services Corporation, and the Community Development Financial Institutions.

Because government relies heavily on nonprofit organizations to deliver publicly financed services, changes in federal spending have significant implications not only for the scope of government action in these fields but also for nonprofit revenues. Overall federal support of nonprofit organizations in FY 1996 is now projected to be $1.3 billion, or 1

The six budget functions of concern to nonprofits included in this analysis are: international affairs (function 550); community and regional development (450); education, training, employment, and social services (500); health (550); Medicare (570); and income assistance (600). These six functions, out of the 20 functional areas in the budget, account for approximately 35 percent of all federal spending and well over 90 percent of all federal assistance to nonprofit organizations. Inflation-adjustments for all programs except Medicare and Medicaid were accomplished by converting spending totals to constant 1995 dollars using the "Chained Gross Domestic Product (GDP) price index." For Medicare and Medicaid, the deflator that was used reflects projected baseline (i.e., "current services") spending and incorporates not only projected changes in prices but also expected changes in utilization of health services and the size of the beneficiary population.

In this analysis, spending levels for budget functions are given in "outlays" and for individual programs in "appropriations." Appropriations and outlays are different stages of the federal budget process. Appropriations represent, in a sense, the checking account balance for programs. Appropriations provide agencies with the authority to enter into obligations that will lead to the spending of government funds in the same or future years. Outlays refer to the actual disbursement of government funds. The relationship between appropriations and outlays varies from program to program. In some programs, appropriations lead to outlays in the same year; in others, there is a delay between appropriations and outlays.

percent, below FY 1995 levels, after adjusting for inflation (see table 3). As a result of the appropriations cuts in selected programs described above, we estimate that nonprofits will lose $1.7 billion, or 10 percent, of the federal support they receive through these programs, as shown in table 2.

FY 1997 Congressional Budget Resolution

Overall Spending

The FY 1997 Congressional budget resolution represents the Congress's latest long-term plan to balance the federal budget by FY 2002. Under the Congressional plan, which was approved by the House of Representatives on June 12 and by the Senate a day later, federal outlays in the policy areas of concern to nonprofits would be $60.9 billion, or 11 percent, below FY 1995 levels by FY 2002, after adjusting for inflation (see table 4). FY 2002 federal outlays for community and regional development would be 51 percent below FY 1995 levels; outlays for international assistance would be 45 percent lower; spending for education, training, employment, and social services would be 24 percent lower; and outlays for health would be 17 percent lower. At the same time, FY 2002 federal income assistance outlays would be six percent above FY 1995 levels.

Over the six-year period, FY 1997-2002, federal outlays in the six functions of concern to nonprofits would be reduced by a cumulative total of $216.2 billion compared to FY 1995 levels, after adjusting for inflation. With income assistance excluded, federal outlays would decline by a cumulative six year total of $268.3 billion.

Nonprofit Revenues

These cuts, if they are ultimately enacted into law, will result in significant reductions in federal funds flowing to nonprofit organizations. We estimate that by FY 2002, federal support of nonprofits under the FY 1997 Congressional budget resolution, would be $24.1 billion, or 18 percent, below FY 1995 levels (see table 5). Over the six years FY 1997-2002, nonprofits would lose a cumulative total of $89.1 billion of their federal revenues under the Congressional budget package.

Comparison to President Clinton's FY 1997 Budget

The Congressional budget resolution sets federal spending through FY 2002 substantially below the level proposed by President Clinton in his FY 1997 budget, which was released in March 1996. Over the six-year period FY 1997-2002, the cumulative cuts in spending in the budget functions of concern to nonprofits that are proposed in the Congressional plan are 1.8 times larger than those in the president's plan; $216.2 billion versus $120.1 billion, as shown in table 4. Similarly, the cumulative, six-year reductions in federal support to nonprofits would be 1.4 times greater under the Congressional plan than the president's plan; $89.1 billion versus $65.4 billion (see table 5).

Implications for Private Giving

What is the likelihood that private philanthropy, including charitable giving by individuals, foundations, and corporations, could make up for the spending cuts proposed in the FY 1997 Congressional budget resolution?

Our analysis indicates that private giving would have to rise by rates far above its historical rates of increase to fill the gap created by proposed federal spending cuts. Thus, just to offset the direct revenue losses that nonprofit organizations are projected to experience under the Congressional budget plan, private giving would have to increase by an added nine percent over its projected rate of giving in fiscal year 1997. This is three times greater than its recent average. By 2002, the increase would have to be 27 percent, 10 times greater than has typically occurred in recent years (see table 6).[5] To offset the entire reduction in federal spending in fields where nonprofits are active, the added increase in private giving by the year 2002 would have to be even higher–68 percent–or 20 times faster than its projected rate.

Conclusion

Fiscal year 1996 marked a clear change in direction in federal spending on budget functions of concern to nonprofit organizations and federal support of nonprofits. Following the sharp spending cuts of the early 1980s, federal spending on many of these programs of concern to nonprofits increased, although funding levels in some key areas as of FY 1995 still remained well below FY 1980 levels after adjusting for inflation. However, for many programs, the period of modest recovery from the 1980s cuts stopped in FY 1996 and in some policy areas spending declined below FY 1995 levels in FY 1996. The FY 1997 Congressional budget resolution would continue and accelerate many of these reductions. Because President Clinton also appears to favor a portion–although not all–of these spending cuts, it now appears certain that nonprofits have entered a new period of fiscal stringency. Moreover, it is extremely doubtful that private giving could increase enough to offset either the federal support nonprofits are projected to lose or the larger amount of cuts in overall federal spending in budget functions of concern to nonprofits.

Whether upcoming FY 1997 budget decisions will actually follow the blueprint of the FY 1997 Congressional budget resolution is difficult to determine, however. Last year, the FY 1996 Congressional budget resolution had some impact on appropriations activity, which shapes spending on discretionary programs, but its guidance on entitlement programs was largely ignored. Some experts are now predicting that partisan disagreements magnified by election year pressures will make it impossible for Congress and the president to agree on "reconciliation" bills that implement the cuts in entitlement programs that are mandated by the FY 1997 Congressional budget resolution.

June 28, 1996

These figures assume three percent annual real growth in private giving from all sources over the period 1996-2002. The baseline giving level used for this analysis, which starts from projected giving of $78.3 billion in 1995, is derived from estimates prepared by Independent Sector. The figures reported here are the percentage increases required *in excess of* the projected three percent growth to accommodate inflation. The giving analysis excludes giving for sacramental religious purposes.

Table 1

Federal Spending in Budget Functions of Interest to Nonprofit Organizations, Estimated FY 1996 Outlays vs. Actual FY 1995 Outlays (in Billions of Constant 1995 Dollars)

Budget Function	Actual FY 1995 Spending Level	Estimated FY 1996 vs. Actual FY 1995	
		Amount	Percent
Education, Training, Employment, Social Services	$54.3	-$5.0	-9%
Community and Regional Development	10.6	0.2	2%
Health[a]	275.3	0.3	0%
Income Assistance	220.4	2.7	1%
International Affairs	16.4	-0.9	-6%
Total	$577.0	-$2.7	0%
Total, excluding Income Assistance	$356.6	-$5.4	-2%

Source: FY 1996 amounts from U.S. House of Representatives, Committee on the Budget, "Concurrent Resolution on the Budget--Fiscal Year 1997," 104th Congress, 2d Session, Report 104-575; and FY 1995 amounts from U.S. Office of Management and Budget, *Budget of the United States Government: Fiscal Year 1997, Historical Tables*. Conversion to constant 1995 dollars was accomplished by using the "Chained Gross Domestic Product (GDP) price index" for all programs except Medicare and Medicaid. For these two programs, the deflator that was used reflects projected baseline (i.e., "current services") spending and incorporates not only projected changes in prices but also expected changes in utilization and the size of the beneficiary population.

a. Includes health (function 550) and Medicare (570).

Table 2

Federal Appropriations for Selected Programs of Concern to Nonprofit Organizations, Enacted FY 1996 vs. FY 1995 Levels
(In Billions of Constant 1995 Dollars)

Agency Program	FY 1995 Appropriations	FY 1996 vs. FY 1995 Appropriations	
		Amount	Percent
Dept. of Agriculture[a]	$3,470.0	$170.5	5%
Supplemental Food for Women, Infants, and Children (WIC)	3,470.0	170.5	5%
Dept. of the Interior[a]	41.4	-5.8	-14%
Historic Preservation Fund	41.4	-5.8	-14%
Urban Park and Recreation Fund	0.0	0.0	0%
Department of Labor[a]	4,352.6	53.4	1%
Training and Employment Services Adult and Youth Training, Summer Youth, etc.)	3,956.5	85.8	2%
Older Workers	396.1	-32.4	-8%
Dept. of Health and Human Services[a]	14,298.7	-1,076.6	-8%
Low-Income Home Energy Assistance	1,319.2	-441.7	-33%
Health Resources and Services (Health Centers, Maternal and Child Health, AIDS Care, etc.)	3,028.2	-28.0	-1%
Mental Health Block Grant	275.4	-6.9	-3%
Substance Abuse Block Grant	1,234.1	-30.9	-3%
Refugee and Entrant Assistance	399.8	-7.7	-2%
Social Services Block Grant	2,800.0	-478.5	-17%
Community Services Block Grant	389.6	-9.7	-3%
Head Start	3,534.4	-53.6	-2%
Child Welfare Services	292.0	-21.5	-7%
Family Support and Preservation	150.0	69.4	46%
Administration on Aging	876.0	-67.4	-8%
Department of Education[a]	20,708.6	-1,896.9	-9%
Education Reform	494.4	22.4	5%
Education for the Disadvantaged	7,228.1	-180.7	-3%
Safe and Drug-Free Schools	466.0	-11.7	-3%
Rehabilitation Services	2,393.4	1.3	0%
Vocational and Adult Education	1,382.6	-75.8	-5%
Bilingual and Immigrant Education	206.7	-33.2	-16%
Postsecondary Student Financial Assistance	7,618.0	-1,515.9	-20%
Higher Education	919.4	-103.3	-11%
Dept. of Housing and Urban Development[a]	24,425.9	-4,905.7	-20%
Selected Housing Programs	18,705.9	-4,473.1	-24%
Community Development Grants	4,600.0	-115.0	-3%
Homeless Assistance	1,120.0	-317.6	-28%

Dept. of Commerce[a]	454.7	-94.0	-21%
Information Infrastructure Grants	45.0	-24.0	-53%
Economic Development Administration	409.7	-69.9	-17%
National Science Foundation	3,360.5	-221.0	-7%
Corporation for National and Community Service	791.6	-205.7	-26%
National and Community Service (AmeriCorps, etc.)	577.0	-184.6	-32%
Domestic Volunteer Service (formerly ACTION)	214.6	-21.2	-10%
National Endowment for the Arts	162.4	-65.4	-40%
National Endowment for the Humanities	172.0	-64.8	-38%
Corporation for Public Broadcasting[b]	260.0	-71.3	-23%
Legal Services Corporation	400.0	-129.0	-32%
Community Development Financial Institutions	125.0	-81.1	-65%
Total	$73,023.4	-$8,537.3	-12%
Estimated Federal Support of Nonprofit Organizations through Programs Listed Above	$17,461.7	-$1,744.7	-10%

Source: Based on enacted FY 1996 appropriations laws and on authors' estimates of the percentage of federal program dollars flowing to nonprofit agencies. FY 1995 amounts incorporate rescissions in programs where reductions occurred.

a. Includes only programs listed below.
b. This agency is forward-funded. The figures in the table represent FY 1998 enacted levels compared to FY 1997 enacted level.

Table 3

Estimated Nonprofit Revenue from Federal Sources,
Estimated FY 1996 Revenue vs. Estimated FY 1995 Revenue
(In Billions of Constant 1995 Dollars)

Budget Function	Estimated FY 1995 Revenue	Estimated FY 1996 vs. FY 1995 Revenue	
		Amount	Percent
Education, Training, Employment, Social Services	$14.9	-$1.4	-9%
Community and Regional Development	0.7	0.0	+2%
Health[a]	114.4	0.1	0%
International Affairs	1.0	-0.1	-6%
Total	$131.0	-$1.3	-1%

Source: Authors' estimates based on FY 1996 amounts from U.S. House of Representatives, Committee on the Budget, "Concurrent Resolution on the Budget--Fiscal Year 1997," 104th Congress, 2d Session, Report 104-575; and FY 1995 amounts from U.S. Office of Management and Budget, *Budget of the United States Government: Fiscal Year 1997, Historical Tables*. Conversion to constant 1995 dollars was accomplished by using the "Chained Gross Domestic Product (GDP) price index" for all programs except Medicare and Medicaid. For these two programs, the deflator that was used reflects projected baseline (i.e., "current services") spending and incorporates not only projected changes in prices but also expected changes in utilization and the size of the beneficiary population.

a. Includes health (function 550) and Medicare (570).

Table 4

Proposed Federal Spending in Budget Functions of Interest to Nonprofit Organizations, Congressional FY 1997 Budget Resolution and President Clinton's FY 1997 Budget vs. Actual FY 1995 Spending Levels (in Billions of Constant 1995 Dollars)

	FY 2002 Outlays: Proposed vs. Actual FY 1995				Cumulative Changes: Proposed FY 1997-2002 vs. Actual FY 1995	
	Congressional Budget Resolution		President Clinton			
Budget Function	Amount	Percent	Amount	Percent	Congress	President
Education, Training, Employment, Social Services	-$13.1	-24%	-$2.6	-5%	-$66.1	-$22.7
Community and Regional Development	-5.4	-51%	-3.9	-37%	-20.8	-13.3
Health[a]	-47.3	-17%	-36.7	-13%	-149.3	-112.9
Income Assistance	12.3	6%	13.5	6%	52.1	51.8
International Affairs	-7.4	-45%	-4.4	-27%	-32.1	-23.0
Total Above	-$60.9	-11%	-$34.0	-6%	-$216.2	-$120.1
Total, excluding Income Assistance	-$73.2	-21%	-$47.5	-13%	-$268.3	-$171.9

Source: U.S. House of Representatives, "Conference Report on House Concurrent Resolution 178," 104th Congress, 2d Session, Report 104-612; and Office of Management and Budget, *Budget of the United States Government: Fiscal Year 1997, Historical Tables*. Conversion to constant 1995 dollars was accomplished by using the "Chained Gross Domestic Product (GDP) price index" for all programs except Medicare and Medicaid. For these two programs, the deflator that was used reflects projected baseline (*i.e.*, "current services") spending and incorporates not only projected changes in prices but also expected changes in utilization and the size of the beneficiary population.

a. Includes health (function 550) and Medicare (570).

Table 5

Estimated Nonprofit Revenues from Federal Sources,
Projected Revenues under the Congressional FY 1997 Budget Resolution and
President Clinton's FY 1997 Budget
vs. Estimated FY 1995 Revenues
(in Billions of Constant 1995 Dollars)

	FY 2002 Federal Support of Nonprofits: Proposed vs. FY 1995 Levels				Cumulative Changes: Proposed FY 1997-2002 vs. FY 1995	
	Congressional Budget Resolution		President Clinton			
Budget Function	Amount	Percent	Amount	Percent	Congress	President
Education, Training, Employment, Social Services	-$3.6	-24%	-$0.7	-5%	-$18.1	-$6.2
Community and Regional Development	-0.4	-51%	-0.3	-37%	-1.4	-0.9
Health[a]	-19.7	-17%	-15.0	-13%	-67.6	-56.8
International Affairs	-0.5	-45%	-0.3	-27%	-2.0	-1.4
Total	-$24.1	-18%	-$16.3	-12%	-$89.1	-$65.4

Source: U.S. House of Representatives, "Conference Report on House Concurrent Resolution 178," 104th Congress, 2d Session, Report 104-612; Office of Management and Budget, *Budget of the United States Government: Fiscal Year 1997, Historical Tables*; and authors' estimates. Conversion to constant 1995 dollars was accomplished by using the "Chained Gross Domestic Product (GDP) price index" for all programs except Medicare and Medicaid. For these two programs, the deflator that was used reflects projected baseline (i.e., "current services") spending and incorporates not only projected changes in prices but also expected changes in utilization and the size of the beneficiary population.

a. Includes health (function 550) and Medicare (570).

Table 6

Changes in Private Giving Needed to Offset
Projected Federal Budget Cuts in Budget Functions of Interest to Nonprofit Organizations
and Projected Cuts in Federal Support of Nonprofit Organizations,
Assuming Implementation of the Congressional FY 1997 Budget Resolution
(in Billions of Constant 1995 Dollars)

Year	Projected Increase in Private Giving[a]	Projected Cuts in Budget Functions of Concern to Nonprofits	Percent Added Increase in Private Giving Needed to Offset Budget Cuts	Projected Cuts in Nonprofit Revenues from Federal Sources	Percent Added Increase in Private Giving Needed to Offset Nonprofit Revenue Losses
1996	+$2.3	-$2.7	6%	-$1.3	na
1997	+2.4	-8.1	13%	-4.6	9%
1998	+2.5	-22.2	30%	-8.1	13%
1999	+2.6	-32.9	41%	-12.4	17%
2000	+2.6	-39.3	48%	-15.8	21%
2001	+2.7	-52.9	61%	-19.5	25%
2002	+2.8	-60.9	68%	-24.1	29%

Source: U.S. House of Representatives, "Conference Report on House Concurrent Resolution 178," 104th Congress, 2d Session, Report 104-612; Office of Management and Budget, *Budget of the United States Government: Fiscal Year 1997, Historical Tables*; and authors' estimates. Conversion to constant 1995 dollars was accomplished by using the "Chained Gross Domestic Product (GDP) price index" for all programs except Medicare and Medicaid. For these two programs, the deflator that was used reflects projected baseline (i.e., "current services") spending and incorporates not only projected changes in prices but also expected changes in utilization and the size of the beneficiary population.

a. Projected increases in private giving assume a real annual growth rate of 3 percent per year, starting from $78.3 billion in 1995. The baseline 1995 estimate is derived from computations by Independent Sector. This giving analysis excludes giving for sacramental religious purposes.

NAADAC
National Association of Alcoholism
and Drug Abuse Counselors

1911 North Fort Myer Drive, Suite 900, Arlington, Virginia 22209 (703) 741-7686 1-800-548-0497 FAX: (703) 741-7698

STATEMENT FOR THE RECORD

on behalf of
THE NATIONAL ASSOCIATION OF
ALCOHOLISM AND DRUG ABUSE COUNSELORS

on
H.R. 3467 - Saving Our Children:
The American Community Renewal Act of 1996

House Economic and Educational Opportunities Subcommittee on
Early Childhood, Youth and Families
and the
House Ways and Means Subcommittee on Human Resources
Hearing Held on July 30, 1996

On behalf of the National Association of Alcoholism and Drug Abuse Counselors (NAADAC), please accept the following comments regarding HR 3467, "The American Community Renewal Act of 1996." NAADAC, with more than 18,000 members, is the largest national organization representing the interests of alcoholism and drug abuse treatment and prevention professionals across the United States.

NAADAC opposes Title III of this bill which unnecessarily creates a controversy about treatment effectiveness by stating that "formal education for counselors ... may undermine the effectiveness of [treatment] programs." Education enhances treatment effectiveness. Those most aware of new treatment technologies and capabilities are better able to provide treatment for all patients.

The bill would require states to give credit for religious education equal to credit given for secular course work in drug treatment. Alcohol and drug counselors (ADCs) constitute the one group of professionals who specialize in the diagnosis, assessment and treatment of psychoactive disorders and other substance abuse/use/dependency issues. These counselors possess a constellation of knowledge that is unique to the alcoholism and drug abuse counseling profession. Religious education and training is not equivalent to this knowledge.

Under this bill, religious organizations could compel participation in religious practice, worship, and instruction. Forced participation for individuals who enter treatment programs is inappropriate and may be unethical. This legislation does not adequately safeguard patients' rights.

Religious organizations would not be required to comply with state laws regarding treatment certification or licensure. States have a need to ensure the public's safety by prohibiting incompetent treatment practices. NAADAC has been in the forefront of organizations helping to create state standards for licensure, programs of addictions studies, and a degree of professionalism equal to or surpassing that of other health specialties. This legislation reverses that effort and creates a distracting and unnecessary controversy.

NAADAC has attached two "Legislative Briefings" which detail our specific objections to HR 3467. We urge committee members to oppose HR 3467 and to work with NAADAC to bring appropriate, effective, and safe treatment resources to America's communities. If you have any questions regarding NAADAC or our position on this bill please contact Linda Kaplan, Executive Director, or Bill McColl, Director of Government Relations, at (703) 741-7686.

Officers
Roxanne Kibben, MA, NCAC II *President*
T. Mark Gallagher, NCAC II *President-Elect*
France Hamm, MAC, NCAC II, LCDC, CADAC *Secretary*
Bill B. Burnett, MAC, NCAC II *Treasurer*
Cynthia Moreno, NCAC II, CCDC III *Immediate Past President*

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Sara Jane Gainor, NCAC II, CAC, LSW *Mid-Atlantic*
Roman Frankel, BS, NCAC II, CEAP *Mid-Central*
Sharon DeEach, MAC, NCAC II, LCDC *Mid-South*
Mary A. Ellis, RSM, MA, NCAC II *North Central*
Thomas M. Sheehan, NCAC II, CAC *Northeast*
Roger A. Curtiss, NCAC II, CCDC, CAS III *Northwest*
Elizabeth C. Shifflette, EdD, CC *Southeast*
Robert O. Phillips, MA, NCAC II *Southwest*

Linda Kaplan, MA, CAE *Executive Director*

NAADAC
National Association of Alcoholism
and Drug Abuse Counselors

1911 North Fort Myer Drive, Suite 900, Arlington, Virginia 22209 (703) 741-7686 1-800-548-0497 FAX: (703) 741-7698

NAADAC Legislative Briefing

June 10, 1996

HR 3467 - "Saving Our Children: The American Community Renewal Act of 1996"

Principal sponsors: Representatives J.C. Watts (R-OK), Representative James Talent (R-MO)

Purpose: "to increase job creation, small business expansion and formation, educational opportunities, and home ownership, and to foster moral renewal, in economically depressed areas by providing Federal tax incentives, regulatory reforms, school reform pilot projects, and home ownership incentives."

Of interest to NAADAC: NAADAC is concerned about provisions which suggest that the field of alcohol and drug treatment counseling is not a professional field and that formal education for counselors is detrimental to the practice of effective counseling. These provisions are contained in Title III -- Prevention and Treatment of Substance Abuse, Sec. 301 (pp. 132-143) of the bill which amends Title V of the Public Health Service Act (42 U.S.C. 290aa et. seq.). These concerns are:

1. Sec. 585. Educational Requirements for Personnel in Drug Treatment Programs (p.141). Sec. 585(a)(1) states that "formal education for counselors ... may undermine the effectiveness of [treatment] programs." This statement is incorrect. The most effective drug and alcohol treatment matches characteristics of the patient to treatment. Effective matching requires continuing education and knowledge of new treatment developments along with the ability to deliver different types of treatment to the patient. As treatment has grown more complex, the need for continuing education and formal education has also grown. Those most aware of new treatment technologies and capabilities are better able to provide treatment for all patients.

2. Sec. 585(a)(2) states that formal education "may hinder or prevent the provision of needed drug treatment services." There is no higher goal for NAADAC than ensuring access to effective treatment services. Establishing standards and requirements for the administration of treatment simply ensures that treatment delivered to patients is effective, it does not deny access to those services. As with other health professionals dealing with a disease, standards are needed for treatment professionals.

3. Sec. 585(b)(1) says that States which require formal education to deliver treatment services "shall give credit for religious education and training equivalent to credit given for secular course work in drug treatment ..." Alcohol and drug counselors (ADCs) constitute the one group of professionals who specialize in the diagnosis, assessment and treatment of psychoactive disorders and other substance abuse/use/dependency. These counselors possess a constellation of

Officers
Roxanne Kibben, MA, NCAC II *President*
T. Mark Gallagher, NCAC II *President-Elect*
Francis Hanna, MAC, NCAC II, LCDC, CADAC *Secretary*
Bill B. Barnett, MAC, NCAC II *Treasurer*
Cynthia Moreno, NCAC II, CCDC III *Immediate Past President*

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Sara Jane Gainer, NCAC II, CAC, LSW *Mid-Atlantic*
Roman Fraschel, BS, NCAC II, CEAP *Mid-Central*
Sharon DeEach, MAC, NCAC II, LCDC *Mid-South*
Mary A. Ellis, RSM, MA, NCAC II *North Central*
Thomas M. Sheehan, NCAC II, CAC *Northeast*
Roger A. Curtin, NCAC II, CCDC, CAS III *Northwest*
Elizabeth C. Shifflette, EdD, CC *Southeast*
Robert O. Phillips, MA, NCAC II *Southwest*

Linda Kaplan, MA, CAE *Executive Director*

knowledge that is unique to the alcoholism and drug abuse counseling profession, and distinguishes ADCs from other related professions and specialties. Religious education and training is not equivalent to this knowledge.

4. Sec. 585(b)(2)(B) creates an exception requiring waiver of state established educational qualifications for treatment personnel if, among other requirements, "(I) the religious organization has a record of prior successful drug treatment for ... the preceding three years," ... "(iv) the State ... has failed to demonstrate empirically that the educational qualifications in question are necessary to the operation of a successful program." This legislation undermines a State's ability to protect the public by licensing and certifying qualified treatment providers. It imposes a mandate from the Federal government requiring the States to fund religious programs or face the costs of defending requirements which the State and local governments believe are necessary for protection of the public. States would therefore be required to conduct research without being provided the means to accomplish it. States are unlikely to have the resources to spend on a demanding empirical defense of their rule and consequently may relax treatment standards to allow unfit organizations to deliver treatment with federal funding.

5. Sec. 582 allows Federal funds to be awarded directly to religious facilities providing treatment services. Section 582(g)(2) allows a religious organization which receives such funds to require active participation in religious practice, worship and instruction. There is no requirement of notification that an individual who objects to program services be notified of the right to receive alternative services. Individuals who enter treatment programs are frequently in a vulnerable situation. Forced or coerced conversion is inappropriate and may be unethical. This legislation does not adequately ensure that treatment alternatives are available and is likely to be unconstitutional.

The bottom line: The field of alcohol and drug treatment has been dealt severe Federal appropriations cutbacks in the FY 1996 Center for Substance Abuse Treatment (CSAT) demonstration programs. Treatment capacity will suffer a de facto setback as these funds are removed. This legislation is guaranteed to create a Constitutional question and will prove to be a distraction to achieving effective treatment as questions are resolved about what organizations are entitled to federal funding. Already stretched treatment funding awards may be delayed for years as this question is resolved. Indeed there is no real question. Religious organizations are free to receive funds by creating a non-profit agency in compliance with state law.

Alcoholism and drug addiction are diseases requiring treatment consisting of spiritual, social, psychological and physical factors. This legislation over-emphasizes the spiritual dimension of treatment without providing adequate safeguards to ensure that all aspects of treatment are provided for. It undermines the state's ability to ensure public safety by enacting certification and licensure laws.

NAADAC has been in the forefront of organizations helping to create state standards for licensure, programs of addictions studies, and a degree of professionalism equal to or surpassing that of other health specialties. This legislation reverses that effort and creates a distracting and unnecessary controversy. Title III should be removed from this legislation.

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and Drug Abuse Counselors

1911 North Fort Myer Drive, Suite 900, Arlington, Virginia 22209 (703) 741-7686 1-800-548-0497 FAX: (703) 741-7698

NAADAC Legislative Briefing

June 27, 1996

Constitutional Issue - Appropriation of Federal Funding to Sectarian Treatment Providers

Legislation: Various amendments, usually referred to as "Charitable Choice" provisions, offered by Senator John Ashcroft (R-MO) and the "American Community Renewal Act of 1996" offered by Representatives J. C. Watts (R-OK) and James Talent (R-MO). Senator Ashcroft has placed a hold on reauthorization of the Substance Abuse and Mental Health Services Administration (SAMHSA) in order to force the Senate to consider this amendment.

Of interest to NAADAC: NAADAC is concerned that legislation which seeks to allow religious providers of alcohol and drug treatment to receive federal funding will damage the alcohol and drug treatment profession and hurt consumers' access to professional treatment.

The alcohol and drug treatment profession is currently engaged in efforts in almost every state to create and reinforce standards of practice for alcohol and drug treatment. Just as states regulate doctors for competence, there is a specific body of knowledge, which properly understood allows treatment professionals to effectively relieve patients of complications from their addiction or alcoholism. For the states, the issue is one of public safety and protection of consumers from unethical and ineffective practices. NAADAC has been in the forefront of efforts to bring licensure and certification to the states.

This legislation is an abrupt change from the status quo. Currently, religiously affiliated organizations provide treatment in a professional manner. Under this new legislation, "pervasively sectarian" institutions such as houses of worship, would be permitted to provide government services for the first time. Religious treatment providers would claim exemption from state regulations, even where legislation explicitly attempts to subject religious providers to state legislation because the First Amendment of the U.S. Constitution prevents excessive government entanglement with religious institutions. This legislation would not allow the government to oversee the hiring practices of religious institutions even if complaints were made against the institution preventing the government from enforcing licensing and certification regulations with respect to religious providers.

The bottom line: Religious providers would not be required to hire certified or licensed competent treatment professionals. NAADAC strongly supports the requirement of individual certification for counselors operating in all treatment institutions. Such regulations establish an organized system which ensures that the delivery of this vital health care service is provided by trained and experienced professionals who have met rigorous educational and training requirements prior to serving in the sensitive position of Alcohol and Drug Counselors. Legislation which allows treatment to be provided without respect to minimal standards hurts the field of alcohol and drug addiction treatment along with the millions of people suffering from addiction, their families, employers and the communities in which they live.

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Sharon DeEsch, MAC, NCAC II, LCDC *Mid-South*
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Elizabeth C. Shifflette, EdD, CC *Southeast*
Robert O. Phillips, MA, NCAC II *Southwest*

Linda Kaplan, MA, CAE *Executive Director*

Nan Rich
National President

Testimony submitted by National Council of Jewish Women (NCJW) to Joint House Hearing on H.R. 3467

The National Council of Jewish Women (NCJW) opposes H.R. 3467, the "Saving Our Children: The American Community Renewal Act of 1996." This bill mandates that local communities provide private and religious school tuition vouchers to eligible low-income children in areas designated "renewal communities."

We believe that H.R. 3467 violates the First Amendment's principle of church-state separation. By allowing the federal government to fund religious schools, whether via the vouchers or "scholarships" described in the bill, H.R. 3467 unconstitutionally uses public funds to subsidize religious instruction and therefore advances sectarian missions. Any governmental regulation of such funds would constitute government intrusion into religious affairs.

Furthermore, the voucher mandate provision alone would cost taxpayers $5 billion, thereby weakening public schools by diverting limited resources to private and religious education. The bill further prohibits the Secretary of Education from exercising any direction or supervision of voucher schools and so would essentially constitute a $5 billion block grant to the states with no federal oversight by the Education Department.

Additionally, H.R. 3467 would allow schools that receive federal tax dollars to discriminate in the hiring of employees based on religion, gender and "moral behavior." Students, as well, would be subject to the qualifications specific to the private and religious schools to which they apply. The federal government would thus be sanctioning discrimination. Public schools are where students of all races, religions and nationalities learn the meaning of opportunity, equality and democracy.

Title III of this bill would change current law to permit any religious institution, including houses of worship, to use government funds for proselytizing. H.R. 3467 explicitly allows religious programs to require those seeking government funded substance abuse treatment "to actively participate in religious practice, worship, and instruction" and follow off-site rules of religious behavior. In addition to violating the Establishment Clause of the First Amendment, Title III would impose upon the religious liberty rights of treatment program beneficiaries.

In our National Resolutions, NCJW holds that "religious liberty and the separation of religion and state are constitutional principles which must be protected and preserved in our democratic society" and that quality public education must be provided for all,"utilizing public funds for public schools only." H.R. 3467 contradicts these principles that are cornerstones of our organization and of this nation.

The National Council of Jewish Women is a volunteer organization, inspired by Jewish values, that works through a program of research, education, advocacy and community service to improve the quality of life for women, children and families and strives to ensure individual rights and freedoms for all.

On behalf of the 90,000 members of NCJW, we thank you for the opportunity to submit written testimony on H.R. 3467.

National Council of Jewish Women • 53 West 23rd Street, 6th Fl. • New York, NY • 10010 • (212) 645-4048 • Fax (212) 645-7466

STATEMENT OF NATIONAL COUNCIL ON ALCOHOLISM & DRUG DEPENDENCE, INC.

The National Council on Alcoholism and Drug Dependence opposes HR 3467, the American Community Renewal Act of 1996, because Title III would reverse twenty-five years of progress in effectively treating individuals who suffer from alcoholism and other drug-related problems by allowing people with no training or education in the field to work as counselors.

The government cannot constitutionally compel religious organizations to conform to government criteria, including credentialing and licensing requirements, when making hiring decisions. Title III of HR 3467 would allow religious organizations to use taxpayer money to hire individuals as treatment counselors who have no experience in education or in treating alcoholism or other drug related problems. (Currently, religious organizations must establish separate "religiously-affiliated organizations," such as Catholic Charities, that can use federal money to provide programs. These programs must abide by state and local regulations that pertain to treatment services.) We oppose HR 3467 because to be effective, treatment must provided by knowledgeable, competent counselors.

We also oppose HR 3467 because Title III:

1) erroneously states that "establishing formal educational qualifications for counselors and other personnel in drug treatment programs may undermine the effectiveness of such programs."

In fact, educational and training requirements enhance the effectiveness of treatment. Over the last twenty-five years, we have advanced our knowledge of the diagnosis, assessment and treatment of psychoactive disorders and other substance use, abuse and dependency problems. Nationally certified and state licensed/certified treatment professionals are uniquely trained and qualified to provide treatment.

2) alleges that educational requirements for counselors and other personnel may hinder or prevent the provision of treatment services.

This is just not true. States have established standards and requirements for treatment to protect the public's safety, not to deny the provision of treatment. Educational requirements ensure that alcohol and drug counselors and other health professionals entrusted with patient care meet standards of competence.

3) requires states that impose formal educational qualifications for treatment providers to give credit for religious education equivalent to secular course work in drug treatment or any other secular subject of similar grade level or duration.

Religious education is not the equivalent of secular course work in addictions theory or application; therefore, it cannot be substituted.

4) explicitly preempts state law and constitutional provisions that are designed to protect the public safety through the regulation of treatment professionals and prohibit the government from entangling itself in the affairs of religious institutions.

States should be allowed to set standards for treatment providers and maintain the integrity of their constitutions.

Most treatment providers recognize the spirituality, along with social, psychological and physical factors, is a component of effective treatment. Anyone providing treatment services must be trained and prepared to deal with all of them.

NCADD provides education, information, help and hope in the fight against the chronic, often fatal disease of alcoholism and other drug addictions.

Founded in 1944, NCADD is a voluntary health organization with a nationwide network of Affiliates. NCADD advocates prevention, intervention, research and treatment and is dedicated to ridding the disease of its stigma and its sufferers from their denial and shame.

PEOPLE FOR THE AMERICAN WAY ACTION FUND

People For the American Way Action Fund (PFAWAF) is a national, non-partisan constitutional and civil liberties organization devoted to this country's heritage of tolerance, pluralism, and liberty. PFAWAF has over 300,000 members and activists across the nation committed to preserving and strengthening religious liberty in our communities as well as supporting and improving our public school system. PFAWAF opposes H.R. 3467, the "Saving Our Children: The American Community Renewal Act of 1996," because it exploits the poor and disadvantaged and seeks to advance a conservative social agenda that promotes the unconstitutional goals of government-sponsored religion, restriction of free expression, and government funding of parochial schools.

Under this legislation, in order for a community to be eligible for any renewal community benefits, the community must implement a school voucher program. The voucher program for elementary and secondary students would funnel five billion dollars in public funds to private and parochial schools over a seven-year period and would permit religious schools to receive taxpayer funds directly from the government in the form of scholarships for eligible low-income children. Such federal funding would thereby breach the constitutional wall of separation between church and state because parochial schools, by their very nature, are pervasively sectarian.

In addition, these religious schools would be entitled to require their employees and students to participate in religious instruction as well as abide by the tenets of the faith both in school and out of school. In fact, these schools would be allowed to discriminate on the basis of religion in their acceptance and hiring practices while receiving taxpayer money. Moreover, while this voucher program is said to place educational choice in the hands of poor parents, the

reality is that it would enhance the ability of private and religious schools to discriminate in their student admissions on any basis except race -- including discrimination on the basis of gender, religious belief, socio-economic status, behavioral problems, academic record, and physical ability. Thus, there is simply no assurance that the very children sought to be helped by the voucher program would in fact have the "opportunity" to attend the private schools of their "choice," and every reason to believe that private schools will not allow themselves to become the repository of "problem" or "disadvantaged" children.

There is no indication whether the $5 billion to fund this voucher program would come from an increase in taxes or whether the money would be siphoned off from the support for public education that is available to all children. Even if the money does not come directly from the appropriation for public education, when children use these vouchers to attend a private school, the public school that they leave would no longer receive funds for that student. Therefore, as enrollment in public schools drops, so would the money that public schools use to teach the children remaining. Due to the fact that there is neither enough money nor private school space available to accommodate all of our children, the vast majority of the more than 45 million children who attend public school in this country would be left to attend increasingly under-funded public schools. Indeed, most of the children in the 100 renewal communities would not be assisted by this program because of the limited funds and the unwillingness of some private schools to accept students with disabilities, behavioral problems, or different religious beliefs.

More importantly, school vouchers are not the answer to the educational problems that exist in our public school system. Diverting federal funds and focus away from public schools to

fund private school education would do nothing to address the critical need in public schools for more teachers, improved facilities, and better technology and training. To the contrary, reduced federal funding would only exacerbate these problems. Furthermore, school vouchers will not enhance competition among educational institutions. Diverting federal education money to private schools would not promote fair competition between public and private schools because private schools do not operate under the same constraints under which public schools must operate. Public schools are open to all children within a school district, including those with severe disabilities and other special problems, whereas private schools can "screen out" the children that will cost them more in financial resources and time.

Analysis of some pilot school voucher programs demonstrates the need to remain focused on improving the public school system. In Milwaukee, Wisconsin, where a voucher program has been in effect for approximately six years, only about half of the students eligible for vouchers have taken advantage of them. Approximately one third of the voucher students returned to the Milwaukee public schools after the first year of the program, and 40 percent returned after the second year. In addition, only half of the schools eligible to accept voucher students have actually accepted such children. Academic results in Milwaukee since the voucher program began have been mixed. Second year test scores dropped "considerably" in reading; math results remained the same.[1] The experience of Milwaukee underscores how school voucher programs are not the answer to criticisms of our public school system.

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[1] National Education Association, Center for the Preservation of Public Education, Tuition Vouchers: Myths and Realities (1993) at 1-2; and E. Doerr, A.J. Menendez and J.M. Swomley, The Case Against School Vouchers (1995) at 47-8.

H.R. 3467 also would enable religious organizations to be funded by public drug and alcohol treatment funds. This legislation would amend the federal Substance Abuse and Mental Health Services Administration (SAMHSA) statute to allow religious organizations to access directly federal funds appropriated for drug and alcohol treatment programs. Religious organizations would no longer be required to establish the separate, religious-affiliated charities that have historically provided treatment to the needy, such as Catholic Charities. Instead, the money would go directly to any church, synagogue, mosque, or other holy place that applied. In addition, the new guidelines of SAMHSA, would authorize religious organizations that provide drug and alcohol treatment services with taxpayer money to require their clients to actively participate in religious services and instruction, and abide by the tenets of the faith, in order to receive treatment. Further, this legislation does not require religious organizations to provide notice to the beneficiaries of these programs of their right to request treatment at a different, non-religious treatment program. Such practices would obviously violate the constitutional separation between church and state and the religious liberty rights of program beneficiaries who are being treated in a program using taxpayer money.

In addition to proselytizing with taxpayer money, under the new guidelines proposed in H.R. 3467, participating religious organizations would be allowed to discriminate against employees, although the employees would be paid with government funds. This legislation would enable these religious organizations to refuse to hire otherwise qualified persons on the basis of their religious beliefs, and would allow these organizations to require their employees to follow the rules and beliefs of the religion while at work and in the employees' private lives. Although religious institutions are permitted to discriminate in employment based on religion

using their **private** money, **taxpayer funds** should not and cannot properly be used to fund religious discrimination.

Title II of this bill unnecessarily burdens non-profit agencies that serve the poor. H.R. 3467 establishes a tax credit for charitable donations made to non-profit organizations that directly aid the poor. However, this tax credit would not apply to donations made to any organization that engages in any type of public policy activity such as lobbying, voter registration, public policy advocacy, public policy research, or litigation on behalf of its clients. Such punitive restrictions would force charities to give up their First Amendment rights -- to the great detriment of their clients -- in order for their donors to qualify for the new tax credit.

There is no public policy justification for such a restriction. On a practical level, placing restrictions on so-called public policy advocacy would limit a charity's ability to address public policies that might detrimentally affect the poor. Further, this restriction would most likely restrict a charity from meeting with a school board, a town council, or the local department of social services on issues and programs that would directly impact on that charity's clients. Placing restrictions on how charities use their private donations to serve their clients would be an unprecedented intrusion by the government at a time when Congress is seeking to achieve less federal control over non-governmental programs.

In addition to silencing charities, this provision of H.R. 3467 would place a tremendous paperwork burden on participating charities. Non-profit organizations would be required to keep detailed records and means tests on their clients in order for donors to receive the new tax credit. The time and energy spent on managing the resulting paperwork explosion would prevent many

organizations from fully meeting the needs of their impoverished clients. Furthermore, large numbers of poor people would be unable to provide all of the required proof of poverty and would therefore give up on trying to access the services they so desperately need.

This legislation also would further entangle government in church affairs. Religious-affiliated charities that currently receive federal funding, such as Catholic Charities, are accustomed to federal audits of the assistance programs that they run. However, it would seem that to be eligible under the requirements of this new tax credit, more churches, synagogues, and mosques would have to adopt the record keeping and means testing of government funded programs that would result in intrusive reviews by the federal government. Clearly, this would mean a further weakening of the constitutional separation between church and state.

H.R. 3467 would undermine the traditional control that state and local governments exercise over the businesses operated, and services provided within their jurisdiction. For example, under the proposed changes to SAMHSA, religious organizations would be entitled to request a waiver of State and local education requirements. In addition, this legislation would forbid state and local governments, most of which are popularly elected, from exercising direction and control over the private schools that would be receiving federal funding. Furthermore, this legislation would require the renewal communities to abandon the zoning and licensing laws that have protected the workers and children in these communities from health hazards and incompetence. Thus, this legislation would take traditional local concerns out of the hands of state and locally elected officials.

In conclusion, given the problems that exist in our country such as decaying urban cente and rural poverty, efforts undoubtedly need to be made if we expect to rejuvenate impoverished communities and assist the disadvantaged who live in such conditions. However, such efforts should preclude attempts to promote an ideological social agenda bent on undermining our constitutionally protected freedoms and liberties. The federal government should not inhibit efforts to "renew" communities by including unconstitutional, unnecessary, and unwise provisions that, in the end, would harm rather than help the very people that the proponents of this bill claim to want to help.

Thank you for the opportunity to share with you our concerns about H.R. 3467, "Saving Our Children: The American Community Renewal Act of 1996."

104TH CONGRESS
2D SESSION

H. R. 3467

To amend the Internal Revenue Code of 1986 to allow the designation of renewal communities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 1996

Mr. WATTS of Oklahoma (for himself, Mr. TALENT, Mrs. MYRICK, Mr. ENGLISH of Pennsylvania, Mr. WELDON of Florida, Mr. KNOLLENBERG, Mr. KOLBE, Mr. RIGGS, Mr. CHABOT, Mr. CHAMBLISS, Mr. COBURN, Mr. FLANAGAN, Mr. GUTKNECHT, Mr. LARGENT, Mr. LATOURETTE, Mr. NORWOOD, Mrs. SEASTRAND, Mr. SOUDER, Mr. STOCKMAN, Mr. THORNBERRY, Mr. WELLER, Mr. WICKER, Mr. BAKER of Louisiana, Mr. BALLENGER, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mr. BLUTE, Mr. BURTON of Indiana, Mr. CALVERT, Mr. DOOLITTLE, Mr. DORNAN, Mr. EMERSON, Mr. HASTERT, Mr. HAYES, Mr. HOEKSTRA, Mr. HOKE, Mr. HUTCHINSON, Mr. KING, Mr. KINGSTON, Mr. LEWIS of Kentucky, Mr. LINDER, Mr. MCCREERY, Mr. SHAYS, Mr. WAMP, Mr. MCINTOSH, Mr. DELAY, and Mr. TAYLOR of North Carolina) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Economic and Educational Opportunities, Banking and Financial Services, and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the Internal Revenue Code of 1986 to allow the designation of renewal communities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as "Sav-
3 ing Our Children: The American Community Renewal Act
4 of 1996".

5 (b) TABLE OF CONTENTS.—The table of contents for
6 this Act is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Findings and purpose.

TITLE I—DESIGNATION AND TREATMENT OF RENEWAL COMMUNITIES

Sec. 101. Short title.
Sec. 102. Statement of purpose.
Sec. 103. Designation and treatment of renewal communities.
Sec. 104. Evaluation and reporting requirements.
Sec. 105. Interaction with other Federal programs.
Sec. 106. Deduction for contributions to family development accounts allowable whether or not taxpayer itemizes.
Sec. 107. Allowance of commercial revitalization credit.
Sec. 108. Conforming and clerical amendments.

TITLE II—ADDITIONAL TAX PROVISIONS

Sec. 201. Work opportunity tax credit.
Sec. 202. Credit for certain charitable contributions.
Sec. 203. Deduction for charitable contributions to be allowed to individuals who do not itemize deductions.

TITLE III—PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Sec. 301. Prevention and treatment of substance abuse; services provided through religious organizations.

TITLE IV—LOW-INCOME EDUCATIONAL OPPORTUNITY SCHOLARSHIP PROGRAM

Sec. 401. Short title.
Sec. 402. Findings; precedents.
Sec. 403. Purposes.
Sec. 404. Plan submission; requirements.
Sec. 405. Uses of funds.
Sec. 406. Scholarship program.
Sec. 407. Allocation of funds among renewal communities.
Sec. 408. Parental right of choice in education.
Sec. 409. Eligible schools.
Sec. 410. Administration of program and treatment of funds.
Sec. 411. Contributions to scholarship program from other sources.
Sec. 412. Use of excess funds for additional educational purposes.

Sec. 413. Evaluation.
Sec. 414. Effect on other programs.
Sec. 415. Judicial review.
Sec. 416. Definitions.
Sec. 417. Authorization of appropriations.

TITLE V—ADDITIONAL INCENTIVES FOR RENEWAL COMMUNITIES

Sec. 501. CRA credit for investments in community development organizations located in renewal communities.
Sec. 502. FDA user fee amendment.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) Many of the Nation's urban centers are
5 places with high levels of poverty, high rates of wel-
6 fare dependency, high crime rates, poor schools, and
7 joblessness.

8 (2) Federal tax incentives and regulatory re-
9 forms can encourage economic growth, job creation,
10 and small business formation in many urban centers.

11 (3) Encouraging private sector investment in
12 America's economically distressed urban and rural
13 areas is essential to breaking the cycle of poverty
14 and the related ills of crime, drug abuse, illiteracy,
15 welfare dependency, and unemployment.

16 (b) PURPOSE.—The purpose of this Act is to increase
17 job creation, small business expansion and formation, edu-
18 cational opportunities, and homeownership, and to foster
19 moral renewal, in economically depressed areas by provid-

1 ing Federal tax incentives, regulatory reforms, school re-
2 form pilot projects, and homeownership incentives.

3 TITLE I—DESIGNATION AND 4 TREATMENT OF RENEWAL 5 COMMUNITIES

6 **SEC. 101. SHORT TITLE.**

7 This title may be cited as the "Renewing American
8 Communities Act of 1996".

9 **SEC. 102. STATEMENT OF PURPOSE.**

10 It is the purpose of this title to provide for the estab-
11 lishment of renewal communities in order to stimulate the
12 creation of new jobs, particularly for disadvantaged work-
13 ers and long-term unemployed individuals, and to promote
14 revitalization of economically distressed areas primarily by
15 providing or encouraging—

16 (1) tax relief at the Federal, State, and local
17 levels;

18 (2) regulatory relief at the Federal, State, and
19 local levels; and

20 (3) improved local services and an increase in
21 the economic stake of renewal community residents
22 in their own community and its development, par-
23 ticularly through the increased involvement of pri-
24 vate, local, and neighborhood organizations.

1 **SEC. 103. DESIGNATION AND TREATMENT OF RENEWAL**
2 **COMMUNITIES.**

3 (a) IN GENERAL.—Chapter 1 of the Internal Reve-
4 nue Code of 1986 is amended by adding at the end the
5 following new subchapter:

6 **"Subchapter W—Renewal Communities**

"Part I. Designation.
"Part II. Renewal community capital gain and stock.
"Part III. Family development accounts.
"Part IV. Additional Incentives.

7 **"PART I—DESIGNATION**

"Sec. 1400. Designation of Renewal Communities.

8 **"SEC. 1400. DESIGNATION OF RENEWAL COMMUNITIES.**

9 "(a) DESIGNATION.—

10 "(1) DEFINITIONS.—For purposes of this title,
11 the term 'renewal community' means any area—

12 "(A) which is nominated by one or more
13 local governments and the State or States in
14 which it is located for designation as a renewal
15 community (hereinafter in this section referred
16 to as a 'nominated area'), and

17 "(B) which the Secretary of Housing and
18 Urban Development, after consultation with—

19 "(i) the Secretaries of Agriculture,
20 Commerce, Labor, and the Treasury; the
21 Director of the Office of Management and

1 Budget; and the Administrator of the
2 Small Business Administration, and
3 "(ii) in the case of an area on an In-
4 dian reservation, the Secretary of the Inte-
5 rior,
6 designates as a renewal community.
7 "(2) NUMBER OF DESIGNATIONS.—
8 "(A) IN GENERAL.—The Secretary of
9 Housing and Urban Development may des-
10 ignate not more than 100 nominated areas as
11 renewal communities.
12 "(B) MINIMUM DESIGNATION IN RURAL
13 AREAS.—Of the areas designated under para-
14 graph (1), at least 10 percent must be areas—
15 "(i) which are within a local govern-
16 ment jurisdiction or jurisdictions with a
17 population of less than 50,000 (as deter-
18 mined under the most recent census data
19 available),
20 "(ii) which are outside of a metropoli-
21 tan statistical area (within the meaning of
22 section 143(k)(2)(B)), or
23 "(iii) which are determined by the
24 Secretary of Housing and Urban Develop-

1 ment, after consultation with the Secretary
2 of Commerce, to be rural areas.
3 "(C) ADDITIONAL DESIGNATIONS TO RE-
4 PLACE REVOKED DESIGNATIONS.—
5 "(i) IN GENERAL.—The Secretary of
6 Housing and Urban Development may des-
7 ignate one additional area under subpara-
8 graph (A) to replace each area for which
9 the designation is revoked under subsection
10 (b)(2), but in no event may more than 100
11 areas designated under this subsection
12 bear designations as renewal communities
13 at any time.
14 "(ii) EXTENSION OF TIME LIMIT ON
15 DESIGNATIONS.—In the case of any des-
16 ignation made under this subparagraph,
17 paragraph (4)(B) shall be applied by sub-
18 stituting '36-month' for '24-month'.
19 "(3) AREAS DESIGNATED BASED SOLELY ON
20 DEGREE OF POVERTY, ETC.—
21 "(A) IN GENERAL.—Except as otherwise
22 provided in this section, the nominated areas
23 designated as renewal communities under this
24 subsection shall be those nominated areas with
25 the highest average ranking with respect to the

1 criteria described in subparagraphs (C), (D),
2 and (E) of subsection (c)(3). For purposes of
3 the preceding sentence, an area shall be ranked
4 within each such criterion on the basis of the
5 amount by which the area exceeds such cri-
6 terion, with the area which exceeds such cri-
7 terion by the greatest amount given the highest
8 ranking.

9 "(B) EXCEPTION WHERE INADEQUATE
10 COURSE OF ACTION, ETC.—An area shall not be
11 designated under subparagraph (A) if the Sec-
12 retary of Housing and Urban Development de-
13 termines that the course of action described in
14 subsection (d)(2) with respect to such area is
15 inadequate.

16 "(C) SEPARATE APPLICATION TO RURAL
17 AND OTHER AREAS.—Subparagraph (A) shall
18 be applied separately with respect to areas de-
19 scribed in paragraph (2)(B) and to other areas.
20 "(4) LIMITATION ON DESIGNATIONS.—

21 "(A) PUBLICATION OF REGULATIONS.—
22 The Secretary of Housing and Urban Develop-
23 ment shall prescribe by regulation no later than
24 4 months after the date of the enactment of

1 this section, after consultation with the officials
2 described in paragraph (1)(B)—
3 "(i) the procedures for nominating an
4 area under paragraph (1)(A),
5 "(ii) the parameters relating to the
6 size and population characteristics of a re-
7 newal community, and
8 "(iii) the manner in which nominated
9 areas will be evaluated based on the cri-
10 teria specified in subsection (d).
11 "(B) TIME LIMITATIONS.—The Secretary
12 of Housing and Urban Development may des-
13 ignate nominated areas as renewal communities
14 only during the 24-month period beginning on
15 the first day of the first month following the
16 month in which the regulations described in
17 subparagraph (A) are prescribed.
18 "(C) PROCEDURAL RULES.—The Secretary
19 of Housing and Urban Development shall not
20 make any designation of a nominated area as a
21 renewal community under paragraph (2) un-
22 less—
23 "(i) the local governments and the
24 State in which the nominated area is lo-
25 cated have the authority—

1 "(I) to nominate such area for
2 designation as a renewal community,
3 "(II) to make the State and local
4 commitments described in subsection
5 (d), and
6 "(III) to provide assurances sat-
7 isfactory to the Secretary of Housing
8 and Urban Development that such
9 commitments will be fulfilled,
10 "(ii) a nomination regarding such
11 area is submitted in such a manner and in
12 such form, and contains such information,
13 as the Secretary of Housing and Urban
14 Development shall by regulation prescribe,
15 and
16 "(iii) the Secretary of Housing and
17 Urban Development determines that any
18 information furnished is reasonably accu-
19 rate.
20 "(5) NOMINATION PROCESS FOR INDIAN RES-
21 ERVATIONS.—For purposes of this subchapter, in
22 the case of a nominated area on an Indian reserva-
23 tion, the reservation governing body (as determined
24 by the Secretary of the Interior) shall be treated as

1 being both the State and local governments with re-
2 spect to such area.
3 "(b) PERIOD FOR WHICH DESIGNATION IS IN EF-
4 FECT.—
5 "(1) IN GENERAL.—Any designation of an area
6 as a renewal community shall remain in effect dur-
7 ing the period beginning on the date of the designa-
8 tion and ending on the earliest of—
9 "(A) December 31 of the 7th calendar year
10 following the calendar year in which such date
11 occurs,
12 "(B) the termination date designated by
13 the State and local governments in their nomi-
14 nation pursuant to subsection (a)(4)(C)(ii), or
15 "(C) the date the Secretary of Housing
16 and Urban Development revokes such designa-
17 tion under paragraph (2).
18 "(2) REVOCATION OF DESIGNATION.—The Sec-
19 retary of Housing and Urban Development may,
20 after—
21 "(A) consultation with the officials de-
22 scribed in subsection (a)(1)(B) (and the Sec-
23 retary of Education if notification required
24 under section 404 of the Low-Income Edu-

1 cational Opportunity Scholarship Act of 1996 is
2 received), and
3 "(B) a hearing on the record involving offi-
4 cials of the State or local government involved
5 (or both, if applicable),
6 revoke the designation of an area if the Secretary of
7 Housing and Urban Development determines that
8 the local government or State in which the area is
9 located is not complying substantially with the State
10 or local commitments, respectively, described in sub-
11 section (d).
12 "(c) AREA AND ELIGIBILITY REQUIREMENTS.—
13 "(1) IN GENERAL.—The Secretary of Housing
14 and Urban Development may designate any nomi-
15 nated area as a renewal community under subsection
16 (a) only if the area meets the requirements of para-
17 graphs (2) and (3) of this subsection.
18 "(2) AREA REQUIREMENTS.—A nominated area
19 meets the requirements of this paragraph if—
20 "(A) the area is within the jurisdiction of
21 a local government,
22 "(B) the boundary of the area is continu-
23 ous, and
24 "(C) the area—

1 (i) has a population, as determined by
2 the most recent census data available, of at
3 least—
4 "(I) 4,000 if any portion of such
5 area (other than a rural area de-
6 scribed in subsection (a)(2)(B)(i)) is
7 located within a metropolitan statis-
8 tical area (within the meaning of sec-
9 tion 143(k)(2)(B)) which has a popu-
10 lation of 50,000 or greater, or
11 "(II) 1,000 in any other case, or
12 "(ii) is entirely within an Indian res-
13 ervation (as determined by the Secretary of
14 the Interior).
15 "(3) ELIGIBILITY REQUIREMENTS.—A nomi-
16 nated area meets the requirements of this paragraph
17 if the State and the local governments in which it
18 is located certify (and the Secretary of Housing and
19 Urban Development, after such review of supporting
20 data as he deems appropriate, accepts such certifi-
21 cation) that—
22 "(A) the area is one of pervasive poverty,
23 unemployment, and general distress,
24 "(B) the area is located wholly within the
25 jurisdiction of a local government which is eligi-

1 ble for Federal assistance under section 119 of
2 the Housing and Community Development Act
3 of 1974, as in effect on the date of the enact-
4 ment of this section,
5 "(C) the unemployment rate in the area,
6 as determined by the appropriate available
7 data, was at least 1½ times the national unem-
8 ployment rate for the period to which such data
9 relate,
10 "(D) the poverty rate (as determined by
11 the most recent census data available) for each
12 population census tract (or where not tracted,
13 the equivalent county division as defined by the
14 Bureau of the Census for the purpose of defin-
15 ing poverty areas) within the area was at least
16 20 percent for the period to which such data re-
17 late, and
18 "(E) at least 70 percent of the households
19 living in the area have incomes below 80 per-
20 cent of the median income of households within
21 the jurisdiction of the local government (deter-
22 mined in the same manner as under section
23 119(b)(2) of the Housing and Community De-
24 velopment Act of 1974).

1 "(d) REQUIRED STATE AND LOCAL COMMIT-
2 MENTS.—
3 "(1) IN GENERAL.—The Secretary of Housing
4 and Urban Development may designate any nomi-
5 nated area as a renewal community under subsection
6 (a) only if—
7 "(A) the local government and the State in
8 which the area is located agree in writing that,
9 during any period during which the area is a
10 renewal community, such governments will—
11 "(i) follow a specified course of action
12 which meets the requirements of para-
13 graph (2) and is designed to reduce the
14 various burdens borne by employers or em-
15 ployees in such area, and
16 "(ii) comply with the requirements of
17 the Low-Income Educational Opportunity
18 Scholarship Act of 1996, and
19 "(B) the economic growth promotion re-
20 quirements of paragraph (3) are met.
21 "(2) COURSE OF ACTION.—
22 "(A) IN GENERAL.—A course of action
23 meets the requirements of this paragraph if
24 such course of action is a written document,
25 signed by a State (or local government) and

1 neighborhood organizations, which evidences a
2 partnership between such State or government
3 and community-based organizations and which
4 commits each signatory to specific and measur-
5 able goals, actions, and timetables. Such course
6 of action shall include at least five of the follow-
7 ing:

8 "(i) A reduction of tax rates or fees
9 applying within the renewal community.

10 "(ii) An increase in the level of effi-
11 ciency of local services within the renewal
12 community.

13 "(iii) Crime reduction strategies, such
14 as crime prevention (including the provi-
15 sion of such services by nongovernmental
16 entities).

17 "(iv) Actions to reduce, remove, sim-
18 plify, or streamline governmental require-
19 ments applying within the renewal commu-
20 nity.

21 "(v) Involvement in the program by
22 private entities, organizations, neighbor-
23 hood organizations, and community
24 groups, particularly those in the renewal
25 community, including a commitment from

1 such private entities to provide jobs and
2 job training for, and technical, financial, or
3 other assistance to, employers, employees,
4 and residents from the renewal community.
5 "(vi) State or local income tax bene-
6 fits for fees paid for services performed by
7 a nongovernmental entity which were for-
8 merly performed by a governmental entity.
9 "(vii) The gift (or sale at below fair
10 market value) of surplus realty (such as
11 land, homes, and commercial or industrial
12 structures) in the renewal community to
13 neighborhood organizations, community de-
14 velopment corporations, or private compa-
15 nies.
16 "(B) RECOGNITION OF PAST EFFORTS.—
17 For purposes of this section, in evaluating the
18 course of action agreed to by any State or local
19 government, the Secretary of Housing and
20 Urban Development shall take into account the
21 past efforts of such State or local government
22 in reducing the various burdens borne by em-
23 ployers and employees in the area involved.
24 "(3) ECONOMIC GROWTH PROMOTION REQUIRE-
25 MENTS.—The economic growth promotion require-

1 ments of this paragraph are met with respect to a
2 nominated area if the local government and the
3 State in which such area is located certify in writing
4 that such government and State, respectively, have
5 repealed or otherwise will not enforce within the
6 area, if such area is designated as a renewal commu-
7 nity—
8 (A) licensing requirements for occupations
9 that do not ordinarily require a professional de-
10 gree,
11 (B) zoning restrictions on home-based
12 businesses which do not create a public nui-
13 sance,
14 (C) permit requirements for street vendors
15 who do not create a public nuisance,
16 (D) zoning or other restrictions that im-
17 pede the formation of schools or child care cen-
18 ters, and
19 (E) franchises or other restrictions on
20 competition for businesses providing public
21 services, including but not limited to taxicabs,
22 jitneys, cable television, or trash hauling,
23 except to the extent that such regulation of busi-
24 nesses and occupations is necessary for and well-tai-
25 lored to the protection of health and safety.

1 "(e) SPECIAL RULES FOR EMPOWERMENT ZONES
2 AND ENTERPRISE COMMUNITIES DESIGNATED AS RE-
3 NEWAL COMMUNITIES.—
4 "(1) IN GENERAL.—Any empowerment zone or
5 enterprise community which is designated as a re-
6 newal community under this section shall be treated
7 as if its designation as an empowerment zone or en-
8 terprise community ended (except as provided in
9 paragraph (2)) on the date of such designation as a
10 renewal community.
11 "(2) ENTERPRISE ZONE FACILITY BONDS.—In
12 the case of an empowerment zone or enterprise com-
13 munity described in paragraph (1), designation as
14 an empowerment zone or enterprise community shall
15 be treated as ended, for purposes of applying section
16 1394, with respect to obligations issued after the
17 date of designation as a renewal community, except
18 that designation as an empowerment zone or enter-
19 prise community shall not be treated as ended with
20 respect to any obligation (or series of obligations) is-
21 sued to refund an obligation issued before such date,
22 if the refunding obligation meets the requirements of
23 subclauses (I), (II), and (III) of section
24 144(a)(12)(A)(ii).

1 "(f) DEFINITIONS.—For purposes of this sub-
2 chapter—
3 "(1) GOVERNMENTS.—If more than one govern-
4 ment seeks to nominate an area as a renewal com-
5 munity, any reference to, or requirement of, this sec-
6 tion shall apply to all such governments.
7 "(2) STATE.—The term 'State' includes Puerto
8 Rico, the Virgin Islands of the United States, Guam,
9 American Samoa, the Northern Mariana Islands,
10 and any other possession of the United States.
11 "(3) LOCAL GOVERNMENT.—The term 'local
12 government' means—
13 "(A) any county, city, town, township, par-
14 ish, village, or other general purpose political
15 subdivision of a State,
16 "(B) any combination of political subdivi-
17 sions described in subparagraph (A) recognized
18 by the Secretary of Housing and Urban Devel-
19 opment, and
20 "(C) the District of Columbia.
21 **"PART II—RENEWAL COMMUNITY CAPITAL GAIN**
22 **AND STOCK**

"Sec. 1400A. Renewal community capital gain.
"Sec. 1400B. Renewal community stock.
"Sec. 1400C. Renewal community business defined.

1 **"SEC. 1400A. RENEWAL COMMUNITY CAPITAL GAIN.**

2 "(a) GENERAL RULE.—Gross income does not in-
3 clude any qualified capital gain recognized on the sale or
4 exchange of a qualified community asset held for more
5 than 5 years.

6 "(b) QUALIFIED COMMUNITY ASSET.—For purposes
7 of this section—

8 "(1) IN GENERAL.—The term 'qualified com-
9 munity asset' means—

10 "(A) any qualified community stock,

11 "(B) any qualified community business
12 property, and

13 "(C) any qualified community partnership
14 interest.

15 "(2) QUALIFIED COMMUNITY STOCK.—

16 "(A) IN GENERAL.—Except as provided in
17 subparagraph (B), the term 'qualified commu-
18 nity stock' means any stock in a domestic cor-
19 poration if—

20 "(i) such stock is acquired by the tax-
21 payer on original issue from the corpora-
22 tion solely in exchange for cash,

23 "(ii) as of the time such stock was is-
24 sued, such corporation was a renewal com-
25 munity business (or, in the case of a new
26 corporation, such corporation was being or-

1 ganized for purposes of being a renewal
2 community business), and
3 "(iii) during substantially all of the
4 taxpayer's holding period for such stock,
5 such corporation qualified as a renewal
6 community business.
7 "(B) EXCLUSION OF STOCK FOR WHICH
8 DEDUCTION UNDER SECTION 1400B AL-
9 LOWED.—The term 'qualified community stock'
10 shall not include any stock the basis of which
11 is reduced under section 1400B.
12 "(C) REDEMPTIONS.—The term 'qualified
13 community stock' shall not include any stock
14 acquired from a corporation which made a sub-
15 stantial stock redemption or distribution (with-
16 out a bona fide business purpose therefor) in an
17 attempt to avoid the purposes of this section.
18 "(3) QUALIFIED COMMUNITY BUSINESS PROP-
19 ERTY.—
20 "(A) IN GENERAL.—The term 'qualified
21 community business property' means tangible
22 property if—
23 "(i) such property was acquired by
24 the taxpayer by purchase (as defined in
25 section 179(d)(2)) after the date on which

1 the designation of the renewal community
2 took effect,
3 "(ii) the original use of such property
4 in the renewal community commences with
5 the taxpayer, and
6 "(iii) during substantially all of the
7 taxpayer's holding period for such prop-
8 erty, substantially all of the use of such
9 property was in a renewal community busi-
10 ness of the taxpayer.
11 "(B) SPECIAL RULE FOR SUBSTANTIAL IM-
12 PROVEMENTS.—
13 "(i) IN GENERAL.—The requirements
14 of clauses (i) and (ii) of subparagraph (A)
15 shall be treated as satisfied with respect
16 to—
17 "(I) property which is substan-
18 tially improved by the taxpayer, and
19 "(II) any land on which such
20 property is located.
21 "(ii) SUBSTANTIAL IMPROVEMENT.—
22 For purposes of clause (i), property shall
23 be treated as substantially improved by the
24 taxpayer only if, during any 24-month pe-
25 riod beginning after the date on which the

1 designation of the renewal community took
2 effect, additions to basis with respect to
3 such property in the hands of the taxpayer
4 exceed the greater of—
5 "(I) an amount equal to the ad-
6 justed basis at the beginning of such
7 24-month period in the hands of the
8 taxpayer, or
9 "(II) $5,000.
10 "(C) LIMITATION ON LAND.—The term
11 'qualified community business property' shall
12 not include land which is not an integral part
13 of a renewal community business.
14 "(4) QUALIFIED COMMUNITY PARTNERSHIP IN-
15 TEREST.—The term 'qualified community partner-
16 ship interest' means any interest in a partnership
17 if—
18 "(A) such interest is acquired by the tax-
19 payer from the partnership solely in exchange
20 for cash,
21 "(B) as of the time such interest was ac-
22 quired, such partnership was a renewal commu-
23 nity business (or, in the case of a new partner-
24 ship, such partnership was being organized for

1 purposes of being a renewal community busi-
2 ness), and
3 "(C) during substantially all of the tax-
4 payer's holding period for such interest, such
5 partnership qualified as a renewal community
6 business.
7 A rule similar to the rule of paragraph (2)(C) shall
8 apply for purposes of this paragraph.
9 "(5) TREATMENT OF SUBSEQUENT PUR-
10 CHASERS.—The term 'qualified community asset' in-
11 cludes any property which would be a qualified com-
12 munity asset but for paragraph (2)(A)(i), (3)(A)(ii),
13 or (4)(A) in the hands of the taxpayer if such prop-
14 erty was a qualified community asset in the hands
15 of all prior holders.
16 "(6) 10-YEAR SAFE HARBOR.—If any property
17 ceases to be a qualified community asset by reason
18 of paragraph (2)(A)(iii), (3)(A)(iii), or (4)(C) after
19 the 10-year period beginning on the date the tax-
20 payer acquired such property, such property shall
21 continue to be treated as meeting the requirements
22 of such paragraph; except that the amount of gain
23 to which subsection (a) applies on any sale or ex-
24 change of such property shall not exceed the amount

1 which would be qualified capital gain had such prop-
2 erty been sold on the date of such cessation.
3 "(7) TREATMENT OF COMMUNITY DESIGNATION
4 TERMINATIONS.—The termination of any designa-
5 tion of an area as a renewal community shall be dis-
6 regarded for purposes of determining whether any
7 property is a qualified community asset.
8 "(c) OTHER DEFINITIONS AND SPECIAL RULES.—
9 For purposes of this section—
10 "(1) QUALIFIED CAPITAL GAIN.—Except as
11 otherwise provided in this subsection, the term
12 'qualified capital gain' means any long-term capital
13 gain recognized on the sale or exchange of a quali-
14 fied community asset held for more than 5 years
15 (determined without regard to any period before the
16 designation of the renewal community).
17 "(2) CERTAIN GAIN ON REAL PROPERTY NOT
18 QUALIFIED.—The term 'qualified capital gain' shall
19 not include any gain which would be treated as ordi-
20 nary income under section 1250 if section 1250 ap-
21 plied to all depreciation rather than the additional
22 depreciation.
23 "(3) GAIN ATTRIBUTABLE TO PERIODS AFTER
24 TERMINATION OF COMMUNITY DESIGNATION NOT
25 QUALIFIED.—The term 'qualified capital gain' shall

1 not include any gain attributable to periods after the
2 termination of any designation of an area as a re-
3 newal community.
4 "(4) RELATED PARTY TRANSACTIONS.—The
5 term 'qualified capital gain' shall not include any
6 gain attributable, directly or indirectly, in whole or
7 in part, to a transaction with a related person. For
8 purposes of this paragraph, persons are related to
9 each other if such persons are described in section
10 267(b) or 707(b)(1).
11 "(d) TREATMENT OF PASS-THRU ENTITIES.—
12 "(1) SALES AND EXCHANGES.—Gain on the
13 sale or exchange of an interest in a pass-thru entity
14 held by the taxpayer (other than an interest in an
15 entity which was a renewal community business dur-
16 ing substantially all of the period the taxpayer held
17 such interest) for more than 5 years shall be treated
18 as gain described in subsection (a) to the extent
19 such gain is attributable to amounts which would be
20 qualified capital gain on qualified community assets
21 (determined as if such assets had been sold on the
22 date of the sale or exchange) held by such entity for
23 more than 5 years (determined without regard to
24 any period before the date of the designation of the
25 renewal community) and throughout the period the

1 taxpayer held such interest. A rule similar to the
2 rule of paragraph (2)(C) shall apply for purposes of
3 the preceding sentence.
4 "(2) INCOME INCLUSIONS.—
5 "(A) IN GENERAL.—Any amount included
6 in income by reason of holding an interest in a
7 pass-thru entity (other than an entity which
8 was a renewal community business during sub-
9 stantially all of the period the taxpayer held the
10 interest to which such inclusion relates) shall be
11 treated as gain described in subsection (a) if
12 such amount meets the requirements of sub-
13 paragraph (B).
14 "(B) REQUIREMENTS.—An amount meets
15 the requirements of this subparagraph if—
16 "(i) such amount is attributable to
17 qualified capital gain recognized on the
18 sale or exchange by the pass-thru entity of
19 property which is a qualified community
20 asset in the hands of such entity and
21 which was held by such entity for the pe-
22 riod required under subsection (a), and
23 "(ii) such amount is includible in the
24 gross income of the taxpayer by reason of
25 the holding of an interest in such entity

1 which was held by the taxpayer on the date
2 on which such pass-thru entity acquired
3 such asset and at all times thereafter be-
4 fore the disposition of such asset by such
5 pass-thru entity.
6 "(C) LIMITATION BASED ON INTEREST
7 ORIGINALLY HELD BY TAXPAYER.—Subpara-
8 graph (A) shall not apply to any amount to the
9 extent such amount exceeds the amount to
10 which subparagraph (A) would have applied if
11 such amount were determined by reference to
12 the interest the taxpayer held in the pass-thru
13 entity on the date the qualified community
14 asset was acquired.
15 "(3) PASS-THRU ENTITY.—For purposes of this
16 subsection, the term 'pass-thru entity' means—
17 "(A) any partnership,
18 "(B) any S corporation,
19 "(C) any regulated investment company,
20 and
21 "(D) any common trust fund.
22 "(e) SALES AND EXCHANGES OF INTERESTS IN
23 PARTNERSHIPS AND S CORPORATIONS WHICH ARE
24 QUALIFIED COMMUNITY BUSINESSES.—In the case of the
25 sale or exchange of an interest in a partnership, or of

1 stock in an S corporation, which was a renewal community
2 business during substantially all of the period the taxpayer
3 held such interest or stock, the amount of qualified capital
4 gain shall be determined without regard to—
5 "(1) any intangible, and any land, which is not
6 an integral part of any qualified business entity (as
7 defined in section 1400C(b)), and
8 "(2) gain attributable to periods before the des-
9 ignation of an area as a renewal community.
10 "(f) CERTAIN TAX-FREE AND OTHER TRANSFERS.—
11 For purposes of this section—
12 "(1) IN GENERAL.—In the case of a transfer of
13 a qualified community asset to which this subsection
14 applies, the transferee shall be treated as—
15 "(A) having acquired such asset in the
16 same manner as the transferor, and
17 "(B) having held such asset during any
18 continuous period immediately preceding the
19 transfer during which it was held (or treated as
20 held under this subsection) by the transferor.
21 "(2) TRANSFERS TO WHICH SUBSECTION AP-
22 PLIES.—This subsection shall apply to any trans-
23 fer—
24 "(A) by gift,
25 "(B) at death, or

"(C) from a partnership to a partner thereof, of a qualified community asset with respect to which the requirements of subsection (d)(2) are met at the time of the transfer (without regard to the 5-year holding requirement).

"(3) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

"SEC. 1400B. RENEWAL COMMUNITY STOCK.

"(a) GENERAL RULE.—At the election of any individual, the aggregate amount paid by such taxpayer during the taxable year for the purchase of renewal community stock shall be allowed as a deduction.

"(b) LIMITATIONS.—

"(1) CEILING.—

"(A) IN GENERAL.—The maximum amount allowed as a deduction under subsection (a) to a taxpayer shall not exceed—

"(i) $100,000 for any taxable year, and

"(ii) when added to the aggregate amount allowed as a deduction under this section in all prior years, $500,000.

1 "(B) EXCESS AMOUNTS.—If the amount
2 otherwise deductible by any person under sub-
3 section (a) exceeds the limitation under—
4 "(i) subparagraph (A)(i), the amount
5 of such excess shall be treated as an
6 amount paid in the next taxable year, and
7 "(ii) subparagraph (A), the deduction
8 allowed for any taxable year shall be allo-
9 cated proportionately among the renewal
10 community stock purchased by such person
11 on the basis of the respective purchase
12 prices per share.
13 "(2) RELATED PERSONS.—The taxpayer and
14 members of the taxpayer's family shall be treated as
15 one person for purposes of paragraph (1) and the
16 limitations contained in such paragraph shall be al-
17 located among the taxpayer and such members in
18 accordance with their respective purchases of re-
19 newal community stock. For purposes of this para-
20 graph, an individual's family includes only such indi-
21 vidual's spouse and minor children.
22 "(3) PARTIAL TAXABLE YEAR.—If designation
23 of an area as a renewal community occurs, expires,
24 or is revoked pursuant to section 1400 on a date
25 other than the first or last day of the taxable year

1 of the taxpayer, or in the case of a short taxable
2 year, the limitations specified in paragraph (1) shall
3 be adjusted on a pro rata basis (based upon the
4 number of days).
5 "(c) RENEWAL COMMUNITY STOCK.—For purposes
6 of this section—
7 "(1) IN GENERAL.—The term 'renewal commu-
8 nity stock' means stock of a corporation if—
9 "(A) such stock is acquired on original
10 issue from the corporation, and
11 "(B) such corporation is, at the time of
12 such issuance, a qualified renewal community
13 issuer.
14 "(2) PROCEEDS MUST BE INVESTED IN QUALI-
15 FIED RENEWAL COMMUNITY PROPERTY.—
16 "(A) IN GENERAL.—Such term shall in-
17 clude such stock only to the extent that the pro-
18 ceeds of such issuance are used by such issuer
19 during the 12-month period beginning on the
20 date of issuance to purchase (as defined in sec-
21 tion 179(d)(2)) qualified renewal community
22 property.
23 "(B) QUALIFIED RENEWAL COMMUNITY
24 PROPERTY.—For purposes of this section, the
25 term 'qualified renewal community property'

1 means property to which section 168 applies (or
2 would apply but for section 179)—
3 "(i) the original use of which com-
4 mences in a renewal community with the
5 issuer, and
6 "(ii) substantially all of the use of
7 which is in such renewal community.
8 "(3) REDEMPTIONS.—The term 'renewal com-
9 munity stock' shall not include any stock acquired
10 from a corporation which made a substantial stock
11 redemption or distribution (without a bona fide busi-
12 ness purpose therefor) in an attempt to avoid the
13 purposes of this section.
14 "(d) QUALIFIED RENEWAL COMMUNITY ISSUER.—
15 For purposes of this section, the term 'qualified renewal
16 community issuer' means any domestic C corporation if—
17 "(1) such corporation is a corporation described
18 in section 1400C(b) or, in the case of a new corpora-
19 tion, such corporation is being organized for pur-
20 poses of being such a corporation,
21 "(2) such corporation does not have more than
22 one class of stock,
23 "(3) the sum of—
24 "(A) the money,

1 "(B) the aggregate unadjusted bases of
2 property owned by such corporation, and
3 "(C) the value of property leased to the
4 corporation (as determined under regulations
5 prescribed by the Secretary),
6 does not exceed $50,000,000, and
7 "(4) more than 20 percent of the total voting
8 power, and 20 percent of the total value, of the
9 stock of such corporation is owned directly by indi-
10 viduals or estates or indirectly by individuals
11 through partnerships or trusts.
12 The determination under paragraph (3) shall be made as
13 of the time of issuance of the stock in question but shall
14 include amounts received for such stock.
15 "(e) DISPOSITIONS OF STOCK.—
16 "(1) BASIS REDUCTION.—For purposes of this
17 title, the basis of any renewal community stock shall
18 be reduced by the amount of the deduction allowed
19 under this section with respect to such stock.
20 "(2) DEDUCTION RECAPTURED AS ORDINARY
21 INCOME.—For purposes of section 1245—
22 "(A) any stock the basis of which is re-
23 duced under paragraph (1) (and any other
24 property the basis of which is determined in
25 whole or in part by reference to the adjusted

1 basis of such stock) shall be treated as section
2 1245 property, and
3 "(B) any reduction under paragraph (1)
4 shall be treated as a deduction allowed for de-
5 preciation.
6 If an exchange of any stock described in paragraph
7 (1) qualifies under section 354(a), 355(a), or
8 356(a), the amount of gain recognized under section
9 1245 by reason of this paragraph shall not exceed
10 the amount of gain recognized in the exchange (de-
11 termined without regard to this paragraph).
12 "(3) CERTAIN EVENTS TREATED AS DISPOSI-
13 TIONS.—For purposes of determining the amount
14 treated as ordinary income under section 1245 by
15 reason of paragraph (2), paragraph (3) of section
16 1245(b) (relating to certain tax-free transactions)
17 shall not apply.
18 "(4) INTEREST CHARGED IF DISPOSITION
19 WITHIN 5 YEARS OF PURCHASE.—
20 "(A) IN GENERAL.—If—
21 "(i) a taxpayer disposes of any re-
22 newal community stock with respect to
23 which a deduction was allowed under sub-
24 section (a) (or any other property the basis
25 of which is determined in whole or in part

1 by reference to the adjusted basis of such
2 stock) before the end of the 5-year period
3 beginning on the date such stock was pur-
4 chased by the taxpayer, and
5 "(ii) section 1245(a) applies to such
6 disposition by reason of paragraph (2),
7 then the tax imposed by this chapter for the
8 taxable year in which such disposition occurs
9 shall be increased by the amount determined
10 under subparagraph (B).
11 "(B) INCREASE AMOUNT.—For purposes
12 of subparagraph (A), the amount of the in-
13 crease shall be equal to the amount of interest
14 (determined at the rate applicable under section
15 6621(a)(2)) that would accrue—
16 "(i) during the period beginning on
17 the date the stock was purchased by the
18 taxpayer and ending on the date of such
19 disposition by the taxpayer, and
20 "(ii) on an amount equal to the aggre-
21 gate decrease in tax of the taxpayer result-
22 ing from the deduction allowed under sub-
23 section (a) of this section with respect to
24 such stock.

"(C) SPECIAL RULE.—Any increase in tax under subparagraph (A) shall not be treated as a tax imposed by this chapter for purposes of—

"(i) determining the amount of any credit allowable under this chapter, and

"(ii) determining the amount of the tax imposed by section 55.

"(f) DISQUALIFICATION.—

"(1) ISSUER CEASES TO QUALIFY.—If, during the 10-year period beginning on the date renewal community stock was purchased by the taxpayer, the issuer of such stock ceases to be a qualified renewal community issuer (determined without regard to subsection (d)(3)), then notwithstanding any provision of this subtitle other than paragraph (2), the taxpayer shall be treated for purposes of subsection (e) as disposing of such stock (and any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such stock) during the taxable year during which such cessation occurs at its fair market value as of the 1st day of such taxable year.

"(2) CESSATION OF RENEWAL COMMUNITY STATUS NOT TO CAUSE RECAPTURE.—A corporation shall not fail to be treated as a qualified renewal

1 community issuer for purposes of paragraph (1)
2 solely by reason of the termination or revocation of
3 a designation as a renewal community, as the case
4 may be.
5 "(g) OTHER SPECIAL RULES.—
6 "(1) APPLICATION OF LIMITS TO PARTNER-
7 SHIPS AND S CORPORATIONS.—In the case of a part-
8 nership or an S corporation, the limitations under
9 subsection (b) shall apply at the partner and share-
10 holder level and shall not apply at the partnership
11 or corporation level.
12 "(2) DEDUCTION NOT ALLOWED TO ESTATES
13 AND TRUSTS.—Estates and trusts shall not be treat-
14 ed as individuals for purposes of this section.
15 **"SEC. 1400C. RENEWAL COMMUNITY BUSINESS DEFINED.**
16 "(a) IN GENERAL.—For purposes of this part, the
17 term 'renewal community business' means—
18 "(1) any qualified business entity, and
19 "(2) any qualified proprietorship.
20 Such term shall include any trades or businesses which
21 would qualify as a renewal community business if such
22 trades or businesses were separately incorporated. Such
23 term shall not include any trade or business of producing
24 property of a character subject to the allowance for deple-
25 tion under section 611.

1 "(b) QUALIFIED BUSINESS ENTITY.— For purposes
2 of this section, the term 'qualified business entity' means,
3 with respect to any taxable year, any corporation or part-
4 nership if for such year—
5 "(1) every trade or business of such entity is
6 the active conduct of a qualified business within a
7 renewal community,
8 "(2) at least 80 percent of the total gross in-
9 come of such entity is derived from the active con-
10 duct of such business,
11 "(3) substantially all of the use of the tangible
12 property of such entity (whether owned or leased) is
13 within a renewal community,
14 "(4) substantially all of the intangible property
15 of such entity is used in, and exclusively related to,
16 the active conduct of any such business,
17 "(5) substantially all of the services performed
18 for such entity by its employees are performed in a
19 renewal community,
20 "(6) at least 35 percent of its employees are
21 residents of a renewal community,
22 "(7) less than 5 percent of the average of the
23 aggregate unadjusted bases of the property of such
24 entity is attributable to collectibles (as defined in
25 section 408(m)(2)) other than collectibles that are

1 held primarily for sale to customers in the ordinary
2 course of such business, and
3 "(8) less than 5 percent of the average of the
4 aggregate unadjusted bases of the property of such
5 entity is attributable to nonqualified financial prop-
6 erty.
7 "(c) QUALIFIED PROPRIETORSHIP.—For purposes of
8 this section, the term 'qualified proprietorship' means,
9 with respect to any taxable year, any qualified business
10 carried on by an individual as a proprietorship if for such
11 year—
12 "(1) at least 80 percent of the total gross in-
13 come of such individual from such business is de-
14 rived from the active conduct of such business in a
15 renewal community,
16 "(2) substantially all of the use of the tangible
17 property of such individual in such business (wheth-
18 er owned or leased) is within a renewal community,
19 "(3) substantially all of the intangible property
20 of such business is used in, and exclusively related
21 to, the active conduct of such business,
22 "(4) substantially all of the services performed
23 for such individual in such business by employees of
24 such business are performed in a renewal commu-
25 nity,

1 "(5) at least 35 percent of such employees are
2 residents of a renewal community,
3 "(6) less than 5 percent of the average of the
4 aggregate unadjusted bases of the property of such
5 individual which is used in such business is attrib-
6 utable to collectibles (as defined in section
7 408(m)(2)) other than collectibles that are held pri-
8 marily for sale to customers in the ordinary course
9 of such business, and
10 "(7) less than 5 percent of the average of the
11 aggregate unadjusted bases of the property of such
12 individual which is used in such business is attrib-
13 utable to nonqualified financial property.
14 For purposes of this subsection, the term 'employee' in-
15 cludes the proprietor.
16 "(d) QUALIFIED BUSINESS.—For purposes of this
17 section—
18 "(1) IN GENERAL.—Except as otherwise pro-
19 vided in this subsection, the term 'qualified business'
20 means any trade or business.
21 "(2) RENTAL OF REAL PROPERTY.—The rental
22 to others of real property located in a renewal com-
23 munity shall be treated as a qualified business if and
24 only if—

1 "(A) the property is not residential rental
2 property (as defined in section 168(e)(2)), and
3 "(B) at least 50 percent of the gross rental
4 income from the real property is from renewal
5 community businesses.
6 "(3) RENTAL OF TANGIBLE PERSONAL PROP-
7 ERTY.—The rental to others of tangible personal
8 property shall be treated as a qualified business if
9 and only if substantially all of the rental of such
10 property is by renewal community businesses or by
11 residents of a renewal community.
12 "(4) TREATMENT OF BUSINESS HOLDING IN-
13 TANGIBLES.—The term 'qualified business' shall not
14 include any trade or business consisting predomi-
15 nantly of the development or holding of intangibles
16 for sale or license.
17 "(5) CERTAIN BUSINESSES EXCLUDED.—The
18 term 'qualified business' shall not include—
19 "(A) any trade or business consisting of
20 the operation of any facility described in section
21 144(c)(6)(B), and
22 "(B) any trade or business the principal
23 activity of which is farming (within the meaning
24 of subparagraphs (A) or (B) of section

1 2032A(e)(5)), but only if, as of the close of the
2 preceding taxable year, the sum of—
3 "(i) the aggregate unadjusted bases
4 (or, if greater, the fair market value) of
5 the assets owned by the taxpayer which are
6 used in such a trade or business, and
7 "(ii) the aggregate value of assets
8 leased by the taxpayer which are used in
9 such a trade or business,
10 exceeds $500,000.
11 "(6) CONTROLLED GROUPS.—For purposes of
12 paragraph (5)(B), all persons treated as a single em-
13 ployer under subsection (a) or (b) of section 52 shall
14 be treated as a single taxpayer.
15 "(e) NONQUALIFIED FINANCIAL PROPERTY.—For
16 purposes of this section, the term 'nonqualified financial
17 property' means debt, stock, partnership interests, op-
18 tions, futures contracts, forward contracts, warrants, no-
19 tional principal contracts, annuities, and other similar
20 property specified in regulations; except that such term
21 shall not include—
22 "(1) reasonable amounts of working capital
23 held in cash, cash equivalents, or debt instruments
24 with a term of 18 months or less, or

"(2) debt instruments described in section 1221(4).

"PART III—FAMILY DEVELOPMENT ACCOUNTS

"Sec. 1400D. Family development accounts.
"Sec. 1400E. Demonstration program to provide matching contributions to family development accounts in certain renewal communities.
"Sec. 1400F. Designation of earned income tax credit payments for deposit to family development account.

"SEC. 1400D. FAMILY DEVELOPMENT ACCOUNTS FOR RENEWAL COMMUNITY EITC RECIPIENTS.

"(a) ALLOWANCE OF DEDUCTION.—

"(1) IN GENERAL.—There shall be allowed as a deduction—

"(A) in the case of a qualified individual, the amount paid in cash for the taxable year by such individual to any family development account for such individual's benefit, and

"(B) in the case of any person other than a qualified individual, the amount paid in cash for the taxable year by such person to any family development account for the benefit of a qualified individual.

No deduction shall be allowed under this paragraph for any amount deposited in a family development account under section 1400E (relating to demonstration program to provide matching amounts in renewal communities).

1 "(2) LIMITATION.—

2 "(A) IN GENERAL.—The amount allowable
3 as a deduction to any individual for any taxable
4 year by reason of paragraph (1)(A) shall not
5 exceed the lesser of—

6 "(i) $2,000, or

7 "(ii) an amount equal to the com-
8 pensation includible in the individual's
9 gross income for such taxable year.

10 "(B) PERSONS DONATING TO FAMILY DE-
11 VELOPMENT ACCOUNTS OF OTHERS.—The
12 amount allowable as a deduction to any person
13 for any taxable year by reason of paragraph
14 (1)(B) shall not exceed $1,000 with respect to
15 any qualified individual.

16 "(3) SPECIAL RULES FOR CERTAIN MARRIED
17 INDIVIDUALS.—

18 "(A) IN GENERAL.—In the case of any in-
19 dividual with respect to whom a deduction is
20 otherwise allowable under paragraph (1)(A)—

21 "(i) who files a joint return for a tax-
22 able year, and

23 "(ii) whose spouse is a qualified indi-
24 vidual and—

1 "(I) has no compensation (deter-
2 mined without regard to section 911)
3 for the taxable year, or
4 "(II) elects to be treated for pur-
5 poses of paragraph (2)(A)(ii) as hav-
6 ing no compensation for the taxable
7 year,
8 there shall be allowed as a deduction any
9 amount paid in cash for the taxable year by the
10 individual to a family development account es-
11 tablished for the benefit of the spouse of the in-
12 dividual.
13 "(B) LIMITATION.—The amount allowable
14 as a deduction under subparagraph (A) shall
15 not exceed the excess of—
16 "(i) the lesser of—
17 "(I) $2,250, or
18 "(II) an amount equal to the
19 compensation includible in the individ-
20 ual's gross income for the taxable
21 year, over
22 "(ii) the amount allowable as a deduc-
23 tion under paragraph (1) for the taxable
24 year.

1 In no event shall the amount allowable as a de-
2 duction under subparagraph (A) exceed $2,000.
3 "(4) ROLLOVERS.—No deduction shall be al-
4 lowed under this section with respect to any rollover
5 contribution.
6 "(b) TAX TREATMENT OF DISTRIBUTIONS.—
7 "(1) INCLUSION OF AMOUNTS IN GROSS IN-
8 COME.—Except as otherwise provided in this sub-
9 section, any amount paid or distributed out of a
10 family development account shall be included in
11 gross income by the payee or distributee, as the case
12 may be.
13 "(2) EXCLUSION OF QUALIFIED FAMILY DEVEL-
14 OPMENT DISTRIBUTIONS.—Paragraph (1) shall not
15 apply to any qualified family development distribu-
16 tion.
17 "(3) SPECIAL RULES.—Rules similar to the
18 rules of paragraphs (4) and (5) of section 408(d)
19 shall apply for purposes of this section.
20 "(c) QUALIFIED FAMILY DEVELOPMENT DISTRIBU-
21 TION.—For purposes of this section—
22 "(1) IN GENERAL.—The term 'qualified family
23 development distribution' means any amount paid or
24 distributed out of a family development account
25 which would otherwise be includible in gross income,

1 to the extent that such payment or distribution is
2 used exclusively to pay qualified family development
3 expenses for the holder of the account or the spouse
4 or dependent (as defined in section 152) of such
5 holder.

6 "(2) QUALIFIED FAMILY DEVELOPMENT EX-
7 PENSES.—The term 'qualified family development
8 expenses' means any of the following:

9 "(A) Qualified postsecondary educational
10 expenses.

11 "(B) First-home purchase costs.

12 "(C) Qualified business capitalization
13 costs.

14 "(D) Qualified medical expenses.

15 "(E) Qualified rollovers.

16 "(3) QUALIFIED POSTSECONDARY EDU-
17 CATIONAL EXPENSES.—

18 "(A) IN GENERAL.—The term 'qualified
19 postsecondary educational expenses' means
20 postsecondary educational expenses paid to an
21 eligible educational institution.

22 "(B) POST-SECONDARY EDUCATIONAL EX-
23 PENSES.—The term 'post-secondary educational
24 expenses' means tuition, fees, room, board,
25 books, supplies, and equipment required for the

1 enrollment or attendance of a student at an eli-
2 gible educational institution.
3 "(C) ELIGIBLE EDUCATIONAL INSTITU-
4 TION.—The term 'eligible educational institu-
5 tion' means the following:
6 "(i) INSTITUTION OF HIGHER EDU-
7 CATION.—An institution described in sec-
8 tion 481(a)(1) or 1201(a) of the Higher
9 Education Act of 1965 (20 U.S.C.
10 1088(a)(1), 1141(a)), as such sections are
11 in effect on the date of the enactment of
12 this section.
13 "(ii) POSTSECONDARY VOCATIONAL
14 EDUCATION SCHOOL.—An area vocational
15 education school (as defined in subpara-
16 graph (C) or (D) of section 521(4) of the
17 Carl D. Perkins Vocational and Applied
18 Technology Education Act (20 U.S.C.
19 2471(4))) which is in any State (as defined
20 in section 521(33) of such Act), as such
21 sections are in effect on the date of the en-
22 actment of this section.
23 "(D) COORDINATION WITH SAVINGS BOND
24 PROVISIONS.—The amount of qualified post-
25 secondary educational expenses for any taxable

1 year shall be reduced by any amount excludable
2 from gross income under section 135.
3 "(4) FIRST-HOME PURCHASE COSTS.—
4 "(A) IN GENERAL.—The term 'first-home
5 purchase costs' means qualified acquisition
6 costs with respect to a qualified principal resi-
7 dence for a qualified first-time homebuyer.
8 "(B) QUALIFIED ACQUISITION COSTS.—
9 The term 'qualified acquisition costs' means the
10 costs of acquiring, constructing, or reconstruct-
11 ing a residence. Such term includes any usual
12 or reasonable settlement, financing, or other
13 closing costs.
14 "(C) QUALIFIED PRINCIPAL RESIDENCE.—
15 The term 'qualified principal residence' means a
16 principal residence (within the meaning of sec-
17 tion 1034), the qualified acquisition costs of
18 which do not exceed 100 percent of the average
19 area purchase price applicable to such residence
20 (determined in accordance with paragraphs (2)
21 and (3) of section 143(e)).
22 "(D) QUALIFIED FIRST-TIME HOME-
23 BUYER.—
24 "(i) IN GENERAL.—The term 'quali-
25 fied first-time homebuyer' means an indi-

1 vidual if such individual (and, in the case
2 of a married individual, the individual's
3 spouse) has no present ownership interest
4 in a principal residence during the 3-year
5 period ending on the date of acquisition of
6 the principal residence to which this sub-
7 section applies.
8 "(ii) DATE OF ACQUISITION.—The
9 term 'date of acquisition' means the date
10 on which a binding contract to acquire,
11 construct, or reconstruct the principal resi-
12 dence to which this subsection applies is
13 entered into.
14 "(5) QUALIFIED BUSINESS CAPITALIZATION
15 COSTS.—
16 "(A) IN GENERAL.—The term 'qualified
17 business capitalization costs' means qualified
18 expenditures for the capitalization of a qualified
19 business pursuant to a qualified plan.
20 "(B) QUALIFIED EXPENDITURES.—The
21 term 'qualified expenditures' means expendi-
22 tures included in a qualified plan, including
23 capital, plant, equipment, working capital, and
24 inventory expenses.

1 "(C) QUALIFIED BUSINESS.—The term
2 'qualified business' means any business that
3 does not contravene any law or public policy (as
4 determined by the Secretary).
5 "(D) QUALIFIED PLAN.—The term 'quali-
6 fied plan' means a business plan which—
7 "(i) is approved by a financial institu-
8 tion, or by a nonprofit loan fund having
9 demonstrated fiduciary integrity,
10 "(ii) includes a description of services
11 or goods to be sold, a marketing plan, and
12 projected financial statements, and
13 "(iii) may require the eligible individ-
14 ual to obtain the assistance of an experi-
15 enced entrepreneurial advisor.
16 "(6) QUALIFIED MEDICAL EXPENSES.—The
17 term 'qualified medical expenses' means any amount
18 paid during the taxable year, not compensated for by
19 insurance or otherwise, for medical care (as defined
20 in section 213(d)) of the taxpayer, his spouse, or his
21 dependent (as defined in section 152).
22 "(7) QUALIFIED ROLLOVERS.—The term 'quali-
23 fied rollover' means any amount paid from a family
24 development account of a taxpayer into another such
25 account established for the benefit of—

1 "(A) such taxpayer, or
2 "(B) any qualified individual who is—
3 "(i) the spouse of such taxpayer, or
4 "(ii) any dependent (as defined in sec-
5 tion 152) of the taxpayer.
6 Rules similar to the rules of section 408(d)(3) shall
7 apply for purposes of this paragraph.
8 "(d) TAX TREATMENT OF ACCOUNTS.—
9 "(1) IN GENERAL.—Any family development ac-
10 count is exempt from taxation under this subtitle
11 unless such account has ceased to be a family devel-
12 opment account by reason of paragraph (2). Not-
13 withstanding the preceding sentence, any such ac-
14 count is subject to the taxes imposed by section 511
15 (relating to imposition of tax on unrelated business
16 income of charitable, etc., organizations).
17 "(2) LOSS OF EXEMPTION IN CASE OF PROHIB-
18 ITED TRANSACTIONS.—For purposes of this section,
19 rules similar to the rules of section 408(e) shall
20 apply.
21 "(e) FAMILY DEVELOPMENT ACCOUNT.—For pur-
22 poses of this title, the term 'family development account'
23 means a trust created or organized in the United States
24 for the exclusive benefit of a qualified individual or his

1 beneficiaries, but only if the written governing instrument
2 creating the trust meets the following requirements:
3 "(1) Except in the case of a qualified rollover
4 (as defined in subsection (c)(7))—
5 "(A) no contribution will be accepted un-
6 less it is in cash, and
7 "(B) contributions will not be accepted for
8 the taxable year in excess of $2,000 (deter-
9 mined without regard to any contribution made
10 under section 1400E (relating to demonstration
11 program to provide matching amounts in re-
12 newal communities)).
13 "(2) The trustee is a bank (as defined in sec-
14 tion 408(n)) or such other person who demonstrates
15 to the satisfaction of the Secretary that the manner
16 in which such other person will administer the trust
17 will be consistent with the requirements of this sec-
18 tion.
19 "(3) No part of the trust funds will be invested
20 in life insurance contracts.
21 "(4) The interest of an individual in the bal-
22 ance in his account is nonforfeitable.
23 "(5) The assets of the trust will not be commin-
24 gled with other property except in a common trust
25 fund or common investment fund.

1 "(6) Under regulations prescribed by the Sec-
2 retary, rules similar to the rules of section 401(a)(9)
3 and the incidental death benefit requirements of sec-
4 tion 401(a) shall apply to the distribution of the en-
5 tire interest of an individual for whose benefit the
6 trust is maintained.
7 "(f) QUALIFIED INDIVIDUAL.—For purposes of this
8 section, the term 'qualified individual' means, for any tax-
9 able year, an individual—
10 "(1) who is a bona fide resident of a renewal
11 community throughout the taxable year, and
12 "(2) to whom a credit was allowed under sec-
13 tion 32 for the preceding taxable year.
14 "(g) OTHER DEFINITIONS AND SPECIAL RULES.—
15 "(1) COMPENSATION.—The term 'compensa-
16 tion' has the meaning given such term by section
17 219(f)(1).
18 "(2) MARRIED INDIVIDUALS.—The maximum
19 deduction under subsection (a) shall be computed
20 separately for each individual, and this section shall
21 be applied without regard to any community prop-
22 erty laws.
23 "(3) TIME WHEN CONTRIBUTIONS DEEMED
24 MADE.—For purposes of this section, a taxpayer
25 shall be deemed to have made a contribution to a

1 family development account on the last day of the
2 preceding taxable year if the contribution is made
3 on account of such taxable year and is made not
4 later than the time prescribed by law for filing the
5 return for such taxable year (not including exten-
6 sions thereof).

7 "(4) EMPLOYER PAYMENTS.—For purposes of
8 this title, any amount paid by an employer to a fam-
9 ily development account shall be treated as payment
10 of compensation to the employee (other than a self-
11 employed individual who is an employee within the
12 meaning of section 401(c)(1)) includible in his gross
13 income in the taxable year for which the amount was
14 contributed, whether or not a deduction for such
15 payment is allowable under this section to the em-
16 ployee.

17 "(5) ZERO BASIS.—The basis of an individual
18 in any family development account of such individual
19 shall be zero.

20 "(6) CUSTODIAL ACCOUNTS.—For purposes of
21 this section, a custodial account shall be treated as
22 a trust if the assets of such account are held by a
23 bank (as defined in section 408(n)) or another per-
24 son who demonstrates, to the satisfaction of the Sec-
25 retary, that the manner in which such person will

1 administer the account will be consistent with the re-
2 quirements of this section, and if the custodial ac-
3 count would, except for the fact that it is not a
4 trust, constitute a family development account de-
5 scribed in this section. For purposes of this title, in
6 the case of a custodial account treated as a trust by
7 reason of the preceding sentence, the custodian of
8 such account shall be treated as the trustee thereof.
9 "(7) REPORTS.—The trustee of a family devel-
10 opment account shall make such reports regarding
11 such account to the Secretary and to the individual
12 for whom the account is maintained with respect to
13 contributions (and the years to which they relate),
14 distributions, and such other matters as the Sec-
15 retary may require under regulations. The reports
16 required by this paragraph—
17 "(A) shall be filed at such time and in
18 such manner as the Secretary prescribes in
19 such regulations, and
20 "(B) shall be furnished to individuals—
21 "(i) not later than January 31 of the
22 calendar year following the calendar year
23 to which such reports relate, and
24 "(ii) in such manner as the Secretary
25 prescribes in such regulations.

"(8) INVESTMENT IN COLLECTIBLES TREATED AS DISTRIBUTIONS.—Rules similar to the rules of section 408(m) shall apply for purposes of this section.

"(h) PENALTY FOR DISTRIBUTIONS NOT USED FOR QUALIFIED FAMILY DEVELOPMENT EXPENSES.—

"(1) IN GENERAL.—If any amount is distributed from a family development account and is not used exclusively to pay qualified family development expenses for the holder of the account or the spouse or dependent (as defined in section 152) of such holder, the tax imposed by this chapter for the taxable year of such distribution shall be increased by the sum of—

"(A) 100 percent of the portion of such amount which is includible in gross income and is attributable to amounts contributed under section 1400E (relating to demonstration program to provide matching amounts in renewal communities), and

"(B) 10 percent of the portion of such amount which is includible in gross income and is not described in paragraph (1).

For purposes of this subsection, the portion of a distributed amount which is attributable to amounts

1 contributed under section 1400E is the amount
2 which bears the same ratio to the distributed
3 amount as the aggregate amount contributed under
4 section 1400E to all family development accounts of
5 the individual bears to the aggregate amount con-
6 tributed to such accounts from all sources.
7 "(2) EXCEPTION FOR CERTAIN DISTRIBU-
8 TIONS.—Paragraph (1) shall not apply to distribu-
9 tions which are—
10 "(A) made on or after the date on which
11 the account holder attains age 59½,
12 "(B) made pursuant to subsection (e)(6),
13 "(C) made to a beneficiary (or the estate
14 of the account holder) on or after the death of
15 the account holder, or
16 "(D) attributable to the account holder's
17 being disabled within the meaning of section
18 72(m)(7).
19 **"SEC. 1400E. DEMONSTRATION PROGRAM TO PROVIDE**
20 **MATCHING CONTRIBUTIONS TO FAMILY DE-**
21 **VELOPMENT ACCOUNTS IN CERTAIN RE-**
22 **NEWAL COMMUNITIES.**
23 "(a) DESIGNATION.—

1 "(1) DEFINITIONS.—For purposes of this sec-
2 tion, the term 'FDA matching demonstration area'
3 means any renewal community—
4 "(A) which is nominated under this section
5 by each of the local governments and States
6 which nominated such community for designa-
7 tion as a renewal community under section
8 1400(a)(1)(A), and
9 "(B) which the Secretary of Housing and
10 Urban Development, after consultation with—
11 "(i) the Secretaries of Agriculture,
12 Commerce, Labor, and the Treasury, the
13 Director of the Office of Management and
14 Budget, and the Administrator of the
15 Small Business Administration, and
16 "(ii) in the case of a community on an
17 Indian reservation, the Secretary of the In-
18 terior,
19 designates as an FDA matching demonstration
20 area.
21 "(2) NUMBER OF DESIGNATIONS.—
22 "(A) IN GENERAL.—The Secretary of
23 Housing and Urban Development may des-
24 ignate not more than 25 renewal communities
25 as FDA matching demonstration areas.

1 "(B) MINIMUM DESIGNATION IN RURAL
2 AREAS.—Of the areas designated under para-
3 graph (1), at least 2 must be areas described in
4 section 1400(a)(2)(B).
5 "(3) LIMITATIONS ON DESIGNATIONS.—
6 "(A) PUBLICATION OF REGULATIONS.—
7 The Secretary of Housing and Urban Develop-
8 ment shall prescribe by regulation no later than
9 4 months after the date of the enactment of
10 this section, after consultation with the officials
11 described in paragraph (1)(B)—
12 "(i) the procedures for nominating a
13 renewal community under paragraph
14 (1)(A) (including procedures for coordinat-
15 ing such nomination with the nomination
16 of an area for designation as a renewal
17 community under section 1400), and
18 "(ii) the manner in which nominated
19 renewal communities will be evaluated for
20 purposes of this section.
21 "(B) TIME LIMITATIONS.—The Secretary
22 of Housing and Urban Development may des-
23 ignate renewal communities as FDA matching
24 demonstration areas only during the 24-month
25 period beginning on the first day of the first

1 month following the month in which the regula-
2 tions described in subparagraph (A) are pre-
3 scribed.
4 (4) DESIGNATION BASED ON DEGREE OF POV-
5 ERTY, ETC.—The rules of section 1400(a)(3) shall
6 apply for purposes of designations of FDA matching
7 demonstration areas under this section.
8 "(b) PERIOD FOR WHICH DESIGNATION IS IN EF-
9 FECT.—Any designation of a renewal community as an
10 FDA matching demonstration area shall remain in effect
11 during the period beginning on the date of such designa-
12 tion and ending on the date on which such area ceases
13 to be a renewal community.
14 "(c) MATCHING CONTRIBUTIONS TO FAMILY DEVEL-
15 OPMENT ACCOUNTS.—
16 "(1) IN GENERAL.—Not less than once each
17 taxable year, the Secretary shall deposit (to the ex-
18 tent provided in appropriation Acts) into a family
19 development account of each qualified individual (as
20 defined in section 1400D(f)) who is a resident
21 throughout the taxable year of an FDA matching
22 demonstration area an amount equal to the sum of
23 the amounts deposited into all of the family develop-
24 ment accounts of such individual during such tax-

able year (determined without regard to any amount contributed under this section).

"(2) LIMITATIONS.—

"(A) ANNUAL LIMIT.—The Secretary shall not deposit more than $1000 under paragraph (1) with respect to any individual for any taxable year.

"(B) AGGREGATE LIMIT.—The Secretary shall not deposit more than $2000 under paragraph (1) with respect to any individual.

"(3) EXCLUSION FROM INCOME.—Except as provided in section 1400D, gross income shall not include any amount deposited into a family development account under paragraph (1).

"SEC. 1400F. DESIGNATION OF EARNED INCOME TAX CREDIT PAYMENTS FOR DEPOSIT TO FAMILY DEVELOPMENT ACCOUNT.

"(a) IN GENERAL.—With respect to the return of any qualified individual (as defined in section 1400D(f)) for the taxable year of the tax imposed by this chapter, such individual may designate that a specified portion (not less than $1) of any overpayment of tax for such taxable year which is attributable to the earned income tax credit shall be deposited by the Secretary into a family development

1 account of such individual. The Secretary shall so deposit
2 such portion designated under this subsection.
3 "(b) MANNER AND TIME OF DESIGNATION.—A des-
4 ignation under subsection (a) may be made with respect
5 to any taxable year—
6 "(1) at the time of filing the return of the tax
7 imposed by this chapter for such taxable year, or
8 "(2) at any other time (after the time of filing
9 the return of the tax imposed by this chapter for
10 such taxable year) specified in regulations prescribed
11 by the Secretary.
12 Such designation shall be made in such manner as the
13 Secretary prescribes by regulations.
14 "(c) PORTION ATTRIBUTABLE TO EARNED INCOME
15 TAX CREDIT.—For purposes of subsection (a), an over-
16 payment for any taxable year shall be treated as attrib-
17 utable to the earned income tax credit to the extent that
18 such overpayment does not exceed the credit allowed to
19 the taxpayer under section 32 for such taxable year.
20 "(d) OVERPAYMENTS TREATED AS REFUNDED.—
21 For purposes of this title, any portion of an overpayment
22 of tax designated under subsection (a) shall be treated as
23 being refunded to the taxpayer as of the last date pre-
24 scribed for filing the return of tax imposed by this chapter

1 (determined without regard to extensions) or, if later, the
2 date the return is filed.

3 **"PART IV—ADDITIONAL INCENTIVES**

"Sec. 1400G. Commercial revitalization credit.
"Sec. 1400H. Increase in expensing under section 179.

4 **"SEC. 1400G. COMMERCIAL REVITALIZATION TAX CREDIT.**

5 "(a) GENERAL RULE.—For purposes of section 46,
6 except as provided in subsection (e), the commercial revi-
7 talization credit for any taxable year is an amount equal
8 to the applicable percentage of the qualified revitalization
9 expenditures with respect to any qualified revitalization
10 building.

11 "(b) APPLICABLE PERCENTAGE.—For purposes of
12 this section—

13 "(1) IN GENERAL.—The term 'applicable per-
14 centage' means—

15 "(A) 20 percent for the taxable year in
16 which a qualified revitalization building is
17 placed in service, or

18 "(B) at the election of the taxpayer, 5 per-
19 cent for each taxable year in the credit period.

20 The election under subparagraph (B), once made,
21 shall be irrevocable.

22 "(2) CREDIT PERIOD.—

23 "(A) IN GENERAL.—The term 'credit pe-
24 riod' means, with respect to any building, the

1 period of 10 taxable years beginning with the
2 taxable year in which the building is placed in
3 service.
4 "(B) APPLICABLE RULES.—Rules similar
5 to the rules under paragraphs (2) and (4) of
6 section 42(f) shall apply.
7 "(c) QUALIFIED REVITALIZATION BUILDINGS AND
8 EXPENDITURES.—For purposes of this section—
9 "(1) QUALIFIED REVITALIZATION BUILDING.—
10 The term 'qualified revitalization building' means
11 any building (and its structural components) if—
12 "(A) such building is located in a renewal
13 community and is placed in service after the
14 designation of such renewal community under
15 section 1400,
16 "(B) a commercial revitalization credit
17 amount is allocated to the building under sub-
18 section (e), and
19 "(C) depreciation (or amortization in lieu
20 of depreciation) is allowable with respect to the
21 building.
22 "(2) QUALIFIED REVITALIZATION EXPENDI-
23 TURE.—

1 "(A) IN GENERAL.—The term 'qualified
2 revitalization expenditure' means any amount
3 properly chargeable to capital account—
4 "(i) for property for which deprecia-
5 tion is allowable under section 168 and
6 which is—
7 "(I) nonresidential real property,
8 or
9 "(II) an addition or improvement
10 to property described in subclause (I),
11 "(ii) in connection with the construc-
12 tion or substantial rehabilitation or recon-
13 struction of a qualified revitalization build-
14 ing, or
15 "(iii) for the acquisition of land in
16 connection with the qualified revitalization
17 building.
18 "(B) DOLLAR LIMITATION.—The aggre-
19 gate amount which may be treated as qualified
20 revitalization expenditures with respect to any
21 qualified revitalization building for any taxable
22 year shall not exceed the excess of—
23 "(i) $10,000,000, reduced by
24 "(ii) any such expenditures with re-
25 spect to the building taken into account by

1 the taxpayer or any predecessor in deter-
2 mining the amount of the credit under this
3 section for all preceding taxable years.
4 "(C) CERTAIN EXPENDITURES NOT IN-
5 CLUDED.—The term 'qualified revitalization ex-
6 penditure' does not include—
7 "(i) STRAIGHT LINE DEPRECIATION
8 MUST BE USED.—Any expenditure (other
9 than with respect to land acquisitions) with
10 respect to which the taxpayer does not use
11 the straight line method over a recovery
12 period determined under subsection (c) or
13 (g) of section 168. The preceding sentence
14 shall not apply to any expenditure to the
15 extent the alternative depreciation system
16 of section 168(g) applies to such expendi-
17 ture by reason of subparagraph (B) or (C)
18 of section 168(g)(1).
19 "(ii) ACQUISITION COSTS.—The costs
20 of acquiring any building or interest there-
21 in and any land in connection with such
22 building to the extent that such costs ex-
23 ceed 30 percent of the qualified revitaliza-
24 tion expenditures determined without re-
25 gard to this clause.

1 "(iii) OTHER CREDITS.—Any expendi-
2 ture which the taxpayer may take into ac-
3 count in computing any other credit allow-
4 able under this title unless the taxpayer
5 elects to take the expenditure into account
6 only for purposes of this section.
7 "(5) SUBSTANTIAL REHABILITATION OR RE-
8 CONSTRUCTION.—For purposes of this subsection, a
9 rehabilitation or reconstruction shall be treated as a
10 substantial rehabilitation or reconstruction only if
11 the qualified revitalization expenditures in connec-
12 tion with the rehabilitation or reconstruction exceed
13 25 percent of the fair market value of the building
14 (and its structural components) immediately before
15 the rehabilitation or reconstruction.
16 "(d) WHEN EXPENDITURES TAKEN INTO AC-
17 COUNT.—
18 "(1) IN GENERAL.—Qualified revitalization ex-
19 penditures with respect to any qualified revitaliza-
20 tion building shall be taken into account for the tax-
21 able year in which the qualified revitalization build-
22 ing is placed in service. For purposes of the preced-
23 ing sentence, a substantial rehabilitation or recon-
24 struction of a building shall be treated as a separate
25 building.

1 "(2) PROGRESS EXPENDITURE PAYMENTS.—
2 Rules similar to the rules of subsections (b)(2) and
3 (d) of section 47 shall apply for purposes of this sec-
4 tion.
5 "(e) LIMITATION ON AGGREGATE CREDITS ALLOW-
6 ABLE WITH RESPECT TO BUILDINGS LOCATED IN A
7 STATE.—
8 "(1) IN GENERAL.—The amount of the credit
9 determined under this section for any taxable year
10 with respect to any building shall not exceed the
11 commercial revitalization credit amount (in the case
12 of an amount determined under subsection
13 (b)(1)(B), the present value of such amount as de-
14 termined under the rules of section 42(b)(2)(C)) al-
15 located to such building under this subsection by the
16 commercial revitalization credit agency. Such alloca-
17 tion shall be made at the same time and in the same
18 manner as under paragraphs (1) and (7) of section
19 42(h).
20 "(2) COMMERCIAL REVITALIZATION CREDIT
21 AMOUNT FOR AGENCIES.—
22 "(A) IN GENERAL.—The aggregate com-
23 mercial revitalization credit amount which a
24 commercial revitalization credit agency may al-
25 locate for any calendar year is the amount of

1 the State commercial revitalization credit ceil-
2 ing determined under this paragraph for such
3 calendar year for such agency.
4 "(B) STATE COMMERCIAL REVITALIZATION
5 CREDIT CEILING.—
6 "(i) IN GENERAL.—The State com-
7 mercial revitalization credit ceiling applica-
8 ble to any State for any calendar year is
9 $2,000,000 for each renewal community in
10 the State.
11 "(ii) SPECIAL RULE WHERE COMMU-
12 NITY LOCATED IN MORE THAN 1 STATE.—
13 If a renewal community is located in more
14 than 1 State, a State's share of the
15 amount specified in clause (i) with respect
16 to such community shall be an amount
17 that bears the same ratio to $2,000,000 as
18 the population in the State bears to the
19 population in all States in which such com-
20 munity is located.
21 "(iii) OTHER SPECIAL RULES.—Rules
22 similar to the rules of subparagraphs (D),
23 (E), (F), and (G) of section 42(h)(3) shall
24 apply for purposes of this subsection.

1 "(C) COMMERCIAL REVITALIZATION CRED-
2 IT AGENCY.—For purposes of this section, the
3 term 'commercial revitalization credit agency'
4 means any agency authorized by a State to
5 carry out this section.
6 "(f) RESPONSIBILITIES OF COMMERCIAL REVITAL-
7 IZATION CREDIT AGENCIES.—
8 "(1) PLANS FOR ALLOCATION.—Notwithstand-
9 ing any other provision of this section, the commer-
10 cial revitalization credit amount with respect to any
11 building shall be zero unless—
12 "(A) such amount was allocated pursuant
13 to a qualified allocation plan of the commercial
14 revitalization credit agency which is approved
15 (in accordance with rules similar to the rules of
16 section 147(f)(2) (other than subparagraph
17 (B)(ii) thereof)) by the governmental unit of
18 which such agency is a part, and
19 "(B) such agency notifies the chief execu-
20 tive officer (or its equivalent) of the local juris-
21 diction within which the building is located of
22 such allocation and provides such individual a
23 reasonable opportunity to comment on the allo-
24 cation.

1 "(2) QUALIFIED ALLOCATION PLAN.—For pur-
2 poses of this subsection, the term 'qualified alloca-
3 tion plan' means any plan—
4 "(A) which sets forth selection criteria to
5 be used to determine priorities of the commer-
6 cial revitalization credit agency which are ap-
7 propriate to local conditions,
8 "(B) which considers—
9 "(i) the degree to which a project con-
10 tributes to the implementation of a strate-
11 gic plan that is devised for a renewal com-
12 munity through a citizen participation
13 process,
14 "(ii) the amount of any increase in
15 permanent, full-time employment by reason
16 of any project, and
17 "(iii) the active involvement of resi-
18 dents and nonprofit groups within the re-
19 newal community, and
20 "(C) which provides a procedure that the
21 agency (or its agent) will follow in monitoring
22 compliance with this section.
23 "(g) TERMINATION.—This section shall not apply to
24 any building placed in service after December 31, 2002.

1 **"SEC. 1400H. INCREASE IN EXPENSING UNDER SECTION 179.**

2 "(a) GENERAL RULE.—In the case of a renewal com-
3 munity business (as defined in section 1400C), for pur-
4 poses of section 179—

5 "(1) the limitation under section 179(b)(1)
6 shall be increased by the lesser of—

7 "(A) $35,000, or

8 "(B) the cost of section 179 property
9 which is qualified renewal property placed in
10 service during the taxable year, and

11 "(2) the amount taken into account under sec-
12 tion 179(b)(2) with respect to any section 179 prop-
13 erty which is qualified renewal property shall be 50
14 percent of the cost thereof.

15 "(b) RECAPTURE.—Rules similar to the rules under
16 section 179(d)(10) shall apply with respect to any quali-
17 fied renewal property which ceases to be used in a renewal
18 community by an renewal community business.

19 "(c) QUALIFIED RENEWAL PROPERTY.—

20 "(1) GENERAL RULE.—For purposes of this
21 section—

22 "(A) IN GENERAL.—The term 'qualified
23 renewal property' means any property to which
24 section 168 applies (or would apply but for sec-
25 tion 179) if—

"(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after the date on which the designation of the renewal community took effect,

"(ii) the original use of which in a renewal community commences with the taxpayer, and

"(iii) substantially all of the use of which is in a renewal community and is in the active conduct of a qualified business (as defined in section 1400C(d)) by the taxpayer in such renewal community.

"(B) SPECIAL RULE FOR SUBSTANTIAL RENOVATIONS.—In the case of any property which is substantially renovated by the taxpayer, the requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as satisfied. For purposes of the preceding sentence, property shall be treated as substantially renovated by the taxpayer only if, during any 24-month period beginning after the date on which the designation of the renewal community took effect, additions to basis with respect to such property in the hands of the taxpayer exceed

1 the greater of (i) an amount equal to the ad-
2 justed basis at the beginning of such 24-month
3 period in the hands of the taxpayer, or (ii)
4 $5,000.
5 "(2) SPECIAL RULES FOR SALE-LEASEBACKS.—
6 For purposes of paragraph (1)(A)(ii), if property is
7 sold and leased back by the taxpayer within 3
8 months after the date such property was originally
9 placed in service, such property shall be treated as
10 originally placed in service not earlier than the date
11 on which such property is used under the lease-
12 back."

13 **SEC. 104. EVALUATION AND REPORTING REQUIREMENTS.**

14 Not later than the close of the fourth calendar year
15 after the year in which the Secretary of Housing and
16 Urban Development first designates an area as a renewal
17 community under section 1400 of the Internal Revenue
18 Code of 1986, and at the close of each fourth calendar
19 year thereafter, such Secretary shall prepare and submit
20 to the Congress a report on the effects of such designa-
21 tions in accomplishing the purposes of this Act.

22 **SEC. 105. INTERACTION WITH OTHER FEDERAL PROGRAMS.**

23 (a) TAX REDUCTIONS.—Any reduction of taxes, with
24 respect to any renewal community designated under sec-
25 tion 1400 of the Internal Revenue Code of 1986 (as added

1 by this title), under any plan of action under section
2 1400(d) of such Code shall be disregarded in determining
3 the eligibility of a State or local government for, or the
4 amount or extent of, any assistance or benefits under any
5 law of the United States (other than subchapter W of
6 chapter 1 of such Code).

7 (b) COORDINATION WITH RELOCATION ASSIST-
8 ANCE.—The designation of a renewal community under
9 section 1400 of such Code (as added by this title) shall
10 not—

11 (1) constitute approval of a Federal or Feder-
12 ally assisted program or project (within the meaning
13 of the Uniform Relocation Assistance and Real
14 Property Acquisition Policies Act of 1970 (42
15 U.S.C. 4601 et seq.)), or

16 (2) entitle any person displaced from real prop-
17 erty located in such community to any rights or any
18 benefits under such Act.

19 (c) RENEWAL COMMUNITIES TREATED AS LABOR
20 SURPLUS AREAS.—Any area which is designated as a re-
21 newal community under section 1400 of such Code (as
22 added by this title) shall be treated for all purposes under
23 Federal law as a labor surplus area.

1 **SEC. 106. DEDUCTION FOR CONTRIBUTIONS TO FAMILY DE-**
2 **VELOPMENT ACCOUNTS ALLOWABLE WHETH-**
3 **ER OR NOT TAXPAYER ITEMIZES.**

4 Subsection (a) of section 62 of the Internal Revenue
5 Code of 1986 (relating to adjusted gross income defined)
6 is amended by inserting after paragraph (15) the following
7 new paragraph:

8 "(16) FAMILY DEVELOPMENT ACCOUNTS.—The
9 deduction allowed by section 1400D."

10 **SEC. 107. ALLOWANCE OF COMMERCIAL REVITALIZATION**
11 **CREDIT.**

12 Section 46 of the Internal Revenue Code of 1986 (re-
13 lating to investment credit) is amended by striking "and"
14 at the end of paragraph (2), by striking the period at the
15 end of paragraph (3) and inserting ", and", and by adding
16 at the end the following new paragraph:

17 "(4) the commercial revitalization credit pro-
18 vided under section 1400G."

19 **SEC. 108. CONFORMING AND CLERICAL AMENDMENTS.**

20 (a) BASIS ADJUSTMENT FOR CERTAIN STOCK.—Sub-
21 section (a) of section 1016 of the Internal Revenue Code
22 of 1986 (relating to adjustments to basis) is amended by
23 striking "and" at the end of paragraph (24), by striking
24 the period at the end of paragraph (25) and inserting ",
25 and"; and by adding at the end the following new para-
26 graph:

1 "(26) to the extent provided in section
2 1400B(e), in the case of stock with respect to which
3 a deduction was allowed or allowable under section
4 1400B(a)."
5 (b) TAX ON EXCESS CONTRIBUTIONS.—
6 (1) TAX IMPOSED.—Subsection (a) of section
7 4973 of such Code is amended by striking "or" at
8 the end of paragraph (1), adding "or" at the end of
9 paragraph (2), and inserting after paragraph (2) the
10 following new paragraph:
11 "(3) a family development account (within the
12 meaning of section 1400D(e)),"
13 (2) EXCESS CONTRIBUTIONS.—Section 4973 of
14 such Code is amended by adding at the end the fol-
15 lowing new subsection:
16 "(d) FAMILY DEVELOPMENT ACCOUNTS.—For pur-
17 poses of this section, in the case of a family development
18 account, the term 'excess contributions' means the sum
19 of—
20 "(1) the excess (if any) of—
21 "(A) the amount contributed for the tax-
22 able year to the account (other than a qualified
23 rollover, as defined in section 1400D(c)(7), or
24 a contribution under section 1400E), over

"(B) the amount allowable as a deduction under section 1400D for such contributions, and

"(2) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

"(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 1400D(b)(1),

"(B) the distributions out of the account for the taxable year to which rules similar to the rules of section 408(d)(5) apply by reason of section 1400D(b)(3), and

"(C) the excess (if any) of the maximum amount allowable as a deduction under section 1400D for the taxable year over the amount contributed to the account for the taxable year (other than a contribution under section 1400E).

For purposes of this subsection, any contribution which is distributed from the family development account in a distribution to which rules similar to the rules of section 408(d)(4) apply by reason of section 1400D(b)(3) shall be treated as an amount not contributed."

1 (3) HEADING.—The heading of section 4973 of
2 such Code is amended by inserting "**FAMILY DE-**
3 **VELOPMENT ACCOUNTS,**" after "**CONTRACTS,**".
4 (c) TAX ON PROHIBITED TRANSACTIONS.—Section
5 4975 of such Code is amended—
6 (1) by adding at the end of subsection (c) the
7 following new paragraph:
8 "(4) SPECIAL RULE FOR FAMILY DEVELOP-
9 MENT ACCOUNTS.—An individual for whose benefit a
10 family development account is established and any
11 contributor to such account shall be exempt from the
12 tax imposed by this section with respect to any
13 transaction concerning such account (which would
14 otherwise be taxable under this section) if, with re-
15 spect to such transaction, the account ceases to be
16 a family development account by reason of the appli-
17 cation of section 1400D(d)(2) to such account.",
18 and
19 (2) by inserting ", a family development ac-
20 count described in section 1400D(e)," in subsection
21 (e)(1) after "described in section 408(a)".
22 (d) INFORMATION RELATING TO CERTAIN TRUSTS
23 AND ANNUITY PLANS.—Subsection (c) of section 6047 of
24 such Code is amended—

1 (1) by inserting "or section 1400D" after "sec-
2 tion 219", and
3 (2) by inserting ", of any family development
4 account described in section 1400D(e),", after "sec-
5 tion 408(a)".
6 (e) INSPECTION OF APPLICATIONS FOR TAX EXEMP-
7 TION.—Clause (i) of section 6104(a)(1)(B) of such Code
8 is amended by inserting "a family development account
9 described in section 1400D(e)," after "section 408(a),".
10 (f) FAILURE TO PROVIDE REPORTS ON FAMILY DE-
11 VELOPMENT ACCOUNTS.—Section 6693 of such Code is
12 amended—
13 (1) by inserting "**OR ON FAMILY DEVELOP-**
14 **MENT ACCOUNTS**" after "**ANNUITIES**" in the
15 heading of such section, and
16 (2) by adding at the end of subsection (a) the
17 following new sentence: "The person required by sec-
18 tion 1400D(g)(7) to file a report regarding a family
19 development account at the time and in the manner
20 required by such section shall pay a penalty of $50
21 for each failure unless it is shown that such failure
22 is due to reasonable cause."
23 (g) CONFORMING AMENDMENTS REGARDING COM-
24 MERCIAL REVITALIZATION CREDIT.—

1 (1) Section 39(d) of such Code is amended by
2 adding at the end the following new paragraph:
3 "(7) NO CARRYBACK OF SECTION 1400G CREDIT
4 BEFORE DATE OF ENACTMENT.—No portion of the
5 unused business credit for any taxable year which is
6 attributable to any commercial revitalization credit
7 determined under section 1400G may be carried
8 back to a taxable year ending before the date of the
9 enactment of section 1400G."
10 (2) Subparagraph (B) of section 48(a)(2) of
11 such Code is amended by inserting "or commercial
12 revitalization" after "rehabilitation" each place it
13 appears in the text and heading.
14 (3) Subparagraph (C) of section 49(a)(1) of
15 such Code is amended by striking "and" at the end
16 of clause (ii), by striking the period at the end of
17 clause (iii) and inserting ", and", and by adding at
18 the end the following new clause:
19 "(iv) the portion of the basis of any
20 qualified revitalization building attributable
21 to qualified revitalization expenditures."
22 (4) Paragraph (2) of section 50(a) of such Code
23 is amended by inserting "or 1400G(d)(2)" after
24 "section 47(d)" each place it appears.

1 (5) Subparagraph (A) of section 50(b)(2) of
2 such Code is amended by inserting "or qualified re-
3 vitalization building (respectively)" after "qualified
4 rehabilitated building".
5 (6) Subparagraph (B) of section 50(a)(2) of
6 such Code is amended by adding at the end the fol-
7 lowing new sentence: "A similar rule shall apply for
8 purposes of section 1400G."
9 (7) Paragraph (2) of section 50(b) of such Code
10 is amended by striking "and" at the end of subpara-
11 graph (C), by striking the period at the end of sub-
12 paragraph (D) and inserting "; and", and by adding
13 at the end the following new subparagraph:
14 "(E) a qualified revitalization building (as
15 defined in section 1400G) to the extent of the
16 portion of the basis which is attributable to
17 qualified revitalization expenditures (as defined
18 in section 1400G)."
19 (8) Subparagraph (C) of section 50(b)(4) of
20 such Code is amended—
21 (A) by inserting "or commercial revitaliza-
22 tion" after "rehabilitated" in the text and head-
23 ing, and
24 (B) by inserting "or commercial revitaliza-
25 tion" after "rehabilitation".

1 (9) Subparagraph (C) of section 469(i)(3) is
2 amended—
3 (A) by inserting "or section 1400G" after
4 "section 42"; and
5 (B) by striking "CREDIT" in the heading
6 and inserting "AND COMMERCIAL REVITALIZA-
7 TION CREDITS".
8 (h) CLERICAL AMENDMENTS.—
9 (1) The table of subchapters for chapter 1 of
10 the Internal Revenue Code of 1986 is amended by
11 adding at the end the following new item:

"Subchapter W. Renewal Communities."

12 (2) The table of sections for chapter 43 of such
13 Code is amended by striking the item relating to sec-
14 tion 4973 and inserting the following new item:

"Sec. 4973. Tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, family development accounts, and certain individual retirement annuities."

15 (3) The table of sections for part I of sub-
16 chapter B of chapter 68 of such Code is amended
17 by striking the item relating to section 6693 and in-
18 serting the following new item:

"Sec. 6693. Failure to provide reports on individual retirement accounts or annuities or on family development accounts; overstatement of designated nondeductible contributions."

TITLE II—ADDITIONAL TAX PROVISIONS

SEC. 201. WORK OPPORTUNITY TAX CREDIT.

(a) AMOUNT OF CREDIT.—Subsection (a) of section 51 (relating to amount of credit) is amended by striking "40 percent" and inserting "35 percent".

(b) MEMBERS OF TARGETED GROUPS.—Subsection (d) of section 51 is amended to read as follows:

"(d) MEMBERS OF TARGETED GROUPS.—For purposes of this subpart—

"(1) IN GENERAL.—An individual is a member of a targeted group if such individual is—

"(A) a qualified IV–A recipient,

"(B) a qualified veteran,

"(C) a qualified ex-felon,

"(D) a high-risk youth,

"(E) a vocational rehabilitation referral,

"(F) a qualified summer youth employee, or

"(G) a qualified food stamp recipient.

"(2) QUALIFIED IV–A RECIPIENT.—

"(A) IN GENERAL.—The term 'qualified IV–A recipient' means any individual who is certified by the designated local agency as being a member of a family receiving assistance under

1 an IV–A program for at least a 9-month period
2 ending during the 9-month period ending on the
3 hiring date.
4 "(B) IV–A PROGRAM.—For purposes of
5 this paragraph, the term 'IV–A program' means
6 any program providing assistance under a State
7 plan approved under part A of title IV of the
8 Social Security Act (relating to assistance for
9 needy families with minor children) and any
10 successor of such program.
11 "(3) QUALIFIED VETERAN.—
12 "(A) IN GENERAL.—The term 'qualified
13 veteran' means any veteran who is certified by
14 the designated local agency as being—
15 "(i) a member of a family receiving
16 assistance under an IV–A program (as de-
17 fined in paragraph (2)(B)) for at least a 9-
18 month period ending during the 12-month
19 period ending on the hiring date, or
20 "(ii) a member of a family receiving
21 assistance under a food stamp program
22 under the Food Stamp Act of 1977 for at
23 least a 3-month period ending during the
24 12-month period ending on the hiring date.

1 "(B) VETERAN.—For purposes of subpara-
2 graph (A), the term 'veteran' means any indi-
3 vidual who is certified by the designated local
4 agency as—
5 "(i)(I) having served on active duty
6 (other than active duty for training) in the
7 Armed Forces of the United States for a
8 period of more than 180 days, or
9 "(II) having been discharged or re-
10 leased from active duty in the Armed
11 Forces of the United States for a service-
12 connected disability, and
13 "(ii) not having any day during the
14 60-day period ending on the hiring date
15 which was a day of extended active duty in
16 the Armed Forces of the United States.
17 For purposes of clause (ii), the term 'extended
18 active duty' means a period of more than 90
19 days during which the individual was on active
20 duty (other than active duty for training).
21 "(4) QUALIFIED EX-FELON.—The term 'quali-
22 fied ex-felon' means any individual who is certified
23 by the designated local agency—

1 "(A) as having been convicted of a felony
2 under any statute of the United States or any
3 State,
4 "(B) as having a hiring date which is not
5 more than 1 year after the last date on which
6 such individual was so convicted or was released
7 from prison, and
8 "(C) as being a member of a family which
9 had an income during the 6 months imme-
10 diately preceding the earlier of the month in
11 which such income determination occurs or the
12 month in which the hiring date occurs, which,
13 on an annual basis, would be 70 percent or less
14 of the Bureau of Labor Statistics lower living
15 standard.
16 Any determination under subparagraph (C) shall be
17 valid for the 45-day period beginning on the date
18 such determination is made.
19 "(5) HIGH-RISK YOUTH.—
20 "(A) IN GENERAL.—The term 'high-risk
21 youth' means any individual who is certified by
22 the designated local agency—
23 "(i) as having attained age 18 but not
24 age 25 on the hiring date, and

1 "(ii) as having his principal place of
2 abode within a renewal community.
3 "(B) YOUTH MUST CONTINUE TO RESIDE
4 IN RENEWAL COMMUNITY.—In the case of a
5 high-risk youth, the term 'qualified wages' shall
6 not include wages paid or incurred for services
7 performed while such youth's principal place of
8 abode is outside a renewal community.
9 "(6) VOCATIONAL REHABILITATION REFER-
10 RAL.—The term 'vocational rehabilitation referral'
11 means any individual who is certified by the des-
12 ignated local agency as—
13 "(A) having a physical or mental disability
14 which, for such individual, constitutes or results
15 in a substantial handicap to employment, and
16 "(B) having been referred to the employer
17 upon completion of (or while receiving) rehabili-
18 tative services pursuant to—
19 "(i) an individualized written rehabili-
20 tation plan under a State plan for voca-
21 tional rehabilitation services approved
22 under the Rehabilitation Act of 1973, or
23 "(ii) a program of vocational rehabili-
24 tation carried out under chapter 31 of title
25 38, United States Code.

1 "(7) QUALIFIED SUMMER YOUTH EMPLOYEE.—
2 "(A) IN GENERAL.—The term 'qualified
3 summer youth employee' means any individ-
4 ual—
5 "(i) who performs services for the em-
6 ployer between May 1 and September 15,
7 "(ii) who is certified by the designated
8 local agency as having attained age 16 but
9 not 18 on the hiring date (or if later, on
10 May 1 of the calendar year involved),
11 "(iii) who has not been an employee
12 of the employer during any period prior to
13 the 90-day period described in subpara-
14 graph (B)(i), and
15 "(iv) who is certified by the des-
16 ignated local agency as having his principal
17 place of abode within a renewal commu-
18 nity.
19 "(B) SPECIAL RULES FOR DETERMINING
20 AMOUNT OF CREDIT.—For purposes of applying
21 this subpart to wages paid or incurred to any
22 qualified summer youth employee—
23 "(i) subsection (b)(2) shall be applied
24 by substituting 'any 90-day period between
25 May 1 and September 15' for 'the 1-year

1 period beginning with the day the individ-
2 ual begins work for the employer', and
3 "(ii) subsection (b)(3) shall be applied
4 by substituting '$3,000' for '$6,000'.
5 The preceding sentence shall not apply to an in-
6 dividual who, with respect to the same em-
7 ployer, is certified as a member of another tar-
8 geted group after such individual has been a
9 qualified summer youth employee.
10 "(C) YOUTH MUST CONTINUE TO RESIDE
11 IN RENEWAL COMMUNITY.—Paragraph (5)(B)
12 shall apply for purposes of this paragraph.
13 "(8) QUALIFIED FOOD STAMP RECIPIENT.—The
14 term 'qualified food stamp recipient' means any indi-
15 vidual who is certified by the designated local agen-
16 cy—
17 "(A) as having attained age 18 but not age
18 25 on the hiring date, and
19 "(B) as being a member of a family receiv-
20 ing assistance under a food stamp program
21 under the Food Stamp Act of 1977 for at least
22 a 3-month period ending during the 12-month
23 period ending on the hiring date.

1 "(9) HIRING DATE.—The term 'hiring date'
2 means the day the individual is hired by the em-
3 ployer.
4 "(10) DESIGNATED LOCAL AGENCY.—The term
5 'designated local agency' means a State employment
6 security agency established in accordance with the
7 Act of June 6, 1933, as amended (29 U.S.C.
8 4949n).
9 "(11) SPECIAL RULES FOR CERTIFICATIONS.—
10 "(A) IN GENERAL.—An individual shall
11 not be treated as a member of a targeted group
12 unless—
13 "(i) on or before the day on which
14 such individual begins work for the em-
15 ployer, the employer has received a certifi-
16 cation from a designated local agency that
17 such individual is a member of a targeted
18 group, or
19 "(ii)(I) on or before the day the indi-
20 vidual is offered employment with the em-
21 ployer, a pre-screening notice is completed
22 by the employer with respect to such indi-
23 vidual, and
24 "(II) not later than the 14th day after
25 the individual begins work for the em-

1 ployer, the employer submits such notice,
2 signed by the employer and the individual
3 under penalties of perjury, to the des-
4 ignated local agency as part of a written
5 request for such a certification from such
6 agency.
7 For purposes of this paragraph, the term 'pre-
8 screening notice' means a document (in such
9 form as the Secretary shall prescribe) which
10 contains information provided by the individual
11 on the basis of which the employer believes that
12 the individual is a member of a targeted group.
13 "(B) INCORRECT CERTIFICATIONS.—If—
14 "(i) an individual has been certified
15 by a designated local agency as a member
16 of a targeted group, and
17 "(ii) such certification is incorrect be-
18 cause it was based on false information
19 provided by such individual,
20 the certification shall be revoked and wages
21 paid by the employer after the date on which
22 notice of revocation is received by the employer
23 shall not be treated as qualified wages.
24 "(C) EXPLANATION OF DENIAL OF RE-
25 QUEST.—If a designated local agency denies a

1 request for certification of membership in a tar-
2 geted group, such agency shall provide to the
3 person making such request a written expla-
4 nation of the reasons for such denial."
5 (c) MINIMUM EMPLOYMENT PERIOD.—Paragraph
6 (3) of section 51(i) (relating to certain individuals ineli-
7 gible) is amended to read as follows:
8 "(3) INDIVIDUALS NOT MEETING MINIMUM EM-
9 PLOYMENT PERIOD.—No wages shall be taken into
10 account under subsection (a) with respect to any in-
11 dividual unless such individual either—
12 "(A) is employed by the employer at least
13 180 days (20 days in the case of a qualified
14 summer youth employee), or
15 "(B) has completed at least 250 hours
16 (120 hours in the case of a qualified summer
17 youth employee) of services performed for the
18 employer."
19 (d) TERMINATION PERIOD.—Paragraph (4) of sec-
20 tion 51(c) (relating to wages defined) is amended to read
21 as follows:
22 "(4) TERMINATION PERIOD.—The term 'wages'
23 shall not include any amount paid or incurred to an
24 individual who begins work for the employer after
25 December 31, 1994, and before January 1, 1996."

1 (e) REDESIGNATION OF CREDIT.—

2 (1) Sections 38(b)(2) and 51(a) are each
3 amended by striking "targeted jobs credit" and in-
4 serting "work opportunity credit".

5 (2) The subpart heading for subpart F of part
6 IV of subchapter A of chapter 1 is amended by
7 striking "**Targeted Jobs Credit**" and inserting
8 "**Work Opportunity Credit**".

9 (3) The table of subparts for such part IV is
10 amended by striking "targeted jobs credit" and in-
11 serting "work opportunity credit".

12 (4) The heading for paragraph (3) of section
13 1396(c) is amended by striking "TARGETED JOBS
14 CREDIT" and inserting "WORK OPPORTUNITY CRED-
15 IT".

16 (f) TECHNICAL AMENDMENT.—Paragraph (1) of sec-
17 tion 51(c) is amended by striking ", subsection
18 (d)(8)(D),".

19 (g) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to individuals who begin work for
21 the employer after December 31, 1995.

22 **SEC. 202. CREDIT FOR CERTAIN CHARITABLE CONTRIBU-**
23 **TIONS.**

24 (a) IN GENERAL.—Subpart A of part IV of sub-
25 chapter A of chapter 1 of the Internal Revenue Code of

1986 (relating to nonrefundable personal credits) is amended by adding at the end the following new section:

"SEC. 26A. CREDIT FOR CERTAIN CHARITABLE CONTRIBUTIONS.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 75 percent of the qualified charitable contributions which are paid by the taxpayer during the taxable year.

"(b) LIMITATION.—The credit allowed by subsection (a) for the taxable year shall not exceed $200 ($400 in the case of a joint return).

"(c) QUALIFIED CHARITABLE CONTRIBUTION.—For purposes of this section, the term 'qualified charitable contribution' means any charitable contribution (as defined in section 170(c)) made in cash to a qualified charity aiding the poor.

"(d) QUALIFIED CHARITY AIDING THE POOR.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified charity aiding the poor' means, for any taxable year, any organization described in section 501(c)(3) and exempt from tax under section 501(a)—

1 "(A) which is certified by the Secretary as
2 meeting the requirements of paragraphs (2),
3 (3), and (4),
4 "(B) which is organized under the laws of
5 the United States or of any State in which the
6 organization is qualified to operate, and
7 "(C) which is required, or elects to be
8 treated as being required, to file returns under
9 section 6033.
10 "(2) CHARITY MUST PRIMARILY ASSIST POOR
11 INDIVIDUALS.—
12 "(A) IN GENERAL.—An organization meets
13 the requirements of this paragraph only if the
14 predominant activity of such organization is the
15 provision of direct services to individuals whose
16 annual incomes generally do not exceed 185
17 percent of the official poverty line (as defined
18 by the Office of Management and Budget).
19 "(B) FOOD AID AND HOMELESS SHEL-
20 TERS.—Except as otherwise provided in regula-
21 tions, for purposes of subparagraph (A), serv-
22 ices to individuals in the form of—
23 "(i) temporary donations of food or
24 meals, or

1 "(ii) temporary shelter to homeless in-
2 dividuals,
3 shall be treated as provided to individuals de-
4 scribed in subparagraph (A) if the location and
5 operation of such services are such that the
6 service provider may reasonably conclude that
7 the beneficiaries of such services are predomi-
8 nantly individuals described in subparagraph
9 (A).
10 "(3) EXPENDITURES FOR CHARITABLE SERV-
11 ICES TO THE POOR.—
12 "(A) IN GENERAL.—An organization meets
13 the requirements of this paragraph only if for
14 the immediately preceding taxable year (and the
15 Secretary reasonably expects that for the cur-
16 rent taxable year), except as provided in sub-
17 paragraph (B), all annual expenditures of the
18 organization are used to provide the direct serv-
19 ices referred to in paragraph (2).
20 "(B) PERMISSIBLE EXPENDITURES FOR
21 ADMINISTRATION AND FUNDRAISING.—An orga-
22 nization shall not be treated as failing to meet
23 the requirements of subparagraph (A) with re-
24 spect to any taxable year by reason of the fact
25 that 25 percent or less of the annual aggregate

1 expenditures of the organization for such tax-
2 able year are—
3 "(i) administrative expenditures in
4 support of direct services referred to in
5 paragraph (2), and
6 "(ii) expenditures for purposes of
7 fundraising on behalf of the organization
8 providing direct services referred to in
9 paragraph (2).
10 "(4) LIMITATION ON POLITICAL ACTIVITY.—An
11 organization meets the requirements of this para-
12 graph only if for the immediately preceding taxable
13 year (and the Secretary reasonably expects that for
14 the current taxable year) the organization does not
15 engage in any of the following:
16 "(A) Activity for the purpose of influencing
17 legislation.
18 "(B) Litigation on behalf of any individual
19 referred to in paragraph (2).
20 "(C) Voter registration, political organiz-
21 ing, public policy advocacy, or public policy re-
22 search.
23 "(5) SPECIAL RULE FOR NEW ORGANIZA-
24 TIONS.—In the case of an organization which has no
25 preceding taxable year, paragraphs (3) and (4) shall

1 be applied without regard to the words 'for the im-
2 mediately preceding taxable year'.
3 "(e) TIME WHEN CONTRIBUTIONS DEEMED
4 MADE.—For purposes of this section, at the election of
5 the taxpayer, a contribution which is made not later than
6 the time prescribed by law for filing the return for the
7 taxable year (not including extensions thereof) shall be
8 treated as made on the last day of such taxable year.
9 "(f) COORDINATION WITH DEDUCTION FOR CHARI-
10 TABLE CONTRIBUTIONS.—
11 "(1) CREDIT IN LIEU OF DEDUCTION.—The
12 credit provided by subsection (a) for any qualified
13 charitable contribution shall be in lieu of any deduc-
14 tion otherwise allowable under this chapter for such
15 contribution.
16 "(2) ELECTION TO HAVE SECTION NOT
17 APPLY.—A taxpayer may elect for any taxable year
18 to have this section not apply."
19 (b) PUBLIC INSPECTION OF ANNUAL RETURNS.—
20 Subsection (e) of section 6104 of such Code (relating to
21 public inspection of certain annual returns and applica-
22 tions for exemption) is amended by adding at the end the
23 following new paragraph:

1 "(3) CHARITIES RECEIVING CREDITABLE CON-
2 TRIBUTIONS REQUIRED TO PROVIDE COPIES OF AN-
3 NUAL RETURN.—
4 "(A) IN GENERAL.—Every qualified char-
5 ity aiding the poor (as defined in section
6 26A(d)) shall, upon request of an individual
7 made at an office where such organization's an-
8 nual return filed under section 6033 is required
9 under paragraph (1) to be available for inspec-
10 tion, provide a copy of such return to such indi-
11 vidual without charge other than a reasonable
12 fee for any reproduction and mailing costs. If
13 the request is made in person, such copies shall
14 be provided immediately and, if made other
15 than in person, shall be provided within 30
16 days.
17 "(B) PERIOD OF AVAILABILITY.—Subpara-
18 graph (A) shall apply only during the 3-year pe-
19 riod beginning on the filing date (as defined in
20 paragraph (1)(D)) of the return requested."
21 (c) CLERICAL AMENDMENT.—The table of sections
22 for subpart A of part IV of subchapter A of chapter 1
23 of such Code is amended by adding at the end the follow-
24 ing new item:

"Sec. 26A. Credit for certain charitable contributions."

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to contributions made after the
3 date of the enactment of this Act.

4 **SEC. 203. DEDUCTION FOR CHARITABLE CONTRIBUTIONS**
5 **TO BE ALLOWED TO INDIVIDUALS WHO DO**
6 **NOT ITEMIZE DEDUCTIONS.**

7 (a) IN GENERAL.—Section 170 of the Internal Reve-
8 nue Code of 1986 (relating to charitable, etc., contribu-
9 tions and gifts) is amended by redesignating subsection
10 (m) as subsection (n) and by inserting after subsection
11 (l) the following new subsection:

12 "(m) DEDUCTION FOR INDIVIDUALS NOT ITEMIZING
13 DEDUCTIONS.—In the case of an individual who does not
14 itemize deductions for the taxable year, the amount allow-
15 able under subsection (a) for the taxable year shall be
16 taken into account as a direct charitable deduction under
17 section 63."

18 (b) DIRECT CHARITABLE DEDUCTION.—

19 (1) IN GENERAL.—Subsection (b) of section 63
20 of such Code is amended by striking "and" at the
21 end of paragraph (1), by striking the period at the
22 end of paragraph (2) and inserting ", and", and by
23 adding at the end the following new paragraph:

24 "(3) the deduction for charitable contributions
25 under section 170(m)."

(2) CONFORMING AMENDMENT.—Subsection (d) of section 63 of such Code is amended by striking "and" at the end of paragraph (1), by striking the period at the end of paragraph (2) and inserting ", and", and by adding at the end the following new paragraph:

"(3) the deduction for charitable contributions under section 170(m)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1995.

TITLE IV—LOW-INCOME EDUCATIONAL OPPORTUNITY SCHOLARSHIP PROGRAM

SEC. 401. SHORT TITLE.

This title may be cited as the "Low-Income Educational Opportunity Act of 1996".

SEC. 402. FINDINGS; PRECEDENTS.

(a) FINDINGS.—The Congress finds the following:

(1) Significant improvements in the education of educationally deprived children can be accomplished by—

(A) increasing educational opportunities for these children by expanding the range of educational choices that best meet their needs;

1 (B) fostering diversity and competition
2 among school programs for these children;
3 (C) providing the families of these children
4 more of the educational choices already avail-
5 able to affluent families; and
6 (D) enhancing the quality of American
7 education in general by increasing parental in-
8 volvement in the program and the direction of
9 the education of these children.
10 (2) Costs are often much lower in private
11 schools than corresponding costs in schools operated
12 solely by the Government.
13 (3) Not all children are alike and therefore
14 there is no one school or program that fits the needs
15 of all children.
16 (4) The formation of sound values and moral
17 character is crucial to helping young people escape
18 from lives of poverty, family break-up, drug abuse,
19 crime, and school failure.
20 (5) In addition to offering knowledge and skills,
21 education should positively contribute to the forma-
22 tion of the internal norms and values which are vital
23 to a child's success in life and to the well being of
24 society.

1 (6) Schools should help to provide young people
2 with a sound moral foundation which is consistent
3 with the values of their parents. To find such a
4 school, parents need a full range of choice to deter-
5 mine where their children can best be educated.
6 (b) PRECEDENTS.—The United States Supreme
7 Court has determined that programs giving parents choice
8 and increased input in their children's education, includ-
9 ing the choice of a religious education, do not violate the
10 constitution. The Court has held that as long as the bene-
11 ficiary, not the Government, decides where education
12 funds will be spent on such individual's behalf, Govern-
13 ment funds can be used for education in a religious insti-
14 tution because the Government has neither advanced nor
15 hindered a particular religion and therefore has not vio-
16 lated the establishment clause of the first amendment. Su-
17 preme Court precedents include—
18 (1) Wisconsin v. Yoder, 406 U.S. 205; Pierce v.
19 Society of Sisters, 268 U.S. 510; Meyer v. Ne-
20 braska, 262 U.S. 390 which held that parents have
21 the primary role in and are the primary decision
22 makers in all areas regarding the education and up-
23 bringing of their children;
24 (2) Mueller v. Allen, 463 U.S. 388 which de-
25 clared a Minnesota tax deduction program that pro-

1 vided State income tax benefits for educational ex-
2 penditures by parents, including tuition in religiously
3 affiliated schools, constitutional;
4 (3) Witters v. Department of Services for the
5 Blind, 474 U.S. 481 in which the Court ruled unani-
6 mously that public funds for the vocational training
7 of the blind could be used at a Bible college for min-
8 istry training;
9 (4) Zobrest v. Catalina Foothills School District
10 (113 S. Ct. 2462) which held that a deaf child could
11 receive an interpreter, paid for by the Government,
12 in a private religiously affiliated school under the In-
13 dividuals With Disabilities Education Act. The case
14 held that providing an interpreter in a religiously af-
15 filiated school did not violate the establishment
16 clause.
17 **SEC. 403. PURPOSES.**
18 The purposes of this title are the following:
19 (1) To assist renewal communities—
20 (A) in giving children from low-income
21 families more choices in selecting elementary
22 and secondary schools that children from
23 wealthier families already have;
24 (B) in improving schools and other aca-
25 demic programs by financially enhancing the

1 consumer power of low-income families to
2 choose the schools and programs that they de-
3 termine best fit the needs of their children;
4 (C) in engaging low-income parents more
5 fully in their children's schooling;
6 (D) in providing low income parents with
7 a wide range of choice in selecting a school for
8 their children, including public schools, private
9 schools, and private religious schools, without
10 promoting or discriminating against the choice
11 of a particular type of school; and
12 (E) in combating crime, drugs, and illegit-
13 imacy in low-income communities by encourag-
14 ing the restoration of moral character.
15 (2) To demonstrate the effects of State and
16 local programs that give low-income families more of
17 the choices in schools (public, private, or religious)
18 that wealthier families already have.
19 **SEC. 404. PLAN SUBMISSION; REQUIREMENTS.**
20 (a) IN GENERAL.—A community designated as a re-
21 newal community under section 1400 of the Internal Reve-
22 nue Code of 1986 shall submit a plan to the Secretary
23 not later than 60 days after receiving such designation.
24 Such plan shall include the following:

1 (1) A designation of a public or private office,
2 agency, or organization that will be responsible for
3 the establishment and operation of the scholarship
4 program and for the distribution of assistance to
5 parents.
6 (2) A description of the actions to be taken by
7 the State or renewal community to increase edu-
8 cational options for low-income children, including—
9 (A) public school choice programs;
10 (B) private school choice programs;
11 (C) quasi-public or charter school pro-
12 grams; and
13 (D) programs privatizing services such as
14 transportation, administration, or food prepara-
15 tion or distribution.
16 (3) A description of State and local funds (in-
17 cluding tax benefits) and non-governmental funds, if
18 any, that will be available to supplement scholarship
19 funds provided under this title.
20 (4) A description of the procedures the appli-
21 cant will use, including timely and meaningful con-
22 sultation with private school officials, to encourage
23 public and private elementary and secondary schools
24 to participate in the program and to ensure maxi-
25 mum educational choices for the parents of eligible

1 children and for other children residing in the re-
2 newal community.
3 (5) A description of how the applicant will in-
4 form parents and schools of the scholarship program
5 and of the choices available to parents under such
6 program.
7 (6) A description of procedures the applicant
8 will use to determine which eligible children will re-
9 ceive assistance.
10 (7) An assurance that the applicant will main-
11 tain such records relating to the scholarship pro-
12 gram as the Secretary may require and will comply
13 with the Secretary's reasonable requests for informa-
14 tion about the program.
15 (b) REQUIREMENTS.—In addition to the require-
16 ments described in subsection (a), a community that is
17 designated as a renewal community shall establish and op-
18 erate a Low-Income Educational Opportunity Scholarship
19 program (referred to in this title as "scholarship pro-
20 gram") and distribute scholarships to parents during the
21 first school year beginning on or after the 90th day follow-
22 ing the day of such designation. Such program shall meet
23 the following requirements:
24 (1) To provide a choice of schools to families
25 with children who reside in the renewal community.

1 (2) To provide assistance to parents of eligible
2 children to attend public and private elementary and
3 secondary schools, including religious schools that
4 serve the designated renewal community.
5 (3) To allow all or any lawfully operating public
6 and private elementary or secondary schools, includ-
7 ing religious schools that serve the renewal commu-
8 nity to participate in a scholarship program under
9 this title if such a school so chooses, subject to the
10 qualifications specified in section 409.
11 (c) COMPLIANCE.—The Secretary shall notify the
12 Secretary of Housing and Urban Development if a renewal
13 community fails to comply with the requirements of sub-
14 sections (a) or (b). Upon such notification, the Secretary
15 of Housing and Urban Development may begin a review
16 for possible revocation of renewal community designation.
17 **SEC. 405. USES OF FUNDS.**
18 A community that receives renewal community des-
19 ignation under section 1400 of the Internal Revenue Code
20 of 1986 shall use funds received under this title—
21 (1) to provide for scholarships to assist in the
22 payment of tuition and fees at a scholarship school
23 selected by the parents of an eligible child, and to
24 pay the reasonable costs of transportation of eligible
25 children to scholarship or alternative public schools;

1 (2) not to exceed 10 percent, to pay the cost of
2 administering the educational opportunity scholar-
3 ship program; or
4 (3) in accordance with section 412, if an excess
5 amount of funds are available, to pay for the edu-
6 cation of children from low-income families attend-
7 ing public schools.

8 **SEC. 406. SCHOLARSHIP PROGRAM.**

9 (a) ELIGIBLE CHILDREN.—From the amounts made
10 available under this title, each renewal community shall
11 provide, to the extent practicable, assistance to a parent
12 who has applied for assistance and has a child who—
13 (1) is a member of a family that has a total
14 family income that does not exceed 185 percent of
15 the poverty line;
16 (2) resides in the renewal community; and
17 (3)(A) seeks to attend an alternative public ele-
18 mentary or secondary school that participates in the
19 scholarship program; or
20 (B) seeks to attend a private or religious ele-
21 mentary or secondary school that participates in the
22 scholarship program.
23 (b) SELECTION AMONG ELIGIBLE CHILDREN.—
24 (1) IN GENERAL.—In the event that a renewal
25 community has insufficient funds to provide assist-

1 ance to all eligible children whose parents have ap-
2 plied for assistance, the renewal community may se-
3 lect students according to—
4 (A) random selection;
5 (B) the date of the parents' application for
6 assistance with preference given to parents who
7 applied earlier; or
8 (C) any other selection criteria developed
9 by the renewal community, subject to the limi-
10 tations provided in subsection (c).
11 (2) PRIORITY.—A renewal community shall give
12 priority to a parent for a student who received as-
13 sistance pursuant to this title during the preceding
14 school year.
15 (c) CRITERIA FOR SELECTION.—The renewal com-
16 munity may choose any criteria it wishes in order to make
17 the selection described in subsection (b), except that such
18 criteria shall not—
19 (1) discriminate on the basis of race or religion;
20 (2) discriminate on the basis of the school or
21 type of school selected by the parent; or
22 (3) discriminate against an eligible child be-
23 cause the parent of the child has chosen to receive
24 a scholarship to attend an eligible private school
25 under section 408(b)(1) of this title rather than

1 transportation assistance to attend an alternative
2 public school under section 408(b)(2).
3 (d) VALUE OF EACH SCHOLARSHIP.—The renewal
4 community shall determine the value of scholarships pro-
5 vided each semester within the renewal community, except
6 that the value of a scholarship provided by a renewal com-
7 munity shall not be less than the minimum value specified
8 in paragraph (1) and shall not exceed the maximum value
9 specified in paragraph (2).
10 (1) MINIMUM VALUE.—The minimum value of
11 a scholarship for a semester shall be the lesser of—
12 (A) 60 percent of the average per pupil
13 cost per semester in the public school system or
14 systems in the renewal community in the pre-
15 ceding school year; or
16 (B) the regular tuition and education fees
17 charged per semester by the scholarship school
18 chosen by the parent.
19 (2) MAXIMUM VALUE.—The maximum value of
20 a scholarship for a semester shall be the average per
21 pupil cost per semester in the public school system
22 or systems in the renewal community in the preced-
23 ing school year.
24 (3) DISABILITY.—If a student has a disability,
25 the average per pupil cost per semester in the public

1 school system or systems in the renewal community
2 in the preceding year shall be calculated using the
3 same cost for students with the same special needs
4 or handicapped category for such period of time.
5 (e) USE OF SCHOLARSHIPS, TRANSPORTATION AS-
6 SISTANCE.—Funds used to provide assistance to a parent
7 may be used by a parent only to pay for tuition and fees
8 or transportation costs at participating schools.

9 **SEC. 407. ALLOCATION OF FUNDS AMONG RENEWAL COM-**
10 **MUNITIES.**

11 (a) IN GENERAL.—The funds authorized under sec-
12 tion 417 shall be allocated to each renewal community by
13 the Secretary of the Treasury as follows:
14 (1) 80 percent shall be allocated among renewal
15 communities according to the formula provided in
16 subsection (b).
17 (2) 20 percent shall be allocated among renewal
18 communities according to the formula provided in
19 subsection (c).
20 (b) BASIC FUNDING ALLOCATION.—Each renewal
21 community, except as provided in subsection (d), shall re-
22 ceive a percentage of the funds provided under subsection
23 (a)(1) based on—

1 (1) the number of children from low-income
2 families who reside in an individual renewal commu-
3 nity; divided by
4 (2) the total number of children from low-in-
5 come families who reside in renewal communities na-
6 tionwide.
7 (c) ADDITIONAL MATCHING FUNDS.—Each renewal
8 community shall receive a percentage of funds under sub-
9 section (a)(2) based on—
10 (1) the total value of matching contributions for
11 scholarships provided from local governmental,
12 State, or private charitable sources within a renewal
13 community; divided by
14 (2) the total value of matching contributions for
15 scholarships provided from local governmental,
16 State, or private charitable sources in all renewal
17 communities nationwide.
18 (d) POSSIBLE EXCEPTION.—Notwithstanding sub-
19 section (b), if Puerto Rico or communities in Puerto Rico
20 are designated as renewal communities, such renewal com-
21 munities, in aggregate, shall receive not more than the
22 percentage of funds that Puerto Rico received under title
23 I of the Elementary and Secondary Education Act of 1965
24 during fiscal year 1995.

1 **SEC. 408. PARENTAL RIGHT OF CHOICE IN EDUCATION.**

2 (a) IN GENERAL.—Parents of each child who receives
3 assistance under this title shall be given a range of choice
4 of public and private elementary and secondary schools,
5 including religious schools that serve such community.

6 (b) TYPES OF ASSISTANCE.—The type of assistance
7 provided to the parent of a child selected to participate
8 in the scholarship program shall be determined by the type
9 of school to which the parent selects to send the child.

10 (1) SCHOLARSHIP SCHOOL.—If the parent
11 elects to have a child attend a private scholarship
12 school, described in section 409, the parent—

13 (A) shall receive a scholarship to be used
14 to pay tuition and other fees at the school; and

15 (B) shall receive direct or indirect trans-
16 portation assistance.

17 (2) ALTERNATIVE PUBLIC SCHOOL.—If the par-
18 ent elects to have the child attend an alternative
19 pubic school, the parent shall receive direct or indi-
20 rect transportation assistance.

21 (c) NO GUARANTEE OF ADMISSION.—Eligible chil-
22 dren whose parents have applied to receive a scholarship
23 under this title shall be subject to the admission criteria
24 of each scholarship school or alternative public school and
25 nothing in this title shall be construed to guarantee the

1 right of an eligible child to attend any scholarship school
2 or alternative public school.
3 (d) LIMITATION ON NUMBER OF CHILDREN AS-
4 SISTED.—The number of eligible children to receive assist-
5 ance from a renewal community shall be determined by
6 the funds available to such renewal community from—
7 (1) the Federal funds provided under this title;
8 and
9 (2) other funds provided by public and private
10 sources.
11 (e) PARENTAL NOTIFICATION.—
12 (1) IN GENERAL.—Each renewal community
13 shall provide timely notice of the scholarship pro-
14 gram to parents of eligible children residing in the
15 area and to the schools. At a minimum, such notice
16 shall—
17 (A) describe the educational opportunity
18 scholarship program;
19 (B) describe the eligibility requirements for
20 scholarships;
21 (C) describe the selection procedures to be
22 used if the number of eligible children seeking
23 to participate in the program exceeds the num-
24 ber that can be accommodated in the program;

1 (D) provide information about alternative
2 public schools and scholarship schools, including
3 information about any admission requirements
4 or criteria for each school participating in the
5 scholarship program; and
6 (E) include the procedures and a schedule
7 for parents to apply for their eligible children to
8 participate in the program.
9 (2) NOTIFICATION METHODS.—Each renewal
10 community is encouraged to use a variety of means
11 to provide information to parents in the community,
12 including direct distribution, mail, distribution of
13 materials in publicly frequented places, public adver-
14 tisements, and cooperative efforts with local commu-
15 nity groups.
16 (f) INFORMATION.—Renewal communities, upon re-
17 quest by any and all schools eligible to become scholarship
18 schools, shall fully cooperate with such schools in a timely
19 and reasonable manner to provide information prepared
20 by the school regarding school choice to parents of eligible
21 children. Such information shall include, at a minimum,
22 materials prepared by the school regarding the scholarship
23 program, selection of schools, and the school itself.

1 **SEC. 409. ELIGIBLE SCHOOLS.**

2 (a) STANDARDS.—Each private school located in the
3 renewal community or within a reasonable transportation
4 distance of such community is eligible to redeem scholar-
5 ships and to become a scholarship school if—

6 (1) the school complies with the antidiscrimina-
7 tion provisions of section 601 of title VI of the Civil
8 Rights Act of 1964 (42 U.S.C. 2000) and does not
9 discriminate on the basis of race;

10 (2) the school satisfies requirements established
11 by State and local governments, where applicable,
12 for curriculum and facilities which applied to private
13 schools for the area in which the school is located as
14 of January 1, 1996; and

15 (3) the school meets the health and safety
16 standards which applied to private schools as of Jan-
17 uary 1, 1996, for the community in which the school
18 is located.

19 (b) LIMITS ON THE REGULATION OF SCHOOLS.—Any
20 regulation of a scholarship school shall be subject to the
21 following limitations:

22 (1) No additional requirements, regulations, or
23 burdensome paperwork other than those in effect on
24 the date of the enactment of this Act or as set forth
25 or referenced in this title may be imposed upon
26 scholarship schools.

1 (2) Students who have been enrolled in a schol-
2 arship school in the preceding school year may be
3 given an admissions preference over new students
4 who apply.
5 (3) No requirements or regulations may pro-
6 hibit or limit the authority of scholarship schools to
7 provide religious instruction or education.
8 (4) Scholarship schools shall be protected by
9 the rights granted in the Religious Freedom Res-
10 toration Act of 1993.
11 (5) Except for the limitation concerning dis-
12 crimination on the basis of race expressed in sub-
13 section (a)(1), any school operated by a religious or-
14 ganization may require its employees to—
15 (A) adhere to the religious tenets and
16 teachings of such organization; and
17 (B) follow any rules of behavior devised by
18 the organization.
19 (6) No requirement and regulation shall pro-
20 hibit a scholarship school from—
21 (A) admitting students of a single gender;
22 (B) operating classes which are separated
23 on the basis of gender; or

1 (C) employing teaching personnel whose
2 gender the school deems appropriate in the edu-
3 cation of certain categories of students.
4 (c) INELIGIBLE SCHOOLS.—Notwithstanding any
5 other provision of this title, a school that advocates crimi-
6 nal behavior or which is operated by an organization which
7 advocates criminal behavior is ineligible to participate in
8 the program authorized by this title.

9 **SEC. 410. ADMINISTRATION OF PROGRAM AND TREATMENT**
10 **OF FUNDS.**

11 (a) FUNDS NOT AID TO INSTITUTIONS.—The funds
12 provided for a scholarship under this title is an award of
13 aid to a family, not to a school or institution. Use of a
14 scholarship or transportation assistance shall not con-
15 stitute Federal financial aid or assistance to a school, nor
16 shall it invoke any regulation of an activity beyond the
17 regulations explicitly referred to or provided for in this
18 title.
19 (b) TREATMENT OF GRANT FUNDS.—A Federal,
20 State, or local agency may not take into account, in any
21 year, Federal funds provided to a renewal community,
22 school, or to the parents of any child under this title in
23 determining whether to provide any other funds from Fed-
24 eral, State, or local resources, or in determining the
25 amount of such assistance.

1 (c) NO AUTHORIZATION OF FEDERAL REGULATION
2 OF EDUCATION.—Nothing in this Act shall be construed
3 to authorize the Secretary to exercise any direction, super-
4 vision, or control over the curriculum, program of instruc-
5 tion, administration, or personnel of any educational insti-
6 tution or school participating in a program under this
7 title.

8 (d) PROHIBITION ON STATE DISCRIMINATION IN USE
9 OF FUNDS.—A State constitution or State law shall not
10 be construed to prohibit the expenditure of any Federal
11 funds provided under this title in or by a religious institu-
12 tion. If a State law or constitution does not allow the ex-
13 penditure of State or local public funds in or by religious
14 organizations, the renewal community shall segregate Fed-
15 eral funds from State or other public funds for purposes
16 of providing assistance administering the educational op-
17 portunity scholarship program.

18 (e) REGULATION OF SCHOOLS NOT RECEIVING
19 SCHOLARSHIPS.—A rule or requirement established for
20 scholarship schools shall not apply to a private school that
21 chooses not to become a scholarship school.

22 (f) SCHOLARSHIPS NOT DEEMED INCOME.—Funds
23 used to provide scholarships shall not be deemed income
24 of the parents for Federal income tax purposes or for de-
25 termining eligibility for any other Federal programs.

1 **SEC. 411. CONTRIBUTIONS TO SCHOLARSHIP PROGRAM**
2 **FROM OTHER SOURCES.**

3 (a) IN GENERAL.—The renewal community is en-
4 couraged to seek or provide additional funds for scholar-
5 ships and transportation assistance from other sources, in-
6 cluding—

7 (1) local government funds;
8 (2) State government funds;
9 (3) contributions from private businesses; and
10 (4) contributions from private charitable orga-
11 nizations.

12 (b) PARENTAL PAYMENTS NOT COUNTED AS MATCH-
13 ING CONTRIBUTIONS.—For purposes of section 407(c),
14 payments of tuition and education fees by parents of eligi-
15 ble children shall not be considered matching contribu-
16 tions.

17 **SEC. 412. USE OF EXCESS FUNDS FOR ADDITIONAL EDU-**
18 **CATIONAL PURPOSES.**

19 (a) IN GENERAL.—If any funds remain after a re-
20 newal community has provided scholarships to all eligible
21 children whose parents have applied for assistance in ac-
22 cordance with this title, the community may use such ex-
23 cess funds for the general education of children from low-
24 income families who attend public schools within the re-
25 newal community, subject to the limitation in subsection
26 (b).

1 (b) LIMITATION.—A renewal community may not use
2 excess funds for the purposes described in subsection (a)
3 if the Secretary determines that the community—
4 (1) has failed to fully inform the parents or
5 guardians of eligible children of—
6 (A) the availability of scholarships; and
7 (B) the full range of choices of schools
8 available;
9 (2) has in any way discouraged or impeded par-
10 ents of eligible children from using scholarships;
11 (3) has in any way discouraged or impeded eli-
12 gible schools from receiving scholarships; or
13 (4) has unreasonably hindered the establish-
14 ment of new private schools within the renewal com-
15 munity.
16 (c) FORFEITURE OF SURPLUS FUNDS.—In the event
17 that the Secretary determines that a renewal community
18 has met one or more of the conditions described in sub-
19 section (b), the renewal community shall return any excess
20 funds described in subsection (a) to the Treasury.
21 **SEC. 413. EVALUATION.**
22 (a) IN GENERAL.—The Secretary shall conduct a na-
23 tional evaluation of the program authorized by this title
24 not later than 2 years after such program begins and a
25 second evaluation after 4 years. Such evaluations shall—

1 (1) assess the implementation of assisted pro-
2 grams and the effect on participants, schools, and
3 communities in the renewal community, including
4 parental involvement in, and satisfaction with, the
5 program and their children's education;
6 (2) compare the educational achievement of
7 children who participate in the scholarship program
8 with the achievement of similar children who do not
9 participate in the scholarship program before, dur-
10 ing, and after the program;
11 (3) compare educational achievement of chil-
12 dren who use scholarships to attend schools other
13 than the ones they would attend in the absence of
14 the program with educational achievement of chil-
15 dren who attend the schools scholarship students
16 would attend in the absence of the program; and
17 (4) compare graduation rates of children who
18 use scholarships to attend schools other than the
19 schools they would attend in the absence of the pro-
20 gram with graduation rates of children who attend
21 the schools the scholarship students would attend in
22 the absence of the program.
23 (b) NO AUTHORIZATION OF SCHOOL REGULATION.—
24 The responsibility to evaluate shall not be construed to
25 authorize the State or local government to exercise any

1 direction, supervision, or control over the curriculum, pro-
2 gram of instruction, administration, or personnel of any
3 educational private institution or school participating in
4 a low-income educational opportunity scholarship program
5 under this title, except that the school may be required
6 to provide reasonable information to assist in the evalua-
7 tion of the program, including standardized tests of stu-
8 dent achievement, surveys of parental satisfaction with
9 their child's education, surveys of student satisfaction, at-
10 tendance rates, dropout rates, and data on student's col-
11 lege enrollment.

12 **SEC. 414. EFFECT ON OTHER PROGRAMS.**

13 Nothing in this Act shall be read to affect the applica-
14 bility or requirements of part B of the Individuals with
15 Disabilities Education Act.

16 **SEC. 415. JUDICIAL REVIEW.**

17 (a) PANEL.—In the event of a constitutional chal-
18 lenge to the program authorized under this title, such
19 challenge shall be tried immediately by a three judge panel
20 in the United States District Court of the District of Co-
21 lumbia and immediate appeal, as of right, may be had in
22 the Supreme Court of the United States.

23 (b) REQUEST TO EXPEDITE.—The Supreme Court of
24 the United States is requested to expedite an appeal re-
25 quested pursuant to subsection (a).

1 **SEC. 416. DEFINITIONS.**

2 Except as otherwise provided, for purposes of this
3 title—

4 (1) the term "alternative public school" means
5 a public school other than the public school in which
6 the child normally would attend and which is within
7 reasonable transportation distance from the child's
8 residence;

9 (2) the term "assistance" means either a schol-
10 arship, transportation assistance, or a scholarship
11 and transportation assistance provided to parents of
12 eligible children who participate in the scholarship
13 program pursuant to this title.

14 (3) the term "elementary school" means an in-
15 stitutional day or residential school that provides el-
16 ementary education, as determined under State law;

17 (4) the term "eligible child" means a child
18 whose parents qualify to receive assistance under
19 section 406;

20 (5) the term "lawfully operated elementary
21 school" means an institutional day or residential
22 school that provides elementary education, as deter-
23 mined under State law;

24 (6) the term "lawfully operated secondary
25 school" means an institutional day or residential
26 school that provides secondary education, as deter-

1 mined under State law, except that such term does
2 not include any education beyond grade 12;
3 (7) the terms "Low-Income Educational Oppor-
4 tunity Scholarship" and "scholarship" mean a cer-
5 tificate awarded to a parent of an eligible child
6 under section 406 to be redeemed at a scholarship
7 school;
8 (8) the terms "local educational agency", "par-
9 ent", and "State educational agency" have the
10 meanings given such terms in section 14101 of the
11 Elementary and Secondary Education Act of 1965;
12 (9) the term "poverty level" means the total in-
13 come of a family that is at or below the Federal pov-
14 erty guidelines updated annually in the Federal Reg-
15 ister by the Department of Health and Human Serv-
16 ices under authority of section 673(2) of the Omni-
17 bus Budget Reconciliation Act of 1981 as amended;
18 (10) the term "renewal community" has the
19 meaning given such term in section 1400 of the In-
20 ternal Revenue Code of 1986;
21 (11) the term "scholarship program means a
22 program within the renewal community that provides
23 scholarships and transportation aid to eligible chil-
24 dren in accordance with this title.

1 (12) the term "scholarship school" means a pri-
2 vate school that chooses to accept educational oppor-
3 tunity scholarships;
4 (13) the term "secondary school" means an in-
5 stitutional day or residential school that provides
6 secondary education, as determined under State law,
7 except that such term does not include any edu-
8 cation beyond grade 12;
9 (14) the term "Secretary" means the Secretary
10 of Education;
11 (15) the term "State" means each of the 50
12 States, the District of Columbia, and the Common-
13 wealth of Puerto Rico; and
14 (16) the term "transportation assistance"
15 means direct or indirect subsidization of the costs of
16 transporting children participating in the program to
17 scholarship schools or alternative public schools.

18 **SEC. 417. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated the following
20 sums: $200,000,000 for fiscal year 1996, $200,000,000
21 for fiscal year 1997, $200,000,000 for fiscal year 1998,
22 $400,000,000 for fiscal year 1999, $500,000,000 for fis-
23 cal 2000, $1,000,000,000 for fiscal year 2001, and
24 $2,500,000,000 for fiscal year 2002.

TITLE III—PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

SEC. 301. PREVENTION AND TREATMENT OF SUBSTANCE ABUSE; SERVICES PROVIDED THROUGH RELIGIOUS ORGANIZATIONS.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following part:

"PART G—SERVICES PROVIDED THROUGH RELIGIOUS ORGANIZATIONS

"SEC. 581. APPLICABILITY TO DESIGNATED PROGRAMS.

"(a) DESIGNATED PROGRAMS.—Subject to subsection (b), this part applies to each program under this Act that makes awards of Federal financial assistance to public or private entities for the purpose of carrying out activities to prevent or treat substance abuse (in this part referred to as a 'designated program'). Designated programs include the program under subpart II of part B of title XIX (relating to formula grants to the States).

"(b) LIMITATION.—This part does not apply to any award of Federal financial assistance under a designated program for a purpose other than the purpose specified in subsection (a).

1 "(c) DEFINITIONS.—For purposes of this part (and
2 subject to subsection (b)):
3 "(1) The term 'designated award recipient'
4 means a public or private entity that has received an
5 award under a designated program (whether the
6 award is a designated direct award or a designated
7 subaward).
8 "(2) The term 'designated direct award' means
9 an award under a designated program that is re-
10 ceived directly from the Federal Government.
11 "(3) The term 'designated subaward' means an
12 award of financial assistance made by a non-Federal
13 entity, which award consists in whole or in part of
14 Federal financial assistance provided through an
15 award under a designated program.
16 "(4) The term 'designated program' has the
17 meaning given such term in subsection (a).
18 "(5) The term 'financial assistance' means a
19 grant, cooperative agreement, contract, or
20 voucherized assistance.
21 "(6) The term 'program beneficiary' means an
22 individual who receives program services.
23 "(7) The term 'program participant' has the
24 meaning given such term in section 582(a)(2).

1 "(8) The term 'program services' means treat-
2 ment for substance abuse, or preventive services re-
3 garding such abuse, provided pursuant to an award
4 under a designated program.
5 "(9) The term 'religious organization' means a
6 nonprofit religious organization.
7 "(10) The term 'voucherized assistance'
8 means—
9 "(A) a system of selecting and reimbursing
10 program services in which—
11 "(i) the beneficiary is given a docu-
12 ment or other authorization that may be
13 used to pay for program services;
14 "(ii) the beneficiary chooses the orga-
15 nization that will provide services to him or
16 her according to rules specified by the des-
17 ignated award recipient; and
18 "(iii) the organization selected by the
19 beneficiary is reimbursed by the designated
20 award recipient for program services pro-
21 vided; or
22 "(B) any other mode of financial assist-
23 ance to pay for program services in which the
24 program beneficiary determines the allocation

1 of program funds through his or her selection
2 of one service provider from among alternatives.
3 **"SEC. 582. RELIGIOUS ORGANIZATIONS AS PROGRAM PAR-**
4 **TICIPANTS.**
5 "(a) IN GENERAL.—
6 "(1) SCOPE OF AUTHORITY.—Notwithstanding
7 any other provision of law, a religious organiza-
8 tion—
9 "(A) may be a designated award recipient;
10 "(B) may make designated subawards to
11 other public or nonprofit private entities (in-
12 cluding other religious organizations);
13 "(C) may provide for the provision of pro-
14 gram services to program beneficiaries through
15 the use of voucherized assistance; and
16 "(D) may be a provider of services under
17 a designated program, including a provider that
18 accepts voucherized assistance.
19 "(2) DEFINITION OF PROGRAM PARTICIPANT.—
20 For purposes of this part, the term 'program partici-
21 pant' means a public or private entity that has re-
22 ceived a designated direct award, or a designated
23 subaward, regardless of whether the entity provides
24 program services. Such term includes an entity
25 whose only participation in a designated program is

1 to provide program services pursuant to the accept-
2 ance of voucherized assistance.
3 "(b) RELIGIOUS ORGANIZATIONS.—The purpose of
4 this section is to allow religious organizations to be pro-
5 gram participants on the same basis as any other non-
6 profit private provider without impairing the religious
7 character of such organizations, and without diminishing
8 the religious freedom of program beneficiaries.
9 "(c) NONDISCRIMINATION AGAINST RELIGIOUS OR-
10 GANIZATIONS.—Religious organizations are eligible to be
11 program participants on the same basis as any other non-
12 profit private organization so long as activities under the
13 designated programs are implemented consistent with the
14 establishment clause of the first amendment to the Con-
15 stitution of the United States. Neither the Federal Gov-
16 ernment nor a State receiving funds under such programs
17 shall discriminate against an organization that is or ap-
18 plies to be a program participant on the basis that the
19 organization has a religious character.
20 "(d) RELIGIOUS CHARACTER AND FREEDOM.—
21 "(1) RELIGIOUS ORGANIZATIONS.—Notwith-
22 standing any other provision of law, any religious or-
23 ganization that is a program participant shall retain
24 its independence from Federal, State, and local gov-
25 ernment, including such organization's control over

1 the definition, development, practice, and expression
2 of its religious beliefs.
3 "(2) ADDITIONAL SAFEGUARDS.—Neither the
4 Federal Government nor a State shall require a reli-
5 gious organization to—
6 "(A) alter its form of internal governance;
7 or
8 "(B) remove religious art, icons, scripture,
9 or other symbols;
10 in order to be a program participant.
11 "(e) RIGHTS OF PROGRAM BENEFICIARIES.—With
12 respect to an individual who is a program beneficiary or
13 a prospective program beneficiary, if the individual objects
14 to a program participant on the basis that the participant
15 is a religious organization, the following applies:
16 "(1) If the organization received a designated
17 direct award, the organization shall arrange for the
18 individual to receive program services through an al-
19 ternative entity.
20 "(2) If the organization received a designated
21 subaward, the non-Federal entity that made the
22 subaward shall arrange for the individual to receive
23 the program services through an alternative program
24 participant.

1 "(3) If the organization is providing services
2 pursuant to voucherized assistance, the designated
3 award recipient that operates the voucherized assist-
4 ance program shall arrange for the individual to re-
5 ceive the program services through an alternative
6 provider.
7 "(4) Arrangements under any of paragraphs
8 (1) through (3) with an alternative entity shall pro-
9 vide for program services the monetary value of
10 which is not less than the monetary value of the pro-
11 gram services that the individual would have re-
12 ceived from the religious organization involved.
13 "(f) NONDISCRIMINATION IN EMPLOYMENT.—
14 "(1) IN GENERAL.—Except as provided in para-
15 graph (2), nothing in this section shall be construed
16 to modify or affect the provisions of any other Fed-
17 eral or State law or regulation that relates to dis-
18 crimination in employment on the basis of religion.
19 "(2) EXCEPTION.—A religious organization
20 that is a program participant may require that an
21 employee rendering programs services adhere to—
22 "(A) the religious tenets and teachings of
23 such organization; and
24 "(B) any rules of the organization regard-
25 ing the use of drugs or alcohol.

1 "(g) NONDISCRIMINATION AGAINST BENE-
2 FICIARIES.—
3 "(1) IN GENERAL.—Except as provided in para-
4 graph (2) or as otherwise provided in law, a religious
5 organization that is a program participant shall not
6 in providing program services discriminate against a
7 program beneficiary on the basis of religion or reli-
8 gious belief.
9 "(2) LIMITATION.—A religious organization
10 that is a program participant may require a pro-
11 gram beneficiary who has elected in accordance with
12 subsection (e) to receive program services from such
13 organization—
14 "(A) to actively participate in religious
15 practice, worship, and instruction; and
16 "(B) to follow rules of behavior devised by
17 the organizations that are religious in content
18 or origin.
19 "(h) FISCAL ACCOUNTABILITY.—
20 "(1) IN GENERAL.—Except as provided in para-
21 graph (2), any religious organization that is a pro-
22 gram participant shall be subject to the same regula-
23 tions as other recipients of awards of Federal finan-
24 cial assistance to account, in accordance with gen-

1 erally accepting auditing principles, for the use of
2 the funds provided under such awards.
3 "(2) LIMITED AUDIT.—With respect to the
4 award involved, if a religious organization that is a
5 program participant maintains the Federal funds in
6 a separate account from non-Federal funds, then
7 only the Federal funds shall be subject to audit.

8 **"SEC. 583. LIMITATIONS ON USE OF FUNDS FOR CERTAIN**
9 **PURPOSES.**

10 "(a) IN GENERAL.—Except as provided in subsection
11 (b), no funds provided directly to an entity under a des-
12 ignated program shall be expended for sectarian worship
13 or instruction.
14 "(b) EXCEPTION.—Subsection (a) shall not apply to
15 assistance provided to or on behalf of a program bene-
16 ficiary if the beneficiary may choose where such assistance
17 is redeemed or allocated.

18 **"SEC. 584. ADMINISTRATION OF PROGRAM AND TREAT-**
19 **MENT OF FUNDS.**

20 "(a) FUNDS NOT AID TO INSTITUTIONS.—Financial
21 assistance under a designated program provided to or on
22 behalf of program beneficiaries is aid to the beneficiary,
23 not to the organization providing program services. The
24 receipt by a program beneficiary of program services at

1 the facilities of the organization shall not constitute Fed-
2 eral financial assistance to the organization involved.
3 "(b) PROHIBITION ON STATE DISCRIMINATION IN
4 USE OF FUNDS.—No provision in any State constitution
5 or State law shall be construed to prohibit the expenditure
6 of Federal funds under a designated program in a reli-
7 gious facility or by a religious organization that is a pro-
8 gram participant. If a State law or constitution would pre-
9 vent the expenditure of State or local public funds in such
10 a facility or by such a State or local government, then
11 the organization shall segregate the Federal funds from
12 State or other public funds for purposes of carrying out
13 the designated program.

14 **"SEC. 585. EDUCATIONAL REQUIREMENTS FOR PERSONNEL**
15 **IN DRUG TREATMENT PROGRAMS.**

16 "(a) FINDINGS.—The Congress finds that—
17 "(1) establishing formal educational qualifica-
18 tion for counselors and other personnel in drug
19 treatment programs may undermine the effective-
20 ness of such programs; and
21 "(2) such formal educational requirements for
22 counselors and other personnel may hinder or pre-
23 vent the provision of needed drug treatment services.
24 "(b) LIMITATION ON EDUCATIONAL REQUIREMENTS
25 OF PERSONNEL.—

1 "(1) TREATMENT OF RELIGIOUS EDUCATION.—
2 If any State or local government that is a program
3 participant imposes formal educational qualifications
4 on providers of program services that are religious
5 organizations, such State or local government shall
6 treat religious education and training of personnel
7 as having a critical and positive role in the delivery
8 of program services. In applying educational quali-
9 fications for personnel in religious organizations,
10 such State or local government shall give credit for
11 religious education and training equivalent to credit
12 given for secular course work in drug treatment or
13 any other secular subject that is of similar grade
14 level and duration.
15 "(2) RESTRICTION OF DISCRIMINATION RE-
16 QUIREMENTS.—
17 "(A) IN GENERAL.—Subject to paragraph
18 (1), a State or local government that is a pro-
19 gram participant may establish formal edu-
20 cational qualifications for personnel in organiza-
21 tions providing program services that contribute
22 to success in reducing drug use among program
23 beneficiaries.
24 "(B) EXCEPTION.—The Secretary shall
25 waive the application of any educational quali-

1 fication imposed under subparagraph (A) for an
2 individual religious organization, if the Sec-
3 retary determines that—
4 "(i) the religious organization has a
5 record of prior successful drug treatment
6 for at least the preceding three years;
7 "(ii) the educational qualifications
8 have effectively barred such religious orga-
9 nization from becoming a program pro-
10 vider;
11 "(iii) the organization has applied to
12 the Secretary to waive the qualifications;
13 and
14 "(iv) the State or local government
15 has failed to demonstrate empirically that
16 the educational qualifications in question
17 are necessary to the successful operation of
18 a drug treatment program.".

TITLE V—CRA CREDIT FOR INVESTMENTS IN COMMUNITY DEVELOPMENT ORGANIZATIONS LOCATED IN RENEWAL COMMUNITIES

SEC. 501. CRA CREDIT FOR INVESTMENTS IN COMMUNITY DEVELOPMENT ORGANIZATIONS LOCATED IN RENEWAL COMMUNITIES.

Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by adding at the end the following new subsection:

"(c) INVESTMENTS IN CERTAIN COMMUNITY DEVELOPMENT ORGANIZATIONS.—In assessing and taking into account, under subsection (a), the record of a regulated financial institution, the appropriate Federal financial supervisory agency may consider, as a factor, investments of the institution in, and capital investment, loan participation, and other ventures undertaken by the institution in cooperation with, any community development organization (as defined in section 234 of the Bank Enterprise Act of 1991) which is located in a renewal community (as designated under section 1400 of the Internal Revenue Code of 1986).".

1 **SEC. 502. FDA USER FEE AMENDMENT.**

2 Section 736(b) of the Federal Food, Drug, and Cos-
3 metic Act (21 U.S.C. 379h(b)) is amended by adding at
4 the end the following:

5 "(3) RENEWAL COMMUNITY EXCEPTION.—
6 Any—

7 "(A) business which qualifies as a renewal
8 community business under section 1400C of the
9 Internal Revenue Code of 1986, or

10 "(B) any nonprofit organization,

11 which is manufacturing a drug for which a fee is re-
12 quired under subsection (a)(2)(A) and which was de-
13 veloped in a renewal community designated under
14 section 1400 of such Code or has pending an appli-
15 cation or supplement for a drug for which a fee is
16 required under subsection (a)(2)(B) and which was
17 developed in a renewal community designated under
18 section 1400 of such Code shall not be required to
19 pay any portion of such fee. Any business or non-
20 profit organization shall not be required to pay any
21 portion of the fee required under subsection
22 (a)(1)(A) for a human drug application for a drug
23 that was developed in a renewal community."

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IMPLEMENTATION OF WELFARE REFORM AND CHILD SUPPORT ENFORCEMENT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

SEPTEMBER 17 AND 19, 1996

Serial 104–73

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CONTENTS

	Page
Advisories announcing the hearings	2

WITNESSES

U.S. Department of Health and Human Services:	
Olivia Golden, Commissioner, Administration on Children, Youth and Families	21
David Gray Ross, Deputy Director, Office of Child Support Enforcement, Administration for Children and Families	99

American Public Welfare Association, A. Sidney Johnson	59
California Department of Social Services, Leslie L. Frye	131
Center for Law and Social Policy, Mark Greenberg	81
Children's Rights Council, David L. Levy	152
Donahue, Elisabeth Hirschhorn, National Women's Law Center	160
Doss, Wayne D., Los Angeles District Attorney's Bureau of Family Support Operations	112
Frye, Leslie L., California Department of Social Services	131
Golonka, Susan, National Governors' Association	75
Greenberg, Mark, Center for Law and Social Policy	81
Human Services Information Technology Advisory Group, James R. Weaver	124
Johnson, A. Sidney, American Public Welfare Association	59
Levy, David L., Children's Rights Council	152
Los Angeles District Attorney's Bureau of Family Support Operations, Wayne D. Doss	112
Massachusetts Department of Revenue, Marilyn Ray Smith	170
Melia, Robert M., Policy Studies, Inc	141
National Conference of State Legislatures, Sheri E. Steisel	65
National Governors' Association, Susan Golonka	75
National Women's Law Center, Elisabeth Hirschhorn Donahue	160
Policy Studies, Inc., Robert M. Melia	141
Smith, Marilyn Ray, Massachusetts Department of Revenue	170
Steisel, Sheri E., National Conference of State Legislatures	65
Unisys Corp., and Human Services Information Technology Advisory Group, James R. Weaver	124

SUBMISSIONS FOR THE RECORD

Alameda County Social Services Agency, Oakland, CA, Rodger G. Lum, statement	193
Eastern Regional Interstate Child Support Association, Margaret Campbell Haynes, statement and attachment	198
Mears, Chad, Sebastopol, CA, statement	207
Santa Clara, County of, San Jose, CA, statement	214
Stenholm, Hon. Charles, a Representative in Congress from the State of Texas, statement	217
Texas, State of, Office of the Attorney General, Austin, TX, David Vela, statement	221

IMPLEMENTATION OF WELFARE REFORM AND CHILD SUPPORT ENFORCEMENT

TUESDAY, SEPTEMBER 17, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:04 p.m., in room B–318, Rayburn House Office Building, Hon E. Clay Shaw, Jr., (Chairman of the Subcommittee) presiding.

[The advisories announcing the hearings follow:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE
September 10, 1996
No. HR-15

CONTACT: (202) 225-1025

Shaw Announces Two-Day Hearing on Implementation of Welfare Reform and Child Support Enforcement

Congressman E. Clay Shaw, Jr., (R-FL), Chairman of the Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee will hold a two-day hearing on implementation of the recently-enacted welfare reform law. **The first hearing day will take place on Tuesday, September 17, 1996, beginning at 12:00 noon, and the second on Thursday, September 19, 1996, beginning at 10:00 a.m., in room B-318 of the Rayburn House Office Building.**

In view of the limited time available to hear witnesses, oral testimony on both days will be heard from invited witnesses only. Witnesses will include welfare program administrators, representatives of national organizations representing States and localities, and advocates. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearings.

BACKGROUND:

The new welfare reform law, the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," P.L. 104-193, is a major revision of the nation's welfare system. Many programs under the jurisdiction of the Committee on Ways and Means were substantially modified by the legislation, including the Aid to Families with Dependent Children program, several child care programs, and the child support enforcement program. One of the most important changes made by the new law is the dramatic increase in State responsibility for planning and conducting welfare programs. The major purpose of this hearing is to provide a forum for States to describe their new programs and for States and other witnesses to discuss issues that are likely to arise during implementation.

In announcing the hearing, Chairman Shaw stated: "Like all Americans, Members of the Subcommittee are extremely interested in how the States and localities plan to implement the new law. We have placed a great deal of trust in the ability of State and local governments to help people get off welfare and into jobs and to reduce the rate of nonmarital births. Many States have already redesigned their welfare programs to achieve these goals, and others are poised to follow suit. We want to conduct a hearing at this early date both to signal our interest and to show the progress States are already making."

FOCUS OF THE HEARING:

The Subcommittee will focus on the new Temporary Assistance for Needy Families (TANF) block grant program on September 17 and on the child support enforcement program on September 19. The Subcommittee also will focus on State and local government progress in preparing State plans and on issues States expect to confront during implementation of the

welfare reform law. Regarding the TANF block grant, it is expected that the issues addressed will include the conduct of work programs, program financing, the design of programs addressed to reducing nonmarital births, and State use of waivers. Regarding child support enforcement, issues will include the new national data systems, interstate enforcement, and financing. The hearing will include panels of witnesses from States that will describe successful new programs and practices.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit at least six (6) copies of their statement, with their address and date of hearing noted, by the close of business, Thursday, October 3, 1996, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public on either hearing day, they may deliver 200 additional copies for this purpose to the Subcommittee on Human Resources office, room B-317 Rayburn House Office Building, at least two hours before the hearing begins.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are now available on the World Wide Web at 'HTTP://WWW.HOUSE.GOV/WAYS_MEANS/' or over the Internet at 'GOPHER.HOUSE.GOV' under 'HOUSE COMMITTEE INFORMATION'.

*****

NOTICE -- CHANGE IN TIME

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE
September 12, 1996
No. HR-15-Revised

CONTACT: (202) 225-1025

Time Change for Subcommittee Hearing on Tuesday, September 17, 1996, on Implementation of Welfare Reform and Child Support Enforcement

Congressman E. Clay Shaw, Jr., (R-FL), Chairman of the Subcommittee on Human Resources of the Committee on Ways and Means, today announced that the Subcommittee hearing on Implementation of Welfare Reform and Child Support Enforcement previously scheduled for Tuesday, September 17, 1996, at 12:00 noon, in room B-318 of the Rayburn House Office Building, **will be held instead at 2:00 p.m.**

All other details for the hearing remain the same. (See Subcommittee press release No. HR-15, dated September 10, 1996.)

*****

Chairman SHAW. We will go ahead and proceed this afternoon. I apologize for the size of the room and for those of you who are standing, but I am delighted to see the interest in the subject matter that is before us.

The welfare reform bill passed by Congress on a bipartisan basis, and signed into law by President Clinton on August 22, marks a dramatic change in American social policy. We no longer say to poor Americans that we know you cannot support yourselves, so just give up and Uncle Sam will provide you with money, food stamps, medical care, housing, and other benefits. True compassion requires government, on behalf of American workers and taxpayers, to help people to help themselves.

Now American social policy for the poor is moving forward with three major principles. First, no matter how poor you are, the government expects you to do everything possible to support yourself. Second, government support is temporary and it is conditional. Third, the level of government primarily responsible for rescuing the poor from the clutches of welfare dependency and for promoting responsible behavior is State and local government: the level closest to families on welfare and the taxpayers who support them.

This new law is a signal achievement for this Subcommittee, for this Congress, and for the American Nation. But much more remains to be done. We have called this hearing to begin the long and difficult task of overseeing the implementation of this vital legislation. I would estimate that good legislation is about 10 percent of what is required to achieve true welfare reform. The other 90 percent is implementation, and this is going to take a lot of cooperation between Democrats and Republicans in this Congress.

Our goal in Congress is to be bipartisan, and to be a bipartisan helping hand. The law is the law. We must now join together to make it work. As I have said to the President, now we are in this together. Today and Thursday we are providing a forum for the Department of Health and Human Services to provide a progress report on what they are doing to initiate implementation, and to let the Congress know about any problems they anticipate, including needed legislative fixes. In this regard, I expect we will introduce a technical corrections bill sometime in the early part of next year, perhaps in January, and move it quickly through the next Congress.

We have also invited witnesses outside the administration, especially from State government, to give us a progress report as the States prepare for implementation. In inviting these witnesses, I am encouraging them to identify provisions of the law they expect States to have difficulty implementing, and to address recommendations to the States, HHS, the Department of Health and Human Services, or to the Congress about how to deal with these difficult provisions.

Let me try to dispense with one issue that has concerned me and has already received attention in the media. My concern is that States could use the provision in the law allowing for continuation of waivers to weaken the work requirement or the 5-year time limit that is in the law passed by this Congress.

I am pleased to say we have worked closely with HHS to develop an initial strategy on the waiver issue. More specifically, the Sec-

retary is going to require States to explain whether, and if so, how they plan to use their waivers to modify requirements of the new law. Our staff will then work with HHS and the Congressional Research Service to compile a list of these changes. Then, depending on how many waivers will modify the new law and how extensive these modifications are, Congress may need to reexamine the waiver provision itself.

I cannot leave the waiver issue without mentioning the waiver given to the District of Columbia allowing them to ignore the 5-year time limit for 10 years. If the District of Columbia actually intends to use its waiver to exempt more than 20 percent of the caseload from the time limit, I will personally introduce legislation to repeal that waiver. This law will not work unless everyone understands the 5-year time limitation is real.

I might also add here that the District of Columbia, if they do not require work, they are going to run out of money and will also fall short on the other provisions which will actually require HHS to fine them in the future for not meeting those standards.

One more issue, there has been lots of discussion in the media about the charitable choice provision of the new law. There is little question the private sector, especially voluntary organizations, including both sectarian and nonsectarian groups, should play a major role in helping families escaping welfare dependency. Given the legal issues raised by this provision, we are happy to make available legal memorandum about the provisions written for Senator Ashcroft, the original author of the charitable choice option.

Without objection, I would like to make these copies available to those in attendance on the table in the back.

[The information follows:]

School of Law
University of Missouri-Columbia

Columbia, MO 65211

MEMORANDUM

To: **Center for Public Justice**, 1835 H Forest Drive, Annapolis, MD 21401, tele. (410) 263-5909 (Stanley W. Carlson-Thies) - *and* - **Center for Law and Religious Freedom**, 4208 Evergreen Lane Suite 222, Annandale, VA 22003, tele. (703) 642-1070 (Steven T. McFarland)

From: Carl H. Esbeck,* University of Missouri** School of Law, tele. (573) 882-3035

Date: September 9, 1996

RE: **The "Charitable Choice" Provisions in § 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996**

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [PRWOR], H.R. 3734, 104th Cong., 2d Sess., P.L. 104-193, was signed into law by President Clinton on August 22, 1996. As PRWOR worked its way through the legislative process of the U.S. Congress, § 104 of that Act was commonly referred to as "Charitable Choice."

It was the suggestion of your respective organizations that I compile a memorandum with a line-by-line analysis concerning the meaning of § 104's eleven subsections denominated (a) through (k). I concur that a memorandum is a good idea while matters are still fresh so as to faithfully set down the meaning of § 104, and because the entire Act is now moving into its initial implementation stage by state officials. Because I worked closely with the staff of Senator John Ashcroft (R-MO), the sponsor of § 104, beginning February of 1995 when Charitable Choice was just an idea, I am pleased to be of assistance in this way.

** Isabelle Wade & Paul C. Lyda* Professor of Law, University of Missouri-Columbia. J.D., Cornell University, 1974.

**The university where I hold a faculty appointment is listed for identification purposes only. The opinions expressed in this memorandum are my own and do not necessarily reflect those of the university.

RESPONDING TO A NEED

At the outset it is well to recall the felt need which originally gave rise to § 104 of the Act. As one part of the overall effort to reform welfare, it was thought imperative to increase the involvement of the independent sector in the delivery of government-supported social services. A significant part of the voluntary sector presently engaged in social work consists of faith-based nonprofit organizations. Indeed, these religious charities are some of the most efficient social-service providers, as well as among the most successful measured in terms of permanently reformed lives.[1] Although some faith-based providers have been willing to participate in government-assisted programs, many are wary about involvement with the government because they rightly fear the loss of religious character and independence.[2] Consequently, § 104 both invites the increased participation of religious organizations as social-service providers while safeguarding their religious identity which is the very source of their genius and success.

GENERAL PRINCIPLES BEHIND SECTION 104

When those concerned first sat down to draft the Charitable Choice provisions, there were three assumptions which influenced its terms:

1. The work of "government" does not monopolize the "public." Rather, civil society is comprised of many intermediate institutions and communities which also serve public purposes, including the independent sector of nonprofit social-service providers. And at present--as well as historically--faith-based charities comprise a large number of the available voluntary-sector social-service providers, and they operate many of the most efficient and successful programs. So long as the government's welfare program furthers the public purpose of society's betterment--that is, help for the poor and needy--it is neutral as to religion if the program involves faith-based providers along

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[1]*See* Henry G. Cisneros, HIGHER GROUND: FAITH COMMUNITIES AND COMMUNITY BUILDING 3-12 (Dept. of HUD, Feb. 1996)(citing studies on faith-based community development activities); Nat'l Inst. on Drug Abuse Services Research Report, *An Evaluation of the Teen Challenge Treatment Program* (Public Health Service (HEW) Publication No. ADM 7-425, 1977)(showing a materially higher success rate for faith-based over secular drug treatment programs for youth).

[2]*See* Stephen V. Monsma, WHEN SACRED AND SECULAR MIX: RELIGIOUS NONPROFIT ORGANIZATIONS AND PUBLIC MONEY (Rowman & Littlefield 1996); Carl H. Esbeck, *The Regulation of Religious Organizations As Recipients of Governmental Assistance* (Center for Public Justice 1996).

with all others.

2. The independent-sector providers of social services who elect to participate in a government's welfare program are not in any primary sense "beneficiaries of" the government's assistance. Rather, it is those who are the ultimate object of the provider's services--the homeless, the alcoholic, the battered spouse, etc.--who are the beneficiaries of taxpayer funds. As they deliver services to those in need with such remarkable efficiency and effectiveness, faith-based providers, along with others in the voluntary sector, give far more in value measured in societal betterment than they ever possibly receive as an incident of their expanded responsibilities.

3. As a general rule the establishment clause neither requires that faith-based providers censor their religious expression nor give up their religious identity as a condition of participation in a governmental program. Rather, so long as the welfare program has as its object the public purpose of society's betterment, and so long as the program is equally open to all providers, religious and nonreligious, then the requirement that the law be neutral as to religion is fully satisfied.

THE RULES OF SECTION 104

In order to meet the felt need described above, and with the foregoing principles in mind, § 104 lays down three general rules of law:

1. If a state elects to involve independent-sector providers in the delivery of social services, then it may not discriminate against providers because of their religious character.

2. If a faith-based organization is selected as a provider of social services, its religious expression and identity are not to be censored or otherwise diminished on account of its participation in the government-assisted program.

3. If a beneficiary has a religious objection to receiving social services from a faith-based provider, then he or she has a right to obtain services from a different provider.

LINE-BY-LINE ANALYSIS OF SECTION 104

Set forth in the Appendix is the Charitable Choice provisions of § 104. In the analysis that follows, the eleven subsections to

§ 104, denominated (a) through (k), will be arranged under eight subject-matter headings.

I. Programs Covered.

Subsection (a) designates the governmental programs covered by § 104.

The principal program is Temporary Assistance for Needy Families [TANF], codified in Title I of the Act.[3] TANF is funded by block grants to the states. TANF involves more than just handing out checks. Rather, the program is suited to the involvement of the independent sector. For example, many TANF beneficiaries will be required to work. In administering the work requirements, states may want to involve the voluntary sector in the provision of subsidized jobs, on-the-job training, job search and job readiness assistance, community service positions, vocational educational training, job skill training, and G.E.D. programs. For unmarried minor mothers and expectant minors who cannot remain with their parents, states may want to place these minors in voluntary-sector maternity homes, adult-supervised residential care, second-chance homes, or other suitable living quarters.

Subsection (a) states that § 104 also applies to "[a]ny other program established or modified under title I" that permits either purchase-of-service contracts with the voluntary sector or allows the use of certificates or vouchers. Title I makes modifications to the food stamp,[4] job opportunities,[5] and medicaid[6] programs. Thus, in limited circumstances Charitable Choice does apply to these three programs. However, while states currently have a larger role in administering the food stamp, job opportunities, and medicaid programs, states have limited authorization to make contracts and issue certificates or vouchers.

Subsection (a) references the Supplementary Security Income [SSI] program, amended by Title II of the Act.[7] Under the final version of the Act states were not authorized to administer SSI,

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[3] 42 U.S.C. § _____ *et seq.* TANF replaces Aid to Families with Dependent Children, which was codified at 42 U.S.C. § 601 *et seq.* AFDC is repealed by § 103(a) of PRWOR.

[4] *See* § 109 of Title I of PRWOR.

[5] *See* § 112 of Title I of PRWOR.

[6] *See* § 114 of Title I of PRWOR.

[7] 42 U.S.C. § _____ *et seq.*

hence Charitable Choice does not at present affect this program. However, if in the future SSI monies are block granted to the states then § 104 will be applicable.

2. *Permitted Forms of Assistance.*

Subsection (a) contemplates two types of permitted forms of governmental assistance. One is purchase-of-service contracts entered into between the government and the independent-sector provider. Such contracts may be properly characterized as a form of assistance to beneficiaries by way of the government dealing "directly" with the providers. The other form of assistance is through certificates, vouchers, and other forms of disbursement which are redeemable with voluntary-sector providers. Certificates, vouchers, and the like are properly characterized as a form of assistance to beneficiaries whereby government deals with providers only "indirectly."

Concerning TANF, subsection (a) authorizes states to use both direct and indirect forms of assistance.

Concerning SSI, food stamp, job opportunities, and medicaid programs, subsection (a) references the underlying program to determine whether states are authorized to use direct, indirect, or both forms of assistance.

3. *Nondiscrimination.*

Subsection (a) makes it optional with each state whether it wants to administer a program entirely through its own governmental agencies or whether the state wants to involve the independent-sector providers of social services.

If a state elects to involve independent-sector providers, then in the selection of providers subsection (c) requires that the state not discriminate on account of a provider's religious character.

4. *Rights of Religious Providers.*

The rights of faith-based providers are found in subsections (b), (d), and (f).

Subsection (b) sets forth the primary purpose of § 104. The purpose of Charitable Choice is to permit states to involve faith-based providers of social services "on the same basis as any other nongovernmental provider," and in doing so a state may neither require that such providers censor their religious expression nor

may it adopt eligibility criteria that deprecates their religious character. The dual principles are preventing discrimination and safeguarding religious autonomy.

Subsection (d)(1) elaborates on the principle of religious autonomy. It states that a faith-based provider "shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs."

Subsection (d)(2) is a specific example of religious autonomy. It states that faith-based providers, in order to be eligible, may not be required to alter their form of internal governance. Religious organizations often have forms of ecclesiastical polity dictated by religious doctrine. That choice as to polity is here protected.[8] The subsection also safeguards matters of control. For example, should a state require that the governing boards of providers reflect the ethnic and cultural diversity of the local community, such a compelled diversity criteria is here prohibited.

Subsection (d)(2) further specifies that faith-based providers, in order to be eligible, may not be required to remove from their property religious art, icons, scripture, and similar symbols. Such symbols are forms of expression and are here protected.

Concerning the matter of employees, subsection (f) also elaborates on the general principle of religious autonomy. By reference to the exemption for religious organizations in Title VII of the Civil Rights Act of 1964, this subsection ensures that faith-based providers may discriminate on a religious basis in the terms and conditions they establish for their employees. Involvement as a provider of social-services does not act as a waiver of the provider's Title VII exemption.[9]

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[8]Faith-based providers may want to form separate 501(c)(3) nonprofit corporations to administer purchase-of-service contracts. Doing so would ease the keeping of separate accounts, an option permitted by § 104(h)(2), and avoid the coverage of certain civil-rights laws, *see* note 11. Although the formation of a separate 501(c)(3) corporation will incur some legal and administrative costs, it can have the laudable effect of reducing church/state entanglement.

[9]Subsection (f) puts Congress at odds with the result in the strange case of *Dodge v. Salvation Army*, 48 Emply. Prac. Dec. (CCH) para. 38619 (S.D. Miss. 1989). In *Dodge*, a Christian social-service ministry dismissed an employee when it was discovered she was a member of the Wiccan religion and was making unauthorized use of the office photocopy machine to reproduce cultic materials. When the employee sued for religious discrimination, the Salvation Army invoked the "religious organization" exemption in Title VII, 42 U.S.C. § 2000e-1 (1988). The employee countered that the Title VII exemption should not apply because her salary was substantially funded by a federal grant. The trial court agreed with the employee, holding that the Title VII exemption for religious discrimination by a religious organization was unconstitutional when applied to these facts. Subsection (f) provides that the § 2000e-1 exemption, found to be constitutional in *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987), is not waived by participation as a provider of government-assisted welfare. Contrary to *Dodge*,

Subsection (f) does not relieve faith-based providers of any nondiscrimination responsibilities that exist apart from the Act. Thus, for example, as a general rule state and local human-rights laws are unaffected by § 104,[10] as are federal civil-rights laws that are triggered by the receipt of federal financial assistance.[11]

5. *Duties of Religious Providers.*

Subsections (h) and (j) set out certain duties of faith-based providers.

Subsection (h) makes it clear that faith-based providers are subject to the same fiscal audits as are all other providers. However, faith-based providers may establish separate accounts such that monies received under these federal programs are segregated from monies received from other sources, especially nongovernmental sources. In the latter event, only accounts that receive or disburse federal monies are subject to audit.

Subsection (j) prohibits monies received under these federal programs from being "expended for sectarian worship, instruction, or proselytization." As a result of subsection (j), faith-based providers must exercise care so as not to use federal program monies to conduct a worship service, teach a Bible class, or sponsor an evangelistic meeting where the audience will be asked to convert to a particular religion. Monies received from other sources, such as private donations or nongovernmental grants, are not so restricted. Thus, it is prudent to not commingle private monies with contract monies received under this Act. Subsection (j) serves as an added incentive to establishing the separate accounts permitted by subsection (h)(2), thereby ensuring that only noncontract funds are used in support of inherently religious activities.

Congress believes that waiver of civil-rights immunity is not a penalty required by the establishment clause.

[10]State and local laws cannot, of course, be inconsistent with the general principle of religious autonomy set out in subsections (b) and (d). Supremacy Clause, U.S. CONST. art. VI cl. 2.

[11]The four statutes are Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the bases of race, color, and national origin; the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against otherwise qualified handicapped individuals, including individuals with a contagious disease or infection such as HIV; and finally, Title IX of the Educational Amendments of 1972, which prohibits discrimination on the bases of sex and visual impairment in educational institutions.

Separate incorporation as a 501(c)(3) nonprofit can have the effect of taking the parent religious organization out from under coverage by these four civil-rights laws that are triggered by federal funding. *See* Carl H. Esbeck, *The Regulation of Religious Organizations As Recipients of Governmental Assistance* 41-49 (Center for Public Justice 1996).

Subsection (j) pertains to direct assistance only, *i.e.*, purchase-of-service contracts. It does not pertain to indirect assistance, *i.e.*, certificates, vouchers, or other forms of disbursement provided to beneficiaries. The distinction is well established in constitutional law.[12] In the case of indirect assistance the aid goes directly to the ultimate beneficiary in the form of a voucher or certificate. When the form of the aid is directed to beneficiaries who in turn have free choice in selecting the provider of the social service--including choosing a religious provider--the establishment clause is not a concern. The Supreme Court has consistently held that government may confer a benefit on individuals, who exercise personal choice in the use of their benefit at similarly situated institutions, whether public, private nonsectarian, or religious, even if the benefit should indirectly advance religion.

6. *Rights of Beneficiaries.*

Subsections (e) and (g) provide rights to the ultimate beneficiaries. These two subsections pertain only to assistance paid directly to providers, *i.e.*, purchase-of-service contracts. The rights do not obtain in the case of certificates, vouchers, or other forms of disbursement provided to beneficiaries.

Subsection (e) provides that if a beneficiary has a religious objection to receiving social services from a faith-based provider,

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[12]Zobrest v. Catalina Foothills Sch. Dist., 113 S. Ct. 2462 (1993) (providing special education services to a student attending Catholic high school not prohibited by establishment clause); Mueller v. Allen, 463 U.S. 388, 399-400 (1983) (upholding a state income tax deduction for parents paying school tuition); Witters v. Washington Dep't of Servs. for the Blind, 474 U.S. 481 (1986)(upholding a state vocational rehabilitation grant to disabled student choosing to use grant for training as cleric); Everson v. Board of Educ., 330 U.S. 1 (1947)(upholding state law providing reimbursement to parents for expense of transporting children by bus to school, including parochial schools). *Cf.* Durham v. McLeod, 192 S.E.2d 202 (S.C. 1972), dismissed for want of a substantial federal question, 413 U.S. 902 (1973), on the same day in which the Court decided Committee for Pub. Educ. v. Nyquist, 413 U.S. 756 (1973)(striking down program that aided only private schools). In *Durham*, the state court upheld a student loan program wherein students could attend the college of their choice, religious or secular. Similarly, the Court in *Nyquist* implied that educational assistance provisions such as the G.I. Bill do not violate the establishment clause even when some students choose to attend church-affiliated colleges. 413 U.S. at 782 n.38.

The rationale for the rule stated in the text is twofold. First, the constitutionally salient cause of any potential indirect benefit to religion is the self-determination of numerous individuals, not that of the government. Merely enabling private religious choice--where individuals may freely choose or not choose religion--logically cannot be a governmental establishment of religion. The government is largely passive as to the relevant choice. Second, the indirect nature of the aid reduces church/state interaction and oversight. This enhances the institutional separation that is desirable from the perspective of the establishment clause.

There are numerous programs of unquestioned constitutionality that illustrate the rule stated in the text: individual income tax deductions for contributions to charitable organizations, including those that are religious; federal aid to students attending their college of choice; the G.I. Bill; federal child-care certificates for low-income parents enrolling their child in preschool.

he or she has a right to obtain services from a different provider. The state is to provide alternative assistance of equal value, within a reasonable time, and from a provider accessible to the beneficiary.

Subject to other principles such as religious autonomy,[13] subsection (g) requires that faith-based providers not discriminate against beneficiaries "on the basis of religion, a religious belief, or refusal to actively participate in a religious practice." Thus, a provider cannot admit to its program only beneficiaries that are of the same denomination or church. A provider cannot require a beneficiary to adopt a particular religious creed or tenet of faith. A provider cannot require a beneficiary to actively participate in worship, a prayer service, or a Bible study. However, these events and activities may be offered to beneficiaries. For beneficiaries not wanting to participate, providers can expect passivity while other beneficiaries engage in these practices. Beneficiaries may not, of course, disrupt the religious activities offered by providers. Nothing in subsection (g) prevents providers from dismissing a beneficiary that actively disrupts an essential element of the provider's program.

7. *Private Right of Action.*

Subsection (i) affords a private civil cause of action for injunctive relief to providers and beneficiaries who believe their rights under this Act are being violated. State courts are granted exclusive jurisdiction.[14] The action would be brought against the federal, state, or local official thought to be violating rights granted by the Act.

Although the matter is not free of doubt, it appears that Congress intended subsection (i) to be the exclusive civil-court remedy for the violation of rights granted by § 104. However, rights granted elsewhere, such as those found in the First Amendment, could be pursued by providers and beneficiaries under 42 U.S.C. § 1983 or other laws.

8. *Preemption of State Law.*

Subsection (k) follows the rule that rights granted in

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[13]The first clause of subsection (g) states that it is subject to other provisions of law. For example, subsection (g) by its terms is subordinate to a provider's rights of religious autonomy found in subsections (b), (d), and (f).

[14]If a federal official or agency is sued, presumably the case is removable to federal district court.

congressional legislation are federal rights and under the Supremacy Clause preempt all state and local laws to the contrary. Thus, all federal block-grant monies are to be administered in accord with the principles of § 104. If a state commingles federal block-grant monies with state funds, then all of the monies will have to be administered in accord with § 104.

Congress recognized that some states have constitutional provisions that restrict the expenditure of state funds where religious organizations are involved.[15] Thus, subsection (k) gives state authorities the option of segregating federal block-grant monies under these programs from state funds, in which event the federal monies are to be administered in accord with § 104 but the state may administer state-generated revenues in accord with its own more restrictive laws.

Congress intended to discourage segregation of funds.[16] Thus, as far as § 104 goes the segregation of funds is an option, not a requirement. Some state officials may determine that state law requires that they segregate funds. In the latter event, subsection (k) permits state officials to segregate as required by their state's constitution.

RESPONSES TO ANTICIPATED CONSTITUTIONAL OBJECTIONS

1. The U.S. Supreme Court has held that there is no free exercise clause right to object when revenues raised by general taxation are used to assist beneficiaries by the nondiscriminatory involvement of faith-based providers. It makes no difference that a federal taxpayer claims that he or she is "coerced" or otherwise "offended" when general tax revenues are used in a manner involving faith-

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[15] *See* Note, *Beyond The Establishment Clause: Enforcing Separation Of Church And State Through State Constitutional Provisions*, 71 VA. L. REV. 625 (1985).

[16] Conf. Rept. 430, accompanying H.R. 4, 104th Cong., 1st Sess. (Dec. 20, 1995), provides the following explanation for subsection (k):

> It is the intent of Congress . . . to encourage States to involve religious organizations in the delivery of welfare services to the greatest extent possible. The conferees do not intend that this language be construed to require that funds provided by the Federal government referred to in subsection (a) be segregated and expended under rules different than funds provided by the State for the same purposes; however, States may revise such laws, or segregate State and Federal funds, as necessary to allow full participation in these programs by religious organizations.

Id. at 361.

based social-service providers.[17]

2. The Charitable Choice provisions do not violate the principle of no-establishment in the First Amendment. The case of *Bowen v. Kendrick*, 487 U.S. 589 (1988), is the leading case on the question of public-purpose funding of faith-based social service outlets. *Bowen v. Kendrick* makes the case that § 104 is facially constitutional, as well as constitutional "as applied" in its proper implementation.

The Adolescent Family Life Act [AFLA] provided funds to public and private agencies counseling teenagers on matters of premarital sexual relations and pregnancy. The act expressly provided that religious nonprofits were to be considered as eligible grantees. In *Bowen v. Kendrick*, the ACLU brought a claim alleging a violation of the establishment clause. The Court held that AFLA did not, on its face, violate the establishment clause. The Court went on say that in certain applications AFLA might be violative of the First Amendment, but that was a matter for the trial court on remand to take up on a case-by-case basis.

Chief Justice Rehnquist, writing for the Court, said that cases involving governmental grants for independent-sector organizations, including religious organizations, are to be reviewed both "facially" and "as applied to particular grantees" to determine whether congressional action squares with the establishment clause. 487 U.S. at 600-02. The Chief Justice found that the purposes of AFLA were legitimate public concerns, such as the inclusion of broad support from families, communities, and religious organizations in addressing the problem of teenage pregnancy. *Id.* at 602-04. There was no evidence that the congressional purpose for the Act was the endorsement of religion *qua* religion. *Id.* at 604. Mere overlap between the purposes of AFLA and the beliefs of some religions does not point to a violation of the establishment clause. *Id.* at 604 n.8. Congress' explicit requirement that religious organizations be included with all others in the private sector as having something to contribute to the solution of this problem was not itself unconstitutional. *Id.* at 604, 605-07. The social services provided by grantees under AFLA were neither "inherently religious," *id.* at 604-05, nor "specifically religious," *id.* at 613.

Addressing the broader requirements of the establishment clause, the Court in *Bowen v. Kendrick* held that equal eligibility for voluntary-sector organizations, including religious groups, was

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[17] *See* Tilton v. Richardson, 403 U.S. 672, 689 (1971)(rejecting claim by taxpayer where revenues went in payment of a program to assist institutions of higher education, including church-affiliated colleges); United States v. Lee, 455 U.S. 252, 257 (1982)(requiring Amish employer to pay Social Security tax in violation of his religious beliefs).

neutral as to religion. *Id.* at 608. When it comes to temporal needs such as food, shelter, and health care, the Court observed that in all of its history the Court had never found a social-welfare program unconstitutional because of participation by religious organizations. *Id.* at 609.[18] The Court observed that nothing on the factual record before it warranted ACLU's presumption that religious grantees are not capable of carrying out their functions in a secular manner. *Id.* at 612. AFLA had no provision similar to § 104(j), prohibiting use of funds for sectarian worship or training. Nonetheless, while acknowledging such a provision would be useful, the Court held that the absence of such a section was not fatal. *Id.* at 614-15.

As to ACLU's claim that administrative entanglement would lead to a loss of religious autonomy, the Court was unwilling to find AFLA excessive in its oversight of religious grantees. *Id.* at 615-17. Excessive administrative entanglement is far less of a problem in Charitable Choice than it was in AFLA because of the explicit provisions in § 104(b), (d) and (f), for the safeguarding of religious character and autonomy.

In a short concurring opinion, Justice O'Connor made a distinction which is helpful. She said that the object of congressional funding under AFLA, namely teenage sexuality, was "inevitably more difficult than in other projects, such as ministering to the poor and the sick." *Id.* at 623. Far easier cases, in her mind, would be governmental funding of a soup kitchen or a hospital. *Id.* Accordingly, like the Chief Justice, where the object of the governmental aid is not inherently religious (*e.g.*, food, shelter, and health care), clearly a welfare program that includes religious nonprofits as grantees is constitutional on its face. And, as Justice Kennedy added in his concurrence, ultimately the key to these cases is not the religious character of the grantee, but how the grantee spends the government's money. If the money is spent to further a public purpose such as meeting temporal needs, the establishment clause is not violated. *Id.* at 624.

The essential rule of law which emerges from the Court's cases is that the establishment clause does not prohibit government from conferring directly on a religious organization a public-purpose benefit, so long as the same benefit is available to similarly situated nonreligious organizations and that a primary effect of the benefit is not the transmission of inherently religious beliefs

[18] All of the Court's establishment clause holdings disallowing direct aid involve primary and secondary parochial schools. None of the Court's cases has ever struck down aid to faith-based health or social-service providers.

or practices.[19] When these requirements are followed the legislation is neutral as to religion.[20] As enacted, Charitable Choice thus satisfies the principle of neutrality.

xc: John Mashburn, Legislative Director, and Annie Billings, Legislative Assistant, to the Honorable John Ashcroft, United States Senate

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[19]Bowen v. Kendrick, 487 U.S. 589 (1988), is of course a leading case. *See also* Roemer v. Maryland Pub. Works Bd., 426 U.S. 736 (1976)(church-affiliated college); Hunt v. McNair, 413 U.S. 734 (1973)(same); Tilton v. Richardson, 403 U.S. 672 (1971)(same); Bradfield v. Roberts, 175 U.S. 291 (1899)(church-affiliated hospital).

The rationale for the principle stated in the text is that the social-service initiatives of the modern welfare state may want to treat religious organizations in a nondiscriminatory manner so as to avoid redirecting the religious choices of individuals by way of governmental financial incentives. For example, if an individual wants to obtain drug rehabilitation counseling at his or her church, rather than a secular agency, he or she ought to have that choice. If that is to be made possible, then faith-based programs have to be eligible for governmental funding.

[20]*See* Rosenberger v. Rector and Visitors of Univ. of Virginia, 115 S. Ct. 2510 (1995)(upholding aid in the form of equal access to government funding for printing of religious newspaper); Capitol Sq. Review & Advisory Bd. v. Pinette, 115 S. Ct. 2440 (1995)(upholding aid in the form of equal access to public property for purpose of religious expression).

Chairman SHAW. Finally, I would like to express my regret that Mary Jo Bane is leaving the administration. I know from experience that she is honest and reliable. Further, I know from both her reputation and her performance at HHS that she is a first-rate administrator. Her experience and skills would have been put to good use helping States implement this historic legislation. I know I speak for everyone on this Subcommittee when I say we will all greatly miss her.

But life does go on. And because it does, our first witness is Dr. Bane's acting replacement at HHS, Dr. Olivia Golden. Dr. Golden, we welcome you. Without objection, we will have your written statement made a part of the record of this hearing, and I encourage you to summarize your testimony in 5 minutes and give us plenty of time in which to ask you questions and become further acquainted.

Dr. Golden.

Ms. GOLDEN. Thank you.

Mr. FORD. Mr. Chairman, do you mind if I——

Chairman SHAW. Excuse me. Excuse me, Dr. Golden. I am being rude to my Ranking Member and I certainly do not mean to.

Mr. FORD. I apologize too, Dr. Golden.

Chairman SHAW. Mr. Ford.

Mr. FORD. Thank you very much, Mr. Chairman. Let me begin, Mr. Chairman, by thanking you for convening this Subcommittee for oversight purposes. I hope it is the first of many we will conduct as implementation of the new welfare law goes forward.

All of us, whether we voted for or against this bill, understand the magnitude of the change that is being made and being attempted under the new law. Our job does not end with the final vote on the conference report. Now it is even more important than anything else that the oversight function begins, where we learn how the bill is being implemented, what problems States and localities are encountering, and how families are affected. Sessions like this are very important for the first step.

Before we move to our first witness, Mr. Chairman, I would like to make a few comments about the State waiver process. I noticed that you mentioned it in your opening statement. I understand that some of our colleagues are dismayed the District of Columbia was granted a waiver shortly after we passed the Personal Responsibility Act. Critics have charged the waiver lasts too long, was granted too quickly, and amounts to a sweetheart deal for the District of Columbia. I would like to try to set the record straight.

The District of Columbia waiver was granted under the fast track approval process established by the President for all States. Three other States have made use of this process. One State, Idaho, applied for the waiver 2 days after the District of Columbia and was approved at the same time. Approval of State waivers has taken longer because they have involved more complicated issues than the simple policies eligible for fast track approval.

The District of Columbia's waiver is for 10 years. Massachusetts, Michigan, and Washington all have 10-year waivers. Tennessee and Wisconsin have 11-year waivers. There is no sweetheart deal. The District of Columbia time limit waiver is similar to those of eight other States in this Nation, including Florida, your own

State, Mr. Chairman. I would like to join with you to look at this process, and certainly avoid singling out the District of Columbia when there are other States that have used this similar process on this fast track, and it is not just singling out the District of Columbia with the approval that has been granted by the administration and Health and Human Services.

But once again, I would like to join with you, Mr. Chairman, and applaud you for swiftly moving this Subcommittee in an oversight status to look at the new welfare policies we have implemented and granting those policies to the States throughout this Nation. I would also like to thank Dr. Golden and other witnesses who will be testifying before the Subcommittee today.

Again, thank you, Mr. Chairman, for calling this session.

Chairman SHAW. Thank you, Mr. Ford. I can assure you any States that have similar waivers, we certainly will be looking closely at them, and to see how they compare, and which direction they are going. I know my own State of Florida has a 4-year work requirement rather than a 5-year work requirement. Whether they have gotten a waiver that gets them out of the 10-year requirement, I am not sure how that would fit. But perhaps we will learn more about that together.

Dr. Golden.

STATEMENT OF OLIVIA GOLDEN, COMMISSIONER, ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. GOLDEN. Thank you, Mr. Chairman. Good afternoon, Mr. Chairman, and Members of the Subcommittee. I am Olivia Golden, and I will soon be the Acting Assistant Secretary for Children and Families in the Department of Health and Human Services.

It is a pleasure to appear before you today to provide an overview of our implementation of the new welfare reform legislation, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Since we have not had the opportunity to meet in this forum before, I thought I would provide a very brief statement about my background and then move to the welfare reform issues of concern to this Subcommittee.

Since November 1993, I have been serving as the Commissioner of Children, Youth and Families in the Administration for Children and Families. In this position, I have been overseeing the administration of the Head Start Program, of the new Child Care Bureau, of child welfare, foster care, adoption assistance, child abuse and neglect, and youth services.

Prior to this Federal service, my career included extensive experience in policy development, research, teaching, public management, and budget development and execution. This experience has spanned a broad range of venues, including academia, Federal, State, and local government service, and community activities. It has also covered a broad range of child and family issues, including welfare, and employment and training. I accept my new responsibilities with tremendous enthusiasm and appreciate the opportunity you have given me to appear before this Subcommittee today.

In my testimony today I will be focusing on implementation of the Temporary Assistance for Needy Families, the TANF Program, as the Subcommittee has requested. My written testimony also addresses the child care program, and I would be happy to answer questions in that arena. I will defer discussion of the child support enforcement provisions until Thursday when you will be devoting an entire hearing to that topic.

In the few weeks since enactment, we have had numerous conversations with our State partners. These conversations have made it clear there is much work to be done by all of us to ensure that implementation of this new law results in welfare reform that encourages work, promotes parental responsibility, and protects children.

At the State level, States have been given a tremendous amount of flexibility under this welfare reform legislation to design a program which assists needy families and helps them to find jobs and become self-sufficient as quickly as possible. Most States are currently sorting through the legislation and the variety of options and opportunities available to them. Many States are anxious to implement the TANF provisions as soon as possible because most States will benefit financially from accelerated implementation.

In this environment, States are doubly challenged to make sure their programs are thoughtfully planned. So we are, therefore, advising States they may adjust their programs and submit plan amendments as they move further along in the implementation process.

At the Federal level, we are working very hard, both in Washington and in our regional offices, to help the States and the tribes achieve a smooth and effective transition to their new programs. We are at the center of a major transformation in the nature of the Federal-State partnership. States now assume primary responsibility for ensuring the welfare system works, and States have the authority and the flexibility to design programs which meet their individual needs.

In return for this new authority and flexibility, the legislation includes a variety of provisions on penalties, on performance-based funding, on data collection and reporting, and research and evaluation that are designed both to ensure accountability and promote performance.

So at the Federal level we will be monitoring State performance and program implementation. We will assume major new responsibilities for compiling and disseminating information. As their options expand, States will need more and better information about the implications of their choices, and we look forward to sharing what we learn in order to support those choices.

Finally, at the Federal level, we will have a much expanded role in working with tribes who can now decide to implement their own cash assistance programs. Over the past several weeks we have entered into numerous discussions with State and tribal officials and their representatives to learn about their major concerns and questions. Through participation in forums, program instructions, and other vehicles, we are working to address their most critical questions and concerns.

In conclusion, HHS is committed to the successful implementation of this legislation. We are also committed to working with our State and tribal partners, and to ensuring the information we gather will serve our partners' needs and help promote the goals of the legislation.

We will consult with our partners extensively as we work to develop data collection and information requirements, performance measures, and research and evaluation strategies. Through this process, we will strive to ensure the legislation, indeed, accomplishes its goals and the results are positive and work for the good of children, families, and communities.

I will be happy to answer your questions at this time.

[The prepared statement follows:]

STATEMENT OF OLIVIA GOLDEN, COMMISSIONER
ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Good morning Mr. Chairman and members of the Committee. As the Commissioner of the Administration on Children, Youth and Families in the Department of Health and Human Services, I am pleased to appear before you today to provide an overview of the Department's implementation of the new welfare reform legislation--the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The Administration for Children and Families is responsible for administering several of the programs most affected by this historic legislation, including: the new temporary assistance program for needy families; the child care programs for families on welfare and other low-income working families; and the child support enforcement program.

In my testimony today, I will spend much of my time addressing implementation of the Temporary Assistance for Needy Families (TANF) program, as requested by the Committee. I would like to also briefly discuss the new child care provisions and will defer discussion of the child support enforcement provisions until Thursday when you will be devoting an entire hearing to that topic. Since the legislation was signed by the President only 26 days ago, I want to focus most on the process we have undertaken to facilitate implementation. Because of the bill's early effective dates and the extraordinary interest throughout the country in moving forward on welfare reform, officials at all levels of government are very busy. At the federal level, officials from the numerous departments affected by this legislation are working together to ensure coordinated assistance to the states.

In the few weeks since enactment, we have had numerous conversations with many of our State partners. These conversations have made it clear that there is much work to be done by all of us to ensure that implementation of this new law results in welfare reform that indeed encourages work, promotes parental responsibility, and protects children.

State Implementation Activities

States have been given a tremendous amount of flexibility under this welfare reform legislation to design a program which provides assistance to needy families and helps them to find jobs and become self-sufficient as quickly as possible. Because State plans can be filed at any time prior to July 1, 1997, most States are currently sorting through the complexities of the bill and the variety of options and opportunities available to them. In some cases, they are struggling to determine the statutory expectations. In addition, many states are anxious to implement the Temporary Assistance for Needy Families provisions as soon as possible because most states will benefit financially from an accelerated implementation.

In the midst of tremendous time pressures, states are doubly challenged to make sure that their programs are thoughtfully planned. The legislation presents the opportunity for them to explore new administrative arrangements and to develop new linkages with other service delivery systems. It also presents them with the opportunity to develop a more integrated and individualized approach to serving needy families. We are advising states that they may adjust their programs and submit plan amendments as they move further along in the implementation process.

The Changing National Perspective and the New Federal Role

While much of the action has indeed shifted to the states, we are working hard both in Washington and in our regional offices to

help the states and tribes achieve a smooth and effective transition to these new programs.

The legislation provides us with a great opportunity to make welfare a transitional system, rather than a way of life. We can reward states for their success in moving people from welfare to work, not merely for how well they get the checks out. Many more parents can participate in work opportunities and obtain the safe and healthy child care they need to protect their children while they go to work.

We are at the center of a major transformation in the nature of the federal-state partnership. States now assume primary responsibility for ensuring that the welfare system works. States have the authority and the flexibility to design programs which meet their individual needs. The legislation gives them much more opportunity to respond creatively and individually to the highly diverse needs of their children and families.

In return for this new authority and flexibility, the legislation holds states more accountable for program performance. It includes a variety of provisions -- on penalties, performance-based funding, data collection and reporting, and research and evaluation -- designed both to ensure accountability and promote performance.

At the federal level, we will be monitoring state performance and program implementation. Among our first responsibilities will be to review the new TANF plans to ensure that they are complete -- that they include the necessary certifications and descriptions of how the state will serve needy families, help them move into work, and provide for fair and equitable treatment. These plans are a critical tool-- both in terms of ensuring that states are focusing on the issues that need to be decided as they design their new programs, and as a mechanism for informing the citizens of each state about how, and to whom, services will be provided under these new programs.

Later, as required by the new statute, we will be ranking states according to their performance, identifying and studying the high performers and low performers, providing an overall assessment of the legislation's impact on children and families, and tracking child poverty. We will work to ensure that the new programs help families get quickly through the hard times back into the mainstream of society. We will also monitor what is happening so we can identify any potential harmful effects.

One of our other major roles will be to administer the financial reduction provisions found in the new section 409 of the Social Security Act. Under these provisions, we will be focusing on state compliance with a number of key statutory requirements, including child support enforcement, data reporting, participation rates, and maintenance of effort. Here, we will be working, in consultation with our State partners, to clarify the expectations on the states, and the availability of good cause exceptions, etc. In this way, we will be able to ensure that any financial reductions are applied consistently.

We will also assume major new responsibilities for compiling and disseminating information. As the number of program options available to states grows exponentially, states will need more and better information about the implications of their choices. The new law gives us tools we need to develop such information. We look forward to working with the states in employing these tools and sharing what we learn with our partners.

Finally, we will have a much expanded role in working with tribes, who can now decide to implement their own cash assistance programs. While the legislation seems to present tribes with tremendous new opportunities to exercise their sovereignty and serve their own people, tribal representatives have expressed a

number of concerns about the potential impact of this legislation. Many tribes have indicated that they may not wish to make a final decision about applying to participate in TANF until states reveal their TANF plans. Thus, it may be some time before we know the extent of tribal participation in this program.

Our Earliest Activities

Over the past several weeks, we have been working very hard to ensure that we are in a position to meet our responsibilities under the legislation and to facilitate implementation of the bill at the state and community level. One of our first priorities has been to disseminate information on the amounts of TANF and child care funds that states and tribes can receive and how they can access that money. Thus, we prepared and distributed allocation tables for both child care and TANF, and have sent out instructions on how to apply for the FY 1997 "mandatory" child care funds. In addition, we distributed for comment a draft guide which states could use to develop their TANF plans.

Because the new child care provisions have an effective date of October 1, we have made it a priority to provide guidance immediately. Within one week of enactment of the bill, letters were sent to all state welfare commissioners and state Child Care and Development Block Grant lead agencies outlining a simplified process under which states can begin receiving funding in order to be able to operate a more unified child care system.

The Personal Responsibility and Work Opportunity Reconciliation Act also created a new, integrated child care program under the Child Care and Development Block Grant. This program unites three child care funding streams in a way that validates the early effort of many states to construct a unified, seamless child care system out of multiple programs that often had conflicting rules. This program offers an unparalleled opportunity to serve children and their parents for whom child care is a critical element in family growth, stability and self-sufficiency.

At the same time, we have entered into numerous discussions with state and tribal officials, and their representatives, to learn about their major concerns and questions. With my regional office staff, I have participated in conference calls with officials from every state; several key members of my staff and I participated in the national APWA/NGA/NCSL meetings last week in Washington; we will be participating in all the upcoming regional APWA technical assistance meetings. In addition, we sponsored our own meetings with state child care administrators last week; and we will be sponsoring a major meeting with tribal leaders later this month.

Through forums, program instructions, and other vehicles, we are working to address the most critical questions and concerns. Because of the bill's complexity and the hundreds of questions which it has evoked, we are focusing on the questions which affect state implementation decisions and deferring response on some of the others. And we are identifying operational and technical issues which might be addressed through legislative proposals, program guidance or other avenues.

As we deal with some of the most pressing issues, we are also working to refine our implementation plans and schedules. These activities help us ensure that other important provisions of the bill are not neglected, and they help us cope with our shifting workloads and responsibilities.

Conclusion

HHS is committed to the successful implementation of this

legislation. We will provide the leadership necessary to ensure that the legislation gets the attention it is due as states work on the myriad details of program design and implementation.

We are also committed to working with our state and tribal partners to ensure that the information we gather will serve their needs and help promote the goals of the legislation. We will consult with them extensively as we work to develop data collection and information requirements and regulations, performance measures, and research and evaluation strategies. Through this process, we will strive to ensure that the changes that result from this legislation are positive and work for the good of children, families, and communities.

I will be happy to answer your questions at this time.

Chairman SHAW. Mr. Ford.

Mr. FORD. Thank you, Mr. Chairman. Let me also, Dr. Golden, join with the Chairman in welcoming you as the new spokesperson in this area.

Ms. GOLDEN. Thank you.

Mr. FORD. I said earlier in my opening statement, we certainly welcome this opportunity for oversight purposes. Just give us some thoughts. Over the past weekend, I had an opportunity to host a brain trust workshop on welfare reform and talk about the implementation of the new welfare policies that now rest with the States. I know that you have been with the Department of Health and Human Services and are familiar with the issues that the new law creates. What information or feedback have you received as it relates to a State like my own that received a waiver from Health and Human Services for Tennessee's Family First. I am not sure you would be familiar with that particular waiver. But we have had an opportunity now to begin implementation. How do you assess State waivers?

Do you see the States making a faithful effort in trying to put in place those components that are going to be needed to move women from the welfare rolls to work, without damaging their children? Are States providing or requiring child care, with basic necessities that will be needed in order to protect and provide for the children?

Ms. GOLDEN. Congressman Ford, let me give you an overview of the waivers and the process, both what we see as our lessons and what we see as the process from here. As you suggest, I am not yet familiar with all the specifics of Tennessee. Overall, I think we are very proud of the waivers and how they already have facilitated welfare reform in many States around the country.

In terms of the process for next steps, as Chairman Shaw outlined, we have been looking at a process by which States can look at their waivers and look at the new legislation and we can learn what is the best way to move forward. The overview, as you know, is that the new legislation provides States with enormous flexibility to design the program that they think best meets the needs of their children and families.

So the first piece of advice we are giving States that currently operate waivers, such as Tennessee, is to look at what they want to do and what policies they would like to put in place. In many cases, they are finding much of what they want to do they can do under the new legislation.

Where States have provisions under their waivers that are not consistent with the new legislation, the administration staff have been consulting with congressional staff. As Chairman Shaw suggested, the statute gives States that have waivers the ability to continue provisions that, in the words of the statute, are inconsistent with the statute. But as I understand it, there is some ambiguity about exactly what that means.

So, we are asking States to list the provisions they see as inconsistent so we can thoughtfully consult with the States and Congress and try to carry out the statute in a way that also meets the needs of children. That approach is one Chairmen Archer and Roth

have identified, and we think it is a sensible way to address those specific, difficult issues.

Mr. FORD. Under section 113 the new law requires Health and Human Services to submit technical and conforming amendments that are necessary to bring the law into conformity with the policy embodied in the new law. These amendments are due to us within 90 days of enactment. Do you plan to submit such legislation, and what process will you use to identify these amendments, Dr. Golden?

Ms. GOLDEN. We are working very hard right now to consult with our partners, with States and tribes, and with others to identify the technical corrections. We intend to compile those and to provide advice based on that work.

Mr. FORD. So, you will decide after talking with the States and the different directors what is to be recommended to Congress?

Ms. GOLDEN. Yes, I bring experience from directly overseeing the implementation of the child care portion of the bill. I am just in the process of learning the others more specifically. One of the things we are finding is that in the initial stages sometimes it takes a little while to figure out whether a problem requires legislation to address it or whether it can be resolved under the statute through our guidance or through State choices. So that is the process we are in right now, identifying the issues and trying to sort out the best way to solve them.

Mr. FORD. Have all of the States been notified to assist and make recommendations in these areas, so Health and Human Services will be able to report back within that 90-day time period?

Ms. GOLDEN. We intend to collect that information. Since the enactment of the legislation, we have spoken with all 50 States and with tribes in a variety of settings, conference calls, briefings, and other conversations. So I think everyone is trying to work very hard, both to put plans in place and to identify those areas where either further guidance or further legislation would be needed.

Mr. FORD. There are not many Federal standards in the new welfare law and many responsibilities have now shifted to the States. I know it is early on, but do you anticipate full participation and cooperation from these States?

Ms. GOLDEN. I have certainly had terrific experiences so far in terms of State involvement. Last week I had the chance to speak with the State child care administrators. I think there is, among the States, an enormous sense both of opportunity and of responsibility.

I share the Chairman's view that having a law work is 10 percent legislation and 90 percent implementation. I think that sense of responsibility is one that weighs heavily not only on me, but also on the States. I anticipate a lot of commitment.

Mr. FORD. My time has expired, but have you found any problems with the new law, Dr. Golden?

Ms. GOLDEN. The President identified originally two areas where he anticipated seeking changes: One in the area of the legal immigrant provisions and the other in the area of the food stamp cuts. So those are certainly issues that the President identified from the beginning.

Mr. FORD. But have you found any problems?

Ms. GOLDEN. I think we are still working to sort things out. I think the most important thing is we need to be committed. I am committed to working with the States to implement the legislation effectively.

Mr. FORD. Do you know of any problems the States have found with the law that they have submitted right away and saying that they see problems and have flashed it to HHS? Not recommendations for changes, but problems they have seen with the new law.

Ms. GOLDEN. I think the most important arena for the States now is that there are so many new choices. They are at the point of sorting through these choices and how to make them. There are a number of areas where we are getting a lot of questions: technical areas about financing, maintenance-of-effort provisions, questions about waivers. So there are a number of areas still being worked out.

But I would say at this point the major issue for the States is making those choices about the best way to enable families to move to work and to provide temporary assistance. That is really where the core of our efforts are right now.

Mr. FORD. Thank you, Dr. Golden.

Mr. Chairman, I yield back the balance of my time.

Chairman SHAW. Dr. Golden, I would like to follow up on Mr. Ford's questioning with regard to areas that are problems. Perhaps this is an unfair question to ask you, and if you do not feel comfortable answering it you can simply tell me so. But Secretary Shalala was quoted in the Houston Chronicle on August 29 in referring to the welfare bill and said, "Every piece of the bill that is vicious we will invoke the bureaucracy and take our time."

Do you know what portions of the law she was referring to as being vicious, and what agencies constitute the bureaucracy that would be invoked to take your time?

Ms. GOLDEN. I was not there when she——

Chairman SHAW. That is an unfair question for you your first day before this Subcommittee I understand.

Ms. GOLDEN. It is completely fair. Chairman Shaw, as I was telling you earlier, I ran for office so whatever anyone asks me is fair at any moment.

I was not there to hear the Secretary's remarks. I understand she may have been referring to the portions of the law pertaining to immigration, on which we are moving fast in collaboration with the Justice Department. But there are a variety of complex issues. She called me to assure me personally that she is committed to implementation of the law, and she has been clear in her direction that our job is to implement the legislation as Congress passed it and the President signed it, and that that is what she expects from me.

Chairman SHAW. She said that to me on August 22 when I was at the bill signing at the White House. She assured me it was her intention to do exactly as you said and to implement the intention of Congress. That is why I was somewhat surprised to be shown the article in which she was quoted as referring to some of it as being vicious and referring to the invocation of the bureaucracy which concerns me because we are in this together.

Regardless of the fact that there are different levels of enthusiasm certainly in the Congress, and I think of the recent resignations down at HHS which indicate that there is a difference of opinion in the administration, we do have to work together. I would like to say that I always feel, and as with your predecessor, I feel that differences of opinion are healthy, and if we listen to each other we can do better. All of us want the same thing at the end, and that is to promote self-independence and to give people a life other than a life on welfare.

I think we need to move quickly to get people into the job market. But it is going to take complete rethinking on the side of the bureaucrats. I am speaking of the bureaucrats that are right down there at the grassroots level. Their main objective has to be to keep people off of welfare, or if they are on it, to get them off as quick as they possibly can.

This is going to be a retraining because it changes from when a client comes in and they say you are poor, you qualify, here is what you get—and if you violate the rules or go to work or get income, you are going to lose these particular benefits. Thank goodness, we finally changed that. But in doing it, we know that for many of the people on welfare this is going to be a very difficult transition, and for many of the bureaucrats it is going to be a difficult transition. But it is the law now and we are going to have to go forward together and see to it that it does work.

What has HHS done in helping the States to implement the change? Specifically, what have you been doing so far and what is your plan for the coming year?

Ms. GOLDEN. Let me answer that question about what we are doing at HHS and then perhaps, Chairman Shaw, I could tell you a little bit about my own commitment to that agenda as you just described it.

First, in terms of HHS implementation, our early work has been very much in terms of talking with the States, getting to know the questions and issues, answering those issues, and ensuring we can get the money out quickly.

To take one example in child care, which is the arena where I have had direct administrative responsibility, we were able to brief all 50 States the day the President signed the legislation and to get a letter out to them within 1 week because the child care provisions of the new law go into effect October 1. So we need to be able to get States their new resources on October 1, and we have done an interim plan process that will get us there.

In the broader TANF arena, we have been able to have conference calls and conversations with all the States and to participate in briefings with NGA, NCSL, and APWA. Actually, I was just hearing about a regional conference, the second of five that APWA is planning where we are participating. We are feeding the questions to staff in order to be able to answer them and provide guidance.

So the early work is focused very much on providing clear information, hearing the questions from our partners, and getting the money out.

As we move forward there are some additional key arenas. These include the area of accountability, data collection and research that

the Subcommittee and the Congress highlighted as a Federal responsibility, as well as technical assistance to States, and our additional broader responsibilities with the tribes. So all of those are key on the upcoming agenda.

Chairman SHAW. In going back just briefly to the question of the waivers, and Mr. Ford is correct, where we have singled out the District of Columbia, there are some States that are going in the wrong direction and we need to take a close look at them. When the States get a waiver, this does not, in my interpretation, waive the maintenance of effort provision. In other words, a certain percentage of their caseload has to be going into the workplace.

Ms. GOLDEN. The participation rate requirements.

Chairman SHAW. Participation requirements, not maintenance.

Ms. GOLDEN. So far as I know you are correct that no waivers that we have given have waived participation rate.

Chairman SHAW. One of the things that concerns me is if they do not meet the participation requirements, they are going to be fined down the line and I do not see how, whether we are talking about the District of Columbia or the States, how they can meet the participation requirements unless they are really dead serious about meeting the work requirements and the 5-year limitation. Would you care to comment on that?

Ms. GOLDEN. I would underline your point that being serious about work is important for States and for families because we all share the belief that, in fact, effectively moving families to work is essential. So I would underline your statement that States need to be serious about that.

In terms of the specific application of waiver provisions, I would again just underline what you said earlier about the process that Chairmen Roth and Archer have outlined and that we all have agreed to. States will look at the overall policies they want to implement under the law, and then they will make a list of any areas where they believe they need to continue waiver provisions. That is a process that should give us the information we need to make good choices from here on. So I think that is the appropriate way to move forward.

Chairman SHAW. We will want to be working together with you and taking a close look at these next year to see if further legislation is necessary.

Ms. GOLDEN. Terrific.

Chairman SHAW. Mr. Levin.

Mr. LEVIN. Thank you very much, Mr. Chairman. I have been listening with some real interest. I think all of us have to proceed with some caution. The implementation of a bill this major is going to by definition be somewhat complex itself and I am glad, Mr. Chairman, that this process has been set up to look at the interplay between the waivers that have been granted and the new bill and its grandfathering provision.

I hope everybody will be careful before they condemn anybody whether it is the State or the District of Columbia, because I do not think anyone is quite sure of the meaning of the grandfathering provision and I think especially its authors should be careful before they criticize any State. I think it can work out well but we will have to see, and you are going to compile this list.

I think it might be useful, Mr. Chairman, as we exercise oversight, no matter who is operating this Subcommittee and the Full Committee, to look at other provisions of the law.

For example, how the States are implementing the work provisions; what the record is in terms of people leaving welfare to go into productive work; and how participation rates begin to be met, whether they begin to be met by people going to work or simply through the exercise of time limits. We did not provide additional moneys for the States to move people from welfare to work. That was one of the issues that we discussed. It was one of the areas mentioned by the President as a potential defect in this bill and I think you, with your interest in it, Mr. Chairman, would want to make sure that this Subcommittee looks at that issue also.

I am going to try to follow my own cautionary note and be cautious about what I say here. But let me ask one question about the research aspect. As I understand it, Mr. Chairman, we put into this bill some money for research to make sure we follow the progress of this bill. It is my understanding the Senate has changed, the Senate Appropriations Committee has altered the intent and perhaps the language of the bill that was put together to some extent in this Subcommittee and that some of us here voted for.

So tell me, if you would, what your feeling is about this research provision and whether the information I have is correct or not. I am not sure what is going on.

Ms. GOLDEN. The administration is strongly committed to the role of research and evaluation, and we are concerned with the action of the Senate Appropriations Committee. The Congress, in the welfare reform legislation, and I know this Subcommittee has felt strongly, understood that as States have flexibility to design new programs, having good information available about what is working and what is effective is more important than ever.

My own experience, both as an academic and at the State as well as the Federal level, tells me if you are going to enter into change of this magnitude, you have to be able to understand not only how it is working overall, but where there are practices that are excellent or that you want to share. So we believe that is very important.

The Senate Appropriations Committee has effectively reduced the resources available to research from $21 million to $9 million, and that hampers our ability to implement the research component, which is critical to welfare reform. That concern will be reflected in OMB's letter to the Senate Appropriations Committee.

Mr. LEVIN. Mr. Chairman, let me finish. I would hope that we together on a bipartisan basis will take a look at this because, for example, when it comes to participation rates one thing that has become clear is that many States do not really have very accurate records as to who is on welfare and where they have gone when they have left. The bill sets up certain requirements and there may or may not be some interaction between those requirements and the grandfathering provision. We will have to see.

But if these participation requirements are going to be meaningful, the States are going to have to know and we are going to have to know what is going on within the States. So this idea before we

have even started along this new path to reduce the amount of resources to find out what is going on, I find somewhat disturbing.

Chairman SHAW. I would say to the gentleman that you are absolutely correct and you have put your finger on an area where there is bipartisan concern. As you recall, the welfare reform bill went through the process of reconciliation. That was a vehicle in which it passed the Congress. This means that the budgeteers were very much in charge of the table. We scraped and we looked at every aspect of spending under the welfare reform bill and we fought to hold on to those dollars.

I do not intend to let an Appropriations Committee who has doubtful jurisdiction, if any, over these funds to come in and raid these funds particularly when we, I think, already did a masterful job in saving every dollar we could without actually cutting into the bone. I think these dollars are very important. I agree with you, Mr. Levin. I agree with the administration, the comments of Dr. Golden with regard to these funds. They are important.

What we are doing is actually leading the world and not only the question of the American people looking at what we are doing to see if it works, but also other countries. Now there are parliaments looking at what we are doing and for us to walk away and say these research dollars are not necessary just does not make any sense. So I can assure you I will be very much on your side and we will be working together to hold on to these dollars.

Mr. LEVIN. Let me just say, there is, as you know and it has been mentioned here in answer to Mr. Ford's question, some controversy over some of the major provisions that raised money—the legal immigrant provisions and some of the food stamp provisions. We will talk about those some other day.

But this hearing is focusing on the replacement for AFDC. This money was earmarked for TANF, this research money, for what was to be the heart of welfare reform moving people from welfare to work. I think we need to fight to make sure the funds we put in there to assess what was happening with the replacement for AFDC, that those resources need to be maintained.

Chairman SHAW. Absolutely.

Mr. LEVIN. And what has come out since we passed the bill, I think, only reinforces that need. The States themselves are saying to us they do not have the data upon which to proceed. We have to be sure that information and knowledge—information is available and knowledge as to what is happening. So I hope we can nip that effort in the bud.

Chairman SHAW. I am confident we can.

Ms. GOLDEN. Thank you.

Chairman SHAW. Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman and thank you, Dr. Golden. I have had an opportunity to review your testimony and I guess I would like to take my time and say that I would like to compliment the Department for the letter that I know the Michigan Director of the Department of Social Services received 5 days after the signing of the bill.

Ms. GOLDEN. Thank you.

Mr. CAMP. Giving the State allocation for the State Family Assistance Grant and for the State guidance brochure for the temporary assistance for needy families, I think it is something that is very clear. It is understandable. It has the statutory text attached to it to help the States understand what it is they need to do with regard to this particular program, and without objection, I would like to place this guide in the record.

Chairman SHAW. Without objection.

[The information follows:]

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAM
Office of the Assistant Secretary, Suite 600
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

AUG 27 1996

Mr. Gerald H. Miller
Director
Michigan Department of Social Services
P.O. Box 30037
Lansing, Michigan 48909

Dear ~~Mr. Miller~~ Gerry:

I have appreciated the opportunity in the last two weeks to begin a discussion with you and other welfare commissioners about implementation of the new federal welfare reform legislation. As you know, on August 22, President Clinton signed this bill into law.

The enactment of this law is an opportunity to continue the work we have begun to change the culture of welfare in this country so that it focuses on work, provides the supports necessary to ensure a successful transition to work, demands greater responsibility from those participating in the system, and protects children.

As a first step in the implementation of this new law, we have prepared the enclosed tables of state allocations for both the Temporary Assistance for Needy Families Block Grant (TANF) and child care funding. This is information I know you need to begin developing your state's plan.

We are also working on a number of immediate follow-up activities that, I believe, will be useful to you.

First, we are preparing a guide on the submission of TANF state plans. I know that many states hope to submit state plans and begin drawing down block grant funding quite quickly. The guide should provide a basis for our working together to ensure that your plans are complete under the requirements of the law. We will forward that to you soon.

Second, the state's Child Care and Development Block Grant (CCDBG) lead agency will soon be receiving a letter outlining a simplified process under which your state can begin operating a more unified child care system. I am enclosing a copy of that letter.

Third, you or your state's IV-D director and staff will soon receive an invitation to a series of conferences, aimed at helping us work together on implementing the significant child support enforcement provisions of the new law.

Fourth, we will be participating in some of the working sessions at the American Public Welfare Association/National Governors' Association/National Conference of State Legislators' welfare reform implementation conference here in Washington on September 9-10. We will look forward to talking with you and your staff further at that time.

The implementation of the new welfare reform law is an extraordinarily challenging opportunity, and we look forward to working on it in partnership with you. Our combined expertise and experience will help us achieve our shared vision of a welfare system that truly serves our nation's children and families.

The Administration for Children and Families Regional Administrator for your state, Marion Steffy, will be in contact with you to discuss further how we can work together. Please feel free to call me if I can be of additional assistance.

Sincerely,

Mary Jo

Mary Jo Bane
Assistant Secretary
for Children and Families

Enclosures

ESTIMATED FY 1997 STATE FAMILY ASSISTANCE GRANTS UNDER P.L. 104-193

State	State Family Assistance Grant 1/
Alabama	$ 93,006,115
Alaska	63,609,072
Arizona	222,419,988
Arkansas	56,732,858
California	3,733,817,784
Colorado	135,553,187
Connecticut	266,788,107
Delaware	32,290,981
District of Columbia	92,609,815
Florida	560,955,558
Georgia	330,741,739
Hawaii	98,904,788
Idaho	31,851,236
Illinois	585,056,960
Indiana	206,799,109
Iowa	130,088,040
Kansas	101,931,061
Kentucky	181,287,669
Louisiana	163,971,985
Maine	78,120,889
Maryland	229,098,032
Massachusetts	459,371,116
Michigan	775,352,858
Minnesota	266,397,597
Mississippi	86,767,578
Missouri	214,581,689
Montana	45,534,006
Nebraska	58,028,579
Nevada	43,976,750
New Hampshire	38,521,261
New Jersey	404,034,823
New Mexico	126,103,156
New York	2,359,975,147
North Carolina	302,239,599
North Dakota	25,888,452
Ohio	727,968,260
Oklahoma	148,013,558
Oregon	167,924,513
Pennsylvania	719,499,305
Rhode Island	95,021,587
South Carolina	99,967,824
South Dakota	21,893,519
Tennessee	189,787,994
Texas	486,256,752
Utah	74,952,014
Vermont	47,353,181
Virginia	158,285,172
Washington	399,636,861
West Virginia	110,176,310
Wisconsin	318,188,410
Wyoming	21,781,446
State Total	$ 16,389,114,288

ESTIMATED FY 1997 STATE FAMILY ASSISTANCE GRANTS UNDER P.L. 104-193

State	State Family Assistance Grant 1/
American Samoa	1,000,000
Guam	4,686,000
Puerto Rico	107,225,000
Virgin Islands	3,554,000
Total for Territories 2/	$ 110,779,000

1/ Grants are based on the Federal share of expenditures for FY94, FY95 or the average of FY92-94, whichever is greatest. Grants incorporate an adjustment for States that had an Emergency Assistance plan amendment approved during FY94 or FY95. State amounts may be reduced for Tribal Family Assistance Grants.

2/ Amounts shown for Territories represent the revised ceiling amounts under Section 1108 of the Social Security Act. SFAG and matching fund allocations will be estimated separately.

23-Aug-96

ESTIMATED FY 1997 STATE ALLOCATIONS FOR THE CHILD CARE AND DEVELOPMENT FUND

State	Mandatory Funds 1/	State Share Requirement (MOE) 2	Matching Funds 3/	State Share of Matching Funds 4/	Discretionary Funds 5/
Alabama	$ 16,441,707	$ 6,896,415	$ 11,097,223	$ 4,654,690	$ 20,236,065
Alaska	3,544,811	3,544,811	2,028,753	2,028,753	1,906,673
Arizona	19,890,997	10,065,324	12,763,447	6,458,612	18,512,030
Arkansas	5,300,283	1,886,541	6,627,908	2,359,086	11,896,059
California	92,945,658	92,945,659	96,164,172	96,164,172	120,466,746
Colorado	10,173,800	8,985,899	10,285,029	9,084,141	11,059,692
Connecticut	18,738,357	18,738,357	8,559,338	8,559,338	7,224,585
Delaware	5,179,351	5,179,351	1,900,182	1,900,182	2,111,607
District of Columbia	4,720,514	4,720,514	1,286,615	1,286,615	1,979,409
Florida	43,026,524	33,424,300	35,964,991	27,938,689	50,046,337
Georgia	36,622,787	22,167,213	20,202,308	12,261,629	32,157,871
Hawaii	5,220,634	5,220,634	3,323,894	3,323,894	3,662,385
Idaho	2,867,578	1,175,819	3,492,470	1,486,814	5,133,856
Illinois	59,609,473	59,609,473	33,025,568	33,025,568	37,705,575
Indiana	26,181,999	15,356,949	15,294,176	8,970,739	18,065,411
Iowa	8,877,745	5,299,427	7,298,922	4,356,974	9,229,278
Kansas	9,811,668	6,672,989	7,151,279	4,890,112	8,898,861
Kentucky	16,701,803	7,274,356	9,863,568	4,312,299	17,942,749
Louisiana	13,864,552	5,219,484	12,714,858	4,786,667	26,680,153
Maine	3,137,105	1,928,151	3,116,236	1,806,728	3,873,126
Maryland	23,301,407	23,301,407	13,667,019	13,667,019	13,203,338
Massachusetts	44,973,373	44,973,373	15,376,582	15,376,582	14,395,116
Michigan	32,081,922	24,360,587	26,216,778	19,907,040	29,217,891
Minnesota	23,367,543	19,690,395	12,853,121	10,838,963	13,483,420
Mississippi	6,293,116	1,715,431	7,756,796	2,114,413	17,359,322
Missouri	24,668,568	16,548,755	14,257,605	9,564,625	18,227,212
Montana	3,190,691	1,315,298	2,371,213	977,485	3,212,536
Nebraska	11,338,103	6,955,059	4,639,602	2,976,295	5,536,815
Nevada	2,580,422	2,580,422	4,298,070	4,298,070	4,133,817
New Hampshire	5,051,606	5,051,606	3,102,286	3,102,286	2,566,956
New Jersey	31,662,653	31,662,653	20,975,405	20,975,405	18,639,612
New Mexico	8,702,694	3,034,328	5,213,342	1,898,024	9,446,628
New York	104,893,534	104,893,534	48,586,869	48,586,869	57,492,936
North Carolina	69,639,228	37,978,186	18,951,153	10,335,129	28,149,318
North Dakota	2,506,022	1,017,135	1,720,613	782,825	2,344,978
Ohio	70,444,793	45,628,354	29,558,734	19,145,722	35,119,219
Oklahoma	24,909,979	10,650,305	8,994,937	3,845,801	15,232,903
Oregon	19,408,790	11,714,991	8,189,250	4,942,966	9,972,899
Pennsylvania	55,336,804	46,628,930	30,311,476	25,541,621	32,711,417
Puerto Rico	-	-	-	-	24,955,835
Rhode Island	6,633,774	5,321,126	2,525,420	2,025,706	2,720,600
South Carolina	9,867,439	4,087,361	9,805,962	4,061,896	18,120,663
South Dakota	1,710,869	802,897	2,095,014	983,173	3,155,183
Tennessee	37,702,046	18,975,714	13,556,698	6,823,185	20,848,597
Texas	59,844,129	34,681,426	57,033,621	33,062,654	92,920,868
Utah	12,591,564	4,474,925	6,836,604	2,467,430	9,395,745
Vermont	4,148,060	2,804,331	1,518,524	978,227	1,714,663
Virginia	21,328,766	21,328,766	17,051,693	17,051,693	19,258,060
Washington	41,948,341	38,768,113	14,818,125	13,694,719	15,904,935
West Virginia	8,840,727	2,971,393	4,132,279	1,406,969	7,719,175
Wisconsin	24,511,351	15,470,677	13,858,837	9,312,601	14,923,937
Wyoming	2,815,041	1,553,781	1,347,236	795,656	1,626,938
State Total	$ 1,199,050,700	$ 908,252,925	$ 723,691,800	$ 551,286,747	$ 972,500,000

NOTE: Mandatory, Matching and Discretionary funds have been reduced by one quarter of one percent for technical assistance, pursuant to 45 CFR 98.60(a)(1). Mandatory and Matching funds have been reduced by the tribal set-aside. Discretionary funds have been reduced by the tribal and territorial set-aside. Territories are not eligible for Mandatory or Matching funds.

1/ Mandatory Funds are allocated based on the Federal share of expenditures for IV-A child care in FY 1994, FY 1995, or the average of FY 1992-1994, whichever is greatest. Allocations are based on expenditure data as of Feb. 28 and April 28, 1995.

2/ Preliminary calculation based on available aggregate data; may need to be adjusted. In order to be eligible for Matching Funds, States are required to maintain the greater of FY 1994 or FY 1995 expenditures for IV-A child care.

3/ Matching Funds are allocated according to the proportion of children under age 13 using Census data as of July, 1995 (in accordance with the At-Risk Child Care program allocation formula). Each State's maximum allocation is shown; unused funds will be redistributed among States.

4/ State expenditures above the MOE level are matched based on the FY 1995 FMAP rate.

5/ Discretionary allocation is preliminary and based on the $1 billion in authorized funds. Final State allocations may change. For Discretionary Funds, Puerto Rico is included in the State allocation formula

23-Aug-96

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAI
Office of the Assistant Secretary, Suite 600
370 L'Enfant Promenade, S.W
Washington, D.C. 20447

Dear CCDBG Lead Agency Administrator:

As you know, the President has just signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Title VI of the statute creates a new, integrated child care program under the Child Care and Development Block Grant. We are very excited that the program unites three child care funding streams in a way that validates the early effort of many States to construct a unified, seamless child care system out of multiple programs that often had conflicting rules. Attachment A summarizes the key provisions of this new Title. For administrative ease, we will refer to the combined three funding streams as the Child Care and Development Fund.

Title VI has an effective date of October 1, 1996. On that same date Title I of PRWORA discontinues the former title IV-A child care funding streams related to Aid to Families with Dependent Children (AFDC child care, and Transitional and At-Risk child care). The funding for those three programs has been reconfigured as a single appropriation with a Mandatory Fund and a Matching Fund component. The Mandatory Fund is approximately equal to the amount of Federal funds States previously received for their AFDC child care, and Transitional and At-Risk child care programs. No State match is required for use of the mandatory funds. A State may only use Matching Funds, however, if it meets the following three requirements: obligating all Mandatory Funds by the end of the fiscal year, expending from the State's own funds an amount that is no less than the maintenance of effort (MOE) amount on the table found at Attachment B of this letter, and providing the State's share of the Matching Funds.

The statute provides that "notwithstanding any other provisions of law, [these] amounts . . . shall be transferred to the lead agency under the Child Care and Development Block Grant Act of 1990, integrated by the State into the programs established by the State under such Act, and be subject to the requirements and limitations of such Act."

I am writing to you, therefore, to describe the process we have developed so that your State can start receiving the new child care funds as quickly as possible. This letter also provides some initial information about the process for continuing to access those funds.

- First, we are asking that you submit to us, no later than September 20, 1996, a simple interim application that will serve as the planning document to enable us to provide you with the initial installment of the Mandatory and Matching Funds for FY 1997 that become available to you on October 1. The details of this application are spelled out in Attachment C. In the near future, we will provide you with additional guidance on the child care funding process under the revised statute. We cannot begin issuing grants until we receive this application.

- Second, as required by the statute, grantees should begin engaging in a comprehensive planning process, including a public hearing, that will culminate in a final, comprehensive child care plan and application due to us by July 1, 1997. The provisions of the plan will take effect on September 30, 1997, with the FY 1997 discretionary funds released on September 30, 1997, and will cover your integrated child care program for the following two years. Since the experience of so many States suggests that the quality and comprehensiveness of this planning process is extremely important to optimizing child care in your State and leveraging local resources, we will be consulting with you and your child care administrators regarding the nature and timing of the planning process and the kind of assistance we can provide.

Again, we at the Administration for Children and Families are extremely excited by the integrated child care program envisioned by the new statute. We believe that this program offers a heretofore unparalleled opportunity to serve children and their parents for whom child care is a critical element in family growth and stability.

Sincerely,

Mary Jo Bane

Mary Jo Bane
Assistant Secretary
for Children and Families

Attachments:

A - Key provisions of the Child Care and Development Block Grant Amendments of 1996
B - Preliminary allocation tables
C - Interim application process
D - ACF regional administrators

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"...our nation's answer to this great social challenge will no longer be a never-ending cycle of welfare, it will be the dignity, the power and the ethic of work. Today, we are taking an historic chance to make welfare what it was meant to be: a second chance, not a way of life." *President William J. Clinton*

STATE GUIDANCE FOR THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM

Department of Health and Human Services
Administration for Children and Families
370 L'Enfant Promenade, S.W., Washington, D.C. 20447
September 1996

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A New Beginning...

The Temporary Assistance for Needy Families (TANF) Program

On August 22, President Clinton signed into law the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," a comprehensive bipartisan welfare reform bill that establishes the Temporary Assistance for Needy Families (TANF) program. This legislation will dramatically change the nation's welfare system into one that requires work in exchange for time-limited assistance. It contains strong work requirements, a performance bonus to reward States for moving welfare recipients into jobs, State maintenance of effort requirements, comprehensive child support enforcement, and supports for families moving from welfare to work.

In signing the bill, President Clinton said, "This is not the end of welfare reform, this is the beginning." He went on to say:

> Today, we are ending welfare as we know it. But I hope this day will be remembered not for what it ended, but for what it began -- a new day that offers hope, honors responsibility, rewards work, and changes the terms of the debate....

The new legislation gives States the opportunity to create a new system that promotes work and responsibility, and strengthens families. It challenges us all to remedy what is wrong with the old system, and to provide opportunities that will help needy families under a framework of new expectations.

Starting the Program

The new TANF program replaces the AFDC, JOBS and EA programs with a new block grant program. A State is eligible to participate in the new program no earlier than the submittal of its State TANF plan. A State will receive its block grant funds once the Secretary has found the State's plan to be complete.

States must submit their TANF plans no later than July 1, 1997, but can submit them earlier if they choose. States should consider several factors in deciding whether to implement the TANF program prior to July 1, 1997. In States with reduced caseloads, funding for the AFDC, EA and JOBS programs may be less than the amounts the States would receive under the new block grant. Thus, it may be financially advantageous for some States to accelerate their effective date.

In addition to the financial implications, States should also weigh other considerations in determining when to implement the new program. Given the complexity of the new legislation and the tremendous range of options available, designing and implementing a new program will require a significant effort on the part of States. They must consult and coordinate with numerous parties, undertake staff training and modify computer systems.

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Inadequate attention to these activities could undermine the long-term effectiveness of the State's program. Further, once States submit their plans, the work requirements and the 5-year time limit begin. Penalty and data collection requirements begin July 1, 1997, or 6 months after the plan has been submitted, whichever is later.

Suggested State Plan Outline

The statute requires States to outline how they intend to conduct a program that provides assistance to needy families with children and provide parents with job preparation, work and support services to enable them to leave the program and become self-sufficient.

We recommend that States use the State plan process to consider and address a set of important questions, and to outline to the citizens of the State, other interested parties, and the Federal government how those questions will be addressed in the operation of the State's program. Toward that end, we suggest that a State plan include discussion of the issues outlined below as well as addressing all other requirements specified in the law. Attachment A provides a copy of the statutory text.

A possible format is a 15-20 page document that describes the State's program goals, approach, and program features. Some States may emphasize some areas more than others depending on the circumstances in the State. States must submit plans every two years. They may submit amendments to keep the plan current whenever they wish to make changes in the administration or operation of the program. A State plan will be considered complete as long as it includes the information required by the Act.

GOALS, RESULTS AND PUBLIC INVOLVEMENT

What are the overarching goals for your program? How were local governments and private sector organizations involved in designing the TANF plan? How has the public been involved in program design and has the public had the opportunity to provide input? How will you judge and measure progress toward goals? What results will be measured and how will accountability be ensured?

NEEDY FAMILIES

Who will be assisted under this program? How will "needy families" be defined? Will all families in the State have access to the same program or will it vary? Will the same services be offered to families who have moved from another State? How will eligible non-citizens be treated within the program? How will the privacy of families be protected? What rights will applicants and beneficiaries have to challenge decisions?

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WORK AND SELF-SUFFICIENCY

What are your overall goals for work and self-sufficiency? How will the program move families to work and ultimately to self-sufficiency? What services will be available to move clients to work? How will you identify and provide additional, targeted support to victims of domestic violence and others who may have particular difficulty successfully making the transition from welfare to work? How will current workers be protected from displacement? How will various community, education, business, religious, local governments, and non-profit organizations be involved in the effort to provide work for clients? How will the delivery of services vary across the State?

BENEFITS

What benefits will be given to needy families? Will benefits be delivered through cash, in-kind, vouchers, or electronic benefits transfer (EBT)? How will time limits and sanctions be incorporated into the program? What supportive services will be available to clients? How will child care be provided to allow parents to go to work?

CULTURE CHANGE

8 grants

What measures will be taken to change the culture of the welfare office to support work and self-sufficiency? What kind of training will take place for staff who will be involved in administering the program?

PARENTAL RESPONSIBILITY

How will parental responsibility be encouraged? How will child support enforcement interact with the TANF program? Will non-custodial parent be involved in any work programs? What efforts will be made to reduce the incidence of out-of-wedlock births? How will problems of domestic violence and statutory rape be addressed?

TRIBES

How will you ensure equitable access to your program for members of Indian tribes who are not eligible for assistance under a tribal family assistance plan? How will you assist tribes in implementing their programs? What kind of assistance will be available to tribes in implementing their programs?

ADMINISTRATION

What is the structure of the agency administering the program? What will be the role of public or private contractors in the delivery of services? How will elements of the program be phased-in? Will the implementation date differ from the plan submittal date?

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WAIVERS

Do you intend to continue one or more individual waivers as provided under section 415? If so, please identify each waiver provision and each provision of new law that you believe are inconsistent, and provide the basis for your assessment of inconsistency. (You may wish to consult with the chief law officer of your State in making this assessment.) What is the name of the 1115 demonstration which contains the waiver? What are the beginning and ending dates of the demonstration? Is the waiver incorporated into your TANF plan applicable statewide? If not, how will TANF operate in those areas of the State not covered by the continuing waivers? Note: Future legislative or regulatory action may limit which provisions of the TANF may be considered inconsistent with waivers for purposes of determining penalties. If this happens, States will have an opportunity to submit a new plan in order to come into compliance with the requirements.

Description of Attachments

In additions to this guidance, we are providing three attachments that State policy makers may wish to use in developing their State TANF plans. Attachment A is a copy of the statutory requirements regarding the state plan. Attachment B contains suggested formats for the required certifications that must be submitted with a state plan. Attachment C provides technical information for financial officers of the program regarding funding and a mechanism for States to request TANF funds.

Paperwork Reduction Act

The information in the State TANF plan is collected in accordance with section 402 of the Social Security Act, as amended. Information received in the State plans sets forth how the TANF program will be administered and operated in the States.

The response burden for this collection of information is estimated to be 60 hours per response, including the time for reviewing the statute, this guidance gathering and preparing the information, and reviewing the information.

The information collected is mandatory in accordance with the above-mentioned citations.

This information is not considered confidential; therefore, no additional safeguards are considered necessary beyond that customarily applied to routine government information.

Inquiries

Inquiries should be addressed to the appropriate Regional Administrator, Administration for Children and Families. Information about all State plans will be posted on the ACF home page.

ATTACHMENT A

♦ Statutory Text Relating to State Plans ♦

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the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 412, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

(6) CERTIFICATION OF STANDARDS AND PROCEDURES TO ENSURE AGAINST PROGRAM FRAUD AND ABUSE.-A certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

(7) OPTIONAL CERTIFICATION OF STANDARDS AND PROCEDURES TO ENSURE THAT THE STATE WILL SCREEN FOR AND IDENTIFY DOMESTIC VIOLENCE.-

(A) In General.-At the option of the State, a certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to-

(i) screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

(ii) refer such individuals to counseling and supportive services; and

(iii) waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

(b) PUBLIC AVAILABILITY OF STATE PLAN SUMMARY.-The State shall make available to the public a summary of any plan submitted by the State under this section.

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STATUTORY TEXT

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) was signed by the President August 22. The following is the statutory language relative to the State TANF plan.

SECTION 402 -- STATE PLAN REQUIREMENTS

(a)(1) OUTLINE OF FAMILY ASSISTANCE PROGRAM.-

(A) General Provisions.-A written document that outlines how the State intends to:

(i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

(ii) Require a parent or caretaker receiving assistance under the program to engage in work once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months, whichever is earlier.

(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407.

(iv) Take steps to restrict the use and disclosure of information about individuals and families receiving assistance.

(v) Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State for calendar years 1996 through 2005.

(vi) Conduct a program that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men.

(B) Special Provisions.-

(i) The document shall indicate whether the State intends to treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program.

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(ii) The document shall indicate whether the State intends to provide assistance under the program to individuals who are not citizens of the United States, and if so, shall include an overview of such assistance.

(iii) The document shall set forth objective criteria for the delivery of benefits and the determination of eligibility and for fair and equitable treatment, including an explanation of how the State will provide opportunities for recipients who have been adversely affected to be heard in a State administrative or appeal process.

(iv) Not later than 1 year after the date of enactment of this Act, unless the chief executive officer of the State opts out of this provision by notifying the Secretary, a State shall, consistent with the exception provided in section 407(e)(2), require a parent or caretaker receiving assistance under the program who, after receiving such assistance for 2 months is not exempt from work requirements and is not engaged in work, as determined under section 407(c), to participate in community service employment, with minimum hours per week and tasks to be determined by the State.

(2) CERTIFICATION THAT THE STATE WILL OPERATE A CHILD SUPPORT ENFORCEMENT PROGRAM.-A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D.

(3) CERTIFICATION THAT THE STATE WILL OPERATE A FOSTER CARE AND ADOPTION ASSISTANCE PROGRAM.-A certification by the chief executive officer of the State that, during the fiscal year, the State will operate a foster care and adoption assistance program under the State plan approved under part E, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under title XIX.

(4) CERTIFICATION OF THE ADMINISTRATION OF THE PROGRAM.-A certification by the chief executive officer of the State specifying which State agency or agencies will administer and supervise the program referred to in paragraph (1) for the fiscal year, which shall include assurances that local governments and private sector organizations-

(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

(B) have had at least 45 days to submit comments on the plan and the design of such services.

(5) CERTIFICATION THAT THE STATE WILL PROVIDE INDIANS WITH EQUITABLE ACCESS TO ASSISTANCE.-A certification by the chief executive officer of

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ATTACHMENT B

♦ State Plan Certifications ♦

This has been designed to enable the Chief Executive Officer of a State to certify that the State will operate its Temporary Assistance to Needy Families (TANF) program in accordance with the statutory requirements in section 402(a)(2) through (7).

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CERTIFICATIONS

The State will operate a program to provide Temporary Assistance to Needy Families (TANF) so that the children may be cared for in their own homes or in the homes of relatives; to end dependence of needy parents on government benefits by promoting job preparation, work, and marriage; to prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and encourage the formation and maintenance of two-parent families.

This program is known as _____

Executive Officer of the State (Name)_____

In administering and operating a program which provides Temporary Assistance for Needy Families with minor children under title IV-A of the Social Security Act, the State will:

1. Specify which State agency or agencies will administer and supervise the program under part A in all political subdivisions of the State:

   _____ is (are) the agency(ies) responsible for administering the program;

   _____ is (are) the agency(ies) responsible for supervising the program;

2. Assure that local governments and private sector organizations:

   (a) Have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

   (b) Have had at least 45 days to submit comments on the plan and the design of such services.

3. Operate a Child Support Enforcement program under the State plan approved under part D;

4. Operate a Foster Care and Adoption Assistance program in accordance with part E, and certify that the State will take all necessary actions to ensure that children receiving assistance are eligible for medical assistance;

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5. Provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a Tribal Family Assistance plan approved under Section 412, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

6. Establish and enforce standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

7. Make available to the public a summary of the State plan; and

OPTIONAL CERTIFICATION

[ ] The State has established and is enforcing standards and procedures to:

(1) Screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

(2) Refer such individuals to counseling and supportive services; and

(3) Waive, pursuant to a determination of good cause, other program requirements such as time limits (for as long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in case where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.

CERTIFIED BY THE CHIEF EXECUTIVE OFFICER OF THE STATE:

_____ _____

Date Signature and Title

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ATTACHMENT C

◆ Funding ◆

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FUNDING

Section 403(a)(1)(A) provides that each eligible State shall be entitled to receive for each of the fiscal years 1996 through 2002, a grant in an amount equal to the State family assistance grant as defined in section 403(a)(1)(B).

I. Payments to Agency Administering the TANF Program

- Payments for the TANF program will be made to the organization managing the AFDC/JOBS programs as of August 22, 1996, unless the State indicates that the TANF administering agency is changed. If a change is made, describe the name, address and EIN number of the new organization.

II. State Payments for TANF Program

- Section 405 requires that grants be paid to States in quarterly installments, based on State estimates. The State's estimate for each quarter of the fiscal year by percentage is:

For FY 1998 and Future Years-

1st quarter	2nd quarter	3rd quarter	4th quarter
_____	_____	_____	_____

- For FY 1997, States should indicate below the percentage of TANF funds requested for only those quarters in which they plan to operate the program.

For FY 1997

1st quarter	2nd quarter	3rd quarter	4th quarter
_____	_____	_____	_____

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Funding

III. Changes and Inquiries

- If a State determines that these estimates require changes, a letter indicating the change in percentages should be sent to your ACF Regional Office and to ACF's Central Office. The Central Office address is:

  The Administration for Children and Families
  The Office of Program Support
  The Division of Grants Management
  6th Floor, Aerospace Building
  370 L'Enfant Promenade
  Washington, D.C. 20447

Ms. GOLDEN. Thank you. I will be sure to take the compliments back to the people who get the credit for writing it clearly.

Mr. FORD. Dr. Golden, I have just two other questions. If we could go back to the waiver for just 1 minute. Certain States today have approved waivers. States will not be required to comply with the provisions of the act that are inconsistent with the wavier until the expiration of the waiver. Who will determine what is inconsistent? Will it be HHS, the Governors, or the courts?

Ms. GOLDEN. Congressman Ford, you have hit a question that has been coming in from many States. Working with the Congress, we have come up with a process rather than a single answer.

The first thing we have been saying to States that have waivers is that some of the things they now are doing under their waivers, they may not need a waiver to do because the new legislation provides them with so much flexibility. So we are asking them to start by thinking about what it is that they want to do. Then, as you know, they may identify some areas where they believe the State waiver is inconsistent with the legislation. As you point out, it can be complex and ambiguous.

Staff have worked out the process, and I think the administration and the Congress now agree that we will ask States to give us their best judgment about those provisions. With that information, we will be able to consult with the States and with the Congress to make some determinations about the best way to interpret the statute. I think you are exactly right that there are some complexities and some ambiguities in just how to interpret it best.

Mr. FORD. One final question, Dr. Golden. What are the requirements for a State to opt out of an approved waiver without financial loss or penalties?

Ms. GOLDEN. I am not sure I know if there is such a specific situation. Perhaps the best thing for us to do would be to provide you with more detailed information on it. Overall, many States are finding right now they do not need the continuation with the waivers.

Mr. FORD. I am not referring to any particular State. I am from Tennessee. We have a waiver, so I am not referring to my State or any other State. I am just wondering what would be the penalties or what would be the financial loss?

Ms. GOLDEN. I am not familiar with a situation where there would be a loss, but if there is a specific situation, I would be happy to find out more about it and get back to you on that.

Mr. FORD. Thank you, Dr. Golden.

Thank you, Mr. Chairman.

Chairman SHAW. Staff says that the States are held harmless in that situation, but I do not know. We could look further into it.

If there are no further questions, Dr. Golden, thank you so much for being with us. You have made a very nice impression on this Subcommittee.

Ms. GOLDEN. Thank you.

Chairman SHAW. We look forward to working with you.

Ms. GOLDEN. Thank you very much. I appreciate the opportunity.

Chairman SHAW. Next, we have a panel. We have Sid Johnson, the executive director, American Public Welfare Association in Washington, DC; Sheri Steisel, senior committee director of the

Human Services Committee of the National Conference of State Legislatures in Washington, DC; Susan Golonka, senior policy analyst, National Governors' Association, Washington, DC; and Mark Greenberg, senior staff attorney, the Center for Law and Social Policy of Washington, DC.

We should have each of your prepared statements as a part of the record, and we would invite each of you to summarize.

Mr. Johnson.

STATEMENT OF A. SIDNEY JOHNSON, EXECUTIVE DIRECTOR, AMERICAN PUBLIC WELFARE ASSOCIATION

Mr. JOHNSON. Thank you, Mr. Chairman, for the opportunity to testify today. We have moved, as you said, from enactment to implementation where I think the real heavy lifting begins. A friend of mine in law enforcement has said that what actually happens is policy and it is not policy in law enforcement until the cop writes the ticket. We do not think it is policy in welfare reform until welfare recipients get jobs and retain those jobs in the State, local organizations.

Chairman SHAW. I am not sure I like the comparison.

Mr. JOHNSON. I understand your point. Let me clarify this comparison. Unlike receiving a speeding ticket, we think there is a very positive side to the welfare to work policy we are trying to implement. I want to thank the Subcommittee for its work on this legislation and say we are committed to help you in implementing it.

As you know, APWA, NGA, and NCSL had a joint conference with 600 participants just last week to explain the new law. APWA is running five regional 2-day sessions and seminars as we speak in Newark, Minneapolis, Nashville, Portland, and Los Angeles. Our effort is designed to give human service administrators as much information as they can to address the issues and opportunities they face.

I want to tell you that APWA is using, from its own modest reserves, funds to match foundation money. These additional resources will be used to provide States with information about what other States are doing, what the successful practices are, and to provide them with more technical assistance and training as they start their efforts.

I would like to address a couple of areas at this point. Together, APWA, NGA, and NCSL have identified five or six items we would like to present and I will highlight the first two. The first issue has to do with the need to repeal the maintenance of effort requirement for State supplement to the SSI Program. You know that States voluntarily chose to supplement this program and are now frozen into continuing that supplement by this legislation.

We consider this a continuing Federal mandate in an era when Congress has decided not to have unfunded mandates. I raise this issue as a technical correction because, as you know, the House did not require this, but it was dropped in conference as a result of the Senate procedural rules, the Byrd rules.

Another key element for us is the lookback provisions with respect to both foster care/title IV adoption and Medicaid. States are now confronted with two different eligibility standards for vulner-

able kids, often the same children. For foster care and adoption eligibility, States are required to determine a child's eligibility for these services based on the AFDC standard as of June 1, 1995. So they have to look retrospectively whether they would have been eligible under another standard which no longer exists in States.

The law also requires in determining a child's eligibility for Medicaid, the State must maintain the same Medicaid eligibility standards as were in existence July 16, 1996. So there are two separate dates for two lookbacks in two different parts of the program which often affect the same population. This is a confusing and difficult issue for States. At the very least, we would like to work with the Subcommittee and the administration to adopt a single lookback mechanism, a single date, and if possible, to come up with a better approach than using a lookback date.

The other concerns which NGA and NCSL will touch on, and APWA supports as well, have to do with the child support passthrough, the limits on transferability of TANF funds to the child care or Social Services block grant, the treatment of two-parent disabled families, and the use of State maintenance of effort funds for legal alien populations.

We consider these to be minor but important changes and in line with what the Congress and the administration wanted. I want to repeat that this new welfare law is a challenge to the States, an opportunity for them, and a responsibility, but it is one we are eager to take on. APWA and the State and local human service departments we represent will do all we can to implement this law as effectively as possible to promote work, independence, and self-sufficiency and to revisit with the Congress or the administration any provisions that prove unworkable.

Thank you.

[The prepared statement follows:]

A. SIDNEY JOHNSON
AMERICAN PUBLIC WELFARE ASSOCIATION
SUBCOMMITTEE ON HUMAN RESOURCES
WAYS AND MEANS COMMITTEE
SEPTEMBER 17, 1996

Mr. Chairman and members of the Committee, on behalf of the American Public Welfare Association I want to express our appreciation for the opportunity to come before this committee today to talk, once again, about welfare reform. I am pleased that today's hearings have moved to a different phase. That phase being how do we now implement this sweeping new reform. I concur with the President that on August 22, 1996 we did not end the welfare reform process, we have just started it.

Before I proceed with my comments I want to take this opportunity to thank you, Chairman Shaw, on your dedicated and hard work on this issue. I know that the hours that you and the members of this Committee have dedicated to the passage and enactment of H.R. 3734 represents some of the toughest and most challenging work in the 104th Congress. I also want to express my same thanks and appreciation to your staff. Their close consultation and openness were, and are, critical to welfare reform.

APWA is working hard to help states implement their new state plans. I am pleased that APWA was able to join with the National Governors Association and the National Conference of State Legislatures last Monday and Tuesday, September 9th and 10th to host a conference. That conference brought together approximately 600 state officials from across the country to learn about this new legislation.

In addition to that effort, APWA is convening five regional seminars during the month of September. These five seminars in Newark, Minneapolis, Nashville, Portland and Los Angles are designed to give local and state human service administrators the opportunity to address the most pressing program and

management issues they face. We are pleased to be leading these efforts. We are equally pleased to be a part of welfare reform.

The states and our membership want the opportunity that welfare reform presents them. I hope these hearings will become a regular practice. I think continued interest and oversight can help build what needs to be a cooperative partnership between all of the states and the federal government. As we continue to implement this new law and new assistance programs throughout the country we will come across new issues, technical problems and the need for clarification on Congressional and federal intent. I want to use my time today to raise some points on what the APWA considers to be areas in need of technical correction.

The first issue I want to raise is the need to repeal the current maintenance of effort requirement for the state supplement to the Supplemental Security Income or SSI program. This provision requires that the states that voluntarily chose to supplement the federal SSI payment with a state payment are frozen into continuing this supplement. This has become a continuing federal mandate in an era when we have decided to not have unfunded mandates. This maintenance of effort requirement also results in limiting a states ability to streamline its administration of the program. I raise this issue as a technical correction because the House did include this repeal in H.R. 3734 but it was dropped in the Conference as a result of Senate procedural rules.

A second concern is the result of conflicting effective dates in regard to the fifty dollar pass-through and disregard of child support payments. As the Chairman and Committee members know, the AFDC program required the first fifty dollars in child support to be passed on to AFDC families. The federal government would share in this expense. Under the new TANF block grant states have the option of suspending this pass-through. As part of this, the federal government will no longer pay a share of the pass-through. The technical problem in this area is the fact that some states may not eliminate the pass-through until their new state plan is approved -- possibly as late as next July. The way the new law was drafted, states are cut-off from the federal reimbursement as of October 1,

even if a state has not had the chance to file their state plan or change the necessary state laws, regulations, and computer systems.

The third technical correction has to do with the states ability to transfer funds from the TANF block grant to the child care block grant or the Title XX Social Services block grant. The statute allows states to transfer up to 30% of the TANF block grant to these other two funds. The way the law was drafted and interpreted now seems to require a state to transfer two dollars to the child care block grant in order to transfer one dollar to Title XX. I believe the intent was to allow states to transfer to one or the other block grants or both if that was their decision.

A fourth area of concern has to do with the treatment of two-parent families. As required by the new TANF law these families must meet higher participation and work rates. No one is taking issue with these higher requirements. The problem is in those two parent family cases where one or both parents are disabled or seriously incapacitated. In many of these cases that parent or parents will be unable to participate or work. This is a small part of the population but a serious issue when it does occur.

A fifth area has to do with the states use of their maintenance of effort dollars for the TANF block grant. States are required to maintain spending at a level of 80% of the current expenditures on AFDC related services. The new law gives states a great deal of discretion in how they spend these state dollars to meet this test. It is my understanding that Congress did intend to give states the authority to spend some of these maintenance of effort dollars on legal immigrants if a state chose to do so. The way the new law has been drafted does not give states this authority.

Finally, the sixth issue I want to raise has to do with the "look back" requirements for children who may be eligible for federal foster care and adoption assistance, or Medicaid. States are now confronted with two different eligibility standards when it comes to vulnerable kids. Foster care and adoption assistance (Title IV-E) eligibility has been based on a child's AFDC eligibility. With the repeal of AFDC, states are required to determine a child's eligibility for IV-E funding based on the AFDC standards that

existed on June 1, 1995. The law also requires that in determining a child's eligibility for Medicaid, the state must maintain the same Medicaid eligibility standards that were in existence on July 16, 1996. Under federal law, any child eligible for IV-E foster care is automatically eligible for Medicaid. However, if a child is eligible for state foster care or is simply poor, then states will have to look back to determine if that child qualifies under the Medicaid eligibility rules that existed on July 16, 1996. If this sounds confusing -- it is.

While a "look back" requirement in and of itself is problematic because of the administrative complexities, two different "look back" dates further complicates effective administration of these critical programs. At the very least, states would like to see some standardization of these two different eligibility processes so we can better address the real task at hand: serving vulnerable children.

APWA feels that these changes are minor, in-line with what the Congress and the President wanted in welfare reform and consistent with the goal of this new legislation. Let me close by once again stating that this is a challenge for the states and the administrators we represent. But this is a challenge we are eager to take on. If we all keep our eye on the goal we all believe in -- moving people from welfare to opportunity, to hope, to work -- we can look back on this time as one of the great accomplishments of the 1990s. I thank the Chairman and the members for their attention to these issues.

Chairman SHAW. Thank you, Mr. Johnson. Your organization has been very helpful in the drafting of the legislation which we are now working on.

Ms. Steisel.

STATEMENT OF SHERI E. STEISEL, SENIOR COMMITTEE DIRECTOR, HUMAN SERVICES COMMITTEE, NATIONAL CONFERENCE OF STATE LEGISLATURES

Ms. STEISEL. Thank you, Mr. Chairman and Members of this Subcommittee. My name is Sheri Steisel and I am here representing the National Conference of State Legislatures and our 7,541 State legislators across the country who meet bipartisanly to cooperate on issues such as welfare reform.

On behalf of NCSL, I would like to say how pleased we are to have worked so cooperatively with NGA and APWA. Successful implementation of the welfare reform law was best accomplished through such collaboration. In fact, it is the model we hope to pursue through a long-term partnership between us and our Federal Government partners, both the Congress and the administration. We are working together to ensure as smooth a transition as possible. Our organizations together produced a 32-page summary of the legislation within a week after the legislation was passed by the Congress and we used this as a starting off point, a similar point, even though we have divergent responsibilities.

Our welfare reform briefing, as Sid Johnson discussed, was incredibly well attended with representatives from every State in the Nation. The thirst for information on this law and what other States are doing, as well, has been unquenchable. In fact, we have been responding to numerous information requests. We have been doing onsite technical assistance. In fact, in the next 2 weeks NCSL staff will visit nine different States to testify before the legislature regarding the welfare reform legislation. We have also created an electronic forum for legislators to share good ideas and best practices, as well as technical problems with the legislation.

Determining what must be done in 1997 regular State legislative sessions is essential. Legislatures must look at appropriating block grant funds, when to convert to the block grant, what to do with existing waivers, sorting out what needs legislative or regulatory action, all the many child support enforcement statutory changes, and what bureaucratic modifications will best serve the new block grants. Some States may even need special sessions after their regular sessions that begin mostly in January to accomplish many of the legislative changes.

Two topics that particularly created a number of questions at our briefing were waivers in State plans. States want guidance on what a complete State plan is, because we have some concerns about what constitutes completeness, and we would like to pursue a conflict resolution process for waivers. After the process between the administration and the Congress in determining what is appropriate in terms of a waiver procedure for the States, we would like to see a conflict resolution procedure between the States, the administration, and the Congress.

There are two issues I would like to highlight among the seven technical corrections we have put before you today. The two I am

going to mention have incredible impact on the States in terms of our State financing, especially very quickly, which is why if at all possible we would prefer to see this accomplished before you adjourn this year.

The first regards the $50 child support disregard or the passthrough to families of the first $50 of their child support enforcement moneys that does not count against their eligibility for welfare programs. Unfortunately, in title I of the bill, while eliminating this passthrough, in title IV of the bill, you immediately eliminate the Federal financing, the Federal match of the Medicaid matching rate, or the child support enforcement $50 disregard.

What this means is that until States have the opportunity to make statutory changes or amend their State plans, they will have to keep paying 100 percent of that $50 disregard. In many cases, it is in State law and States will have to work on that State law once they get into session. So this is what we believe is an inadvertent writing of the legislation and we would like to see, if at all possible, because of the fiscal impact on the States, $50 per month per family, we would like to see if that could be changed, preferably before the end of the session.

Second, the maintenance of effort. In the report language for the welfare reform bill, there is a reference to including expenditures that States make on legal immigrants and other populations that may be made ineligible for the law that State expenditures could count for these populations toward the maintenance of effort. We feel strongly that this needs to be cleared up within the language of the bill. Unfortunately, there is a drafting error that references a different part of the legislation, not the part that deals with ineligible populations, such as legal immigrants. This is a minor technical correction, but could have a major impact on State financing.

Finally, I would like to conclude by elaborating on what I see as a long-term collaborative partnership between the Federal Government and the States. Clearly, this includes the oversight hearing by this Subcommittee and further Subcommittees, but also we would like to see our long-term collaboration include ongoing consultations with the administration as have begun already since the enactment of the bill.

I would be happy to answer any questions you may have.

[The prepared statement follows:]

STATEMENT OF SHERI E. STEISEL
SENIOR COMMITTEE DIRECTOR, HUMAN SERVICES COMMITTEE
NATIONAL CONFERENCE OF STATE LEGISLATURES

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I AM SHERI STEISEL, SENIOR COMMITTEE DIRECTOR FOR THE HUMAN SERVICES COMMITTEE OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL). I APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO DISCUSS STEPS STATE LEGISLATURES AND NCSL ARE INITIALLY TAKING TO IMPLEMENT THE NEW FEDERAL WELFARE REFORM LAW, P.L. 104-193. I ALSO COME BEFORE YOU TO POINT OUT SOME OF OUR INITIAL CONCERNS WITH THE LEGISLATION THAT WE BELIEVE WARRANT IMMEDIATE TECHNICAL CORRECTION.

THE NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL) IS THE BIPARTISAN ORGANIZATION THAT REPRESENTS THE NATION'S 7,541 STATE LEGISLATORS. WE ASSESS FEDERAL LEGISLATION TO ENSURE THAT STATE AND FEDERAL RESPONSIBILITIES ARE APPROPRIATELY SORTED OUT. WE FURTHER WORK TO REMOVE IMPEDIMENTS TO SUCCESSFUL IMPLEMENTATION OF FEDERAL LAW IN LEGISLATION AND REGULATION. ALSO, NCSL SERVES AS THE KEY RESOURCE FOR STATE LAWMAKERS ON WELFARE REFORM AND OTHER ISSUES, FOR INFORMATION AND ANALYSIS OF FEDERAL LEGISLATION AND REGULATORY INITIATIVES.

ON BEHALF OF NCSL I WOULD LIKE TO SAY HOW PLEASED WE ARE TO HAVE WORKED SO COOPERATIVELY WITH OUR PARTNERS AT NGA AND APWA. SUCCESSFUL IMPLEMENTATION OF THE NEW FEDERAL WELFARE REFORM LAW IS BEST ACCOMPLISHED THROUGH COOPERATION BETWEEN STATE LEGISLATORS, GOVERNORS AND WELFARE PROGRAM ADMINISTRATORS. I THINK OUR COMBINED EFFORTS TOGETHER OVER THE LAST 3-4 YEARS HAVE SET A VALUABLE PRECEDENT AS WE ALL MOVE TOWARD IMPLEMENTING THE NEW LAW. IN THE PAST, STATES HAVE RELIED UPON FEDERAL GUIDANCE FOR WELFARE POLICY AND PROGRAM ADMINISTRATION; IN THIS NEW ENVIRONMENT STATES WILL LOOK TO THEMSELVES AND TO OTHER STATES FOR SUCCESSFUL MODELS AND INNOVATIVE IDEAS.

I WILL DISCUSS WITH YOU TODAY FIVE GENERAL TOPICS: (I) OUR ANALYSIS OF P.L. 104-193; (2) THE MEANS NCSL IS USING TO INFORM STATES ABOUT IMPLEMENTATION REQUIREMENTS; (3) STATE PREPARATION FOR, AND IMPLEMENTATION OF, WELFARE REFORM; (4) TECHNICAL CORRECTIONS NEEDS; AND (5) ADDITIONAL RECOMMENDATIONS.

(I) ANALYSIS

NCSL, THE NATIONAL GOVERNORS' ASSOCIATION AND THE AMERICAN PUBLIC WELFARE ADMINISTRATION COMPLETED IN EARLY AUGUST AND CONTINUE TO UPDATE A COMPREHENSIVE SUMMARY OF P.L. 104-193. THIS SUMMARY TODAY SERVES AS THE MAJOR TOOL FOR NCSL TO ACCOMPLISH THREE SPECIFIC

OBJECTIVES. FIRST, IT SUMMARIZES ALL TITLES OF THE LEGISLATION. SECOND, WE ARE USING THIS PUBLICATION AND OTHERS TO ENHANCE UNDERSTANDING OF HOW THE NEW BLOCK GRANTS AND OTHER LEGISLATIVE CHANGES DIFFER FROM CURRENT LAW. THIRD, THE SUMMARY REINFORCES THE FACT THAT P.L. 104-193 IS NOT LIMITED TO WELFARE REFORM, BUT ALSO CONTAINS TITLES THAT MAKE FAR-REACHING CHANGES TO THE LANDSCAPE OF OTHER PROGRAMS, NOTABLY IMMIGRATION, FOOD STAMPS AND CHILD SUPPORT ENFORCEMENT. WE HAVE MAILED MORE THAN 3,000 COPIES OF THIS SUMMARY TO LEGISLATORS AND LEGISLATIVE STAFF AND HAVE POSTED IT ON NCSL'S INTERNET WEB SITE.

NCSL BELIEVES IT IS CRITICAL FOR THE THREE ORGANIZATIONS TO CONTINUE TO UTILIZE THIS VEHICLE AS A PRIMARY REFERENCE. IT PROVIDES LEGISLATORS, GOVERNORS AND STATE ADMINISTRATORS WITH THE SAME INFORMATION FROM WHICH TO ACCOMPLISH DIVERGENT RESPONSIBILITIES IN IMPLEMENTING FEDERAL WELFARE REFORM.

(II) DISSEMINATING INFORMATION

MR. CHAIRMAN, THE THIRST FOR INFORMATION ON P.L. 104-193 AND WHAT OTHER STATES ARE DOING IS UNQUENCHABLE. REQUESTS FOR WELFARE-RELATED INFORMATION HAVE BEEN VOLUMINOUS THROUGHOUT THE 104TH CONGRESS. WE EXPECT UNPRECEDENTED LEVELS OF REQUESTS AT LEAST THROUGH THE JULY I, 1997 IMPLEMENTATION DATE FOR THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT AND OTHER PROVISIONS. TO MAKE INFORMATION AVAILABLE, NCSL IS DEPLOYING SOME OF ITS REGULAR DATA EXCHANGE TECHNIQUES AND USING THE LATEST TECHNOLOGY TO CREATE NEW RESOURCES.

ON SEPTEMBER 9-10, 1996, NCSL, THE NATIONAL GOVERNORS' ASSOCIATION AND AMERICAN PUBLIC WELFARE ASSOCIATION CONDUCTED A BRIEFING ON P.L. 104-193. THE MEETING WAS DESIGNED TO PROVIDE A FORUM FOR STATE LAWMAKERS, ADMINISTRATORS AND POLICY ADVISORS TO DISCUSS IMMEDIATE AND LONG-TERM CONCERNS AND STRATEGIES. OUR ORGANIZATIONS PUT THIS BRIEFING TOGETHER IN A LITTLE MORE THAN 3 WEEKS AFTER THE LEGISLATION WAS SIGNED. ATTENDANCE WAS EXCEPTIONAL WITH MORE THAN 550 PARTICIPANTS REPRESENTING EVERY STATE IN THE UNION.

AT THE MEETING, STAFF OF THE THREE ORGANIZATIONS PRESENTED A THREE HOUR OVERVIEW OF THE NEW LAW'S PROVISIONS. MEETING PARTICIPANTS ALSO HEARD FROM REPRESENTATIVES OF THE CLINTON ADMINISTRATION AND THE CONGRESS. WE CONVENED SPECIAL BREAKOUT SESSIONS AT THE MEETING ON SPECIFIC PORTIONS OF THE NEW LAW, SUCH AS THE WORK REQUIREMENTS, FISCAL ISSUES, CHANGING THE MESSAGE AND MISSION OF WELFARE PROGRAMS,

THE CHILD SUPPORT REQUIREMENTS AND OTHER ITEMS. QUESTIONS AT THESE SESSIONS WERE VARIED AND SPECIFIC.

FOR THE REMAINDER OF 1996, NCSL STAFF WILL (I) PROVIDE IN-STATE TECHNICAL ASSISTANCE TO STATE LEGISLATORS ON IMPLEMENTATION, (2) DISTRIBUTE 50-STATE SUMMARIES ON SELECT ASPECTS OF WELFARE REFORM, (3) POST WELFARE REFORM CONFERENCE MATERIALS ON NCSL'S WEB SITE, AND (4) CONDUCT YET ANOTHER COMPREHENSIVE BRIEFING ON P.L. 104-193 AT OUR DECEMBER, 1996 MEETING OF OUR POLICYMAKING APPARATUS, THE ASSEMBLY ON FEDERAL ISSUES.

WE ARE ALSO IN THE PROCESS OF ESTABLISHING AN INTERNAL COMPUTERIZED 'LISTSERVE' OF STATE LEGISLATORS AND STAFF. THIS INTERNAL MECHANISM WILL PERMIT ALL FIFTY STATES TO READILY COMMUNICATE WITH EACH OTHER ON IMPLEMENTATION STRATEGIES, IDENTIFY PROBLEMS, SUMMARIZE EXERCISE OF STATE OPTIONS AND REVIEW FISCAL ANALYSES. WE PLAN TO INSTITUTE THIS TECHNOLOGICAL LINK BY THE END OF THIS MONTH. IF SUCCESSFUL, I EXPECT THAT ONE OF ITS USES WILL BE TO GATHER SPECIFIC DATA TO BE SHARED WITH YOU AND OTHER FEDERAL POLICYMAKERS ON ANY DIFFICULTIES THAT PROVISIONS OF P.L. 104-193 ARE CREATING FOR STATE LEGISLATORS, OTHER STATE AND LOCAL OFFICIALS AND PROGRAM BENEFICIARIES

FINALLY, OUR CONSTITUENTS RELY ON US TO IDENTIFY FEDERAL DOCUMENTS THAT PERTAIN TO WELFARE REFORM. ON THIS TOPIC, I SUGGEST THAT THIS SUBCOMMITTEE AND OTHERS INFORM STATE LEGISLATORS, EITHER DIRECTLY OR THROUGH NCSL, OF THE PLANS FOR, AND AVAILABILITY OF, CONGRESSIONAL AND ADMINISTRATION PUBLICATIONS RELATED TO P.L. 104-193 AND ITS IMPLEMENTATION.

(III) STATE PREPARATION AND IMPLEMENTATION

TWO TOPICS THAT GENERATED AN ABUNDANCE OF QUESTIONS AT THE RECENT NCSL, NGA AND APWA WELFARE BRIEFING WERE WAIVERS AND STATE PLANS. THESE WERE HARDLY THE ONLY TOPICS ON WHICH PARTICIPANTS HAD QUESTIONS. HOWEVER, THEY REPRESENT TWO OF THE MORE IMMEDIATE CONCERNS FOR STATES. BEFORE I BRIEFLY DISCUSS WHAT STATES HAVE DONE TO PREPARE FOR IMPLEMENTING P.L. 104-193, I WOULD LIKE TO PRESENT TWO RECOMMENDATIONS TO THE SUBCOMMITTEE.

(A) THOROUGH GUIDANCE ON WHAT IS A "COMPLETE" STATE PLAN IS IMPERATIVE. A FEW STATES HAVE ALREADY SUBMITTED STATE PLANS. MANY OTHERS ARE CONTEMPLATING DOING SO PRESENTLY. SO THAT TIME AND EFFORT ARE NOT WASTED, WE MUST BE ASSURED THAT THERE WILL BE

FLEXIBILITY IN DETERMINING "COMPLETENESS". FROM OUR INFORMAL DISCUSSIONS WITH HHS, THERE APPEARS TO BE FLEXIBILITY.

(B) STATES ARE CURRENTLY DETERMINING WHETHER IT IS IN THEIR BEST INTEREST TO CONTINUE OR TERMINATE ALL OR PART OF THE WAIVERS THEY HAVE BEEN GRANTED. OF PARTICULAR CONCERN ARE THE IMPOSITION OF PENALTIES AFTER CONVERSION TO THE BLOCK GRANT. BECAUSE WE NEED TO MOVE EXPEDITIOUSLY, WE SUGGEST THE ESTABLISHMENT OF AN ONGOING CONFLICT RESOLUTION PROCESS TO CLARIFY WHAT WILL OR WILL NOT BE PERMITTED WITHIN APPROVED WAIVERS.

ONE COULD SPECULATE OR ARGUE ENDLESSLY AS TO HOW PREPARED STATES ARE TO ADDRESS THE NEW TERMS OF FEDERAL WELFARE LEGISLATION. GRANTED, STATES HAVE NEVER OPERATED A BLOCK GRANT ENCOMPASSING WHAT WERE FORMER ENTITLEMENT PROGRAMS. HOWEVER, 43 STATES WITH WAIVERS HAVE LEGISLATED AND ARE MANAGING REVISED WELFARE PROGRAMS. A FEW STATES, SUCH AS MICHIGAN AND FLORIDA, ANTICIPATED ENACTMENT OF P.L. 104-193 AND PASSED STATE LAWS CONDITIONED ON FEDERAL LEGISLATION. OTHERS HAVE STUDY COMMISSIONS AND TASK FORCES THAT ARE REVIEWING STATE OPTIONS AND IMPLEMENTATION NEEDS. AND, AGAIN, SOME STATES HAVE ALREADY SUBMITTED STATE PLANS UNDER THE NEW BLOCK GRANT. NCSL STAFF ALONE HAVE TRAVELED TO MORE THAN HALF THE STATES IN THE PAST YEAR PROVIDING TECHNICAL ASSISTANCE ON BLOCK GRANTS AND WELFARE REFORM AND WE HAVE HAD NUMEROUS SESSIONS AT NCSL MEETINGS, INCLUDING OUR ANNUAL MEETING. IN THE NEXT TWO WEEKS, NCSL STAFF WILL BE TESTIFYING IN MONTANA, MARYLAND, VIRGINIA, PENNSYLVANIA, NEW YORK, INDIANA, ARKANSAS, TENNESSEE, AND WASHINGTON.

THERE ARE MANY QUESTIONS THAT STATES MUST ANSWER FOR THEMSELVES SO THAT THEY CAN IMPLEMENT THE NEW BLOCK GRANTS AND LEGISLATIVE CHANGES THOUGHTFULLY. IN ANSWERING THESE QUESTIONS, ANY CLARIFICATION THAT CONGRESSIONAL AND ADMINISTRATION PERSONNEL CAN PROVIDE WILL BE HELPFUL AND WELCOME. FOR LEGISLATORS IN PARTICULAR, DETERMINING WHAT MUST BE DONE IN 1997 REGULAR LEGISLATIVE SESSIONS IS ESSENTIAL. IT IS POSSIBLE THAT SOME STATES WILL REQUIRE SPECIAL SESSIONS GIVEN THE BREADTH OF LEGISLATIVE ACTION THAT IS REQUIRED UNDER P.L. 104-193. REVIEWING FISCAL CONDITIONS AND APPROPRIATIONS NEEDS, BOTH SHORT- AND LONG-TERM, IS CRITICAL. DETERMINING WHEN TO CONVERT TO THE BLOCK GRANT AND WHETHER TO CONTINUE WAIVERS OR NOT ARE ALSO CRUCIAL IMPLEMENTATION QUESTIONS. FINALLY, SORTING OUT WHAT NEEDS LEGISLATIVE OR REGULATORY ACTION AND WHAT BUREAUCRATIC MODIFICATIONS WILL BEST SERVE THE TERMS OF THE NEW BLOCK GRANTS ARE

ADDITIONAL CONCERNS FOR LEGISLATORS, GOVERNORS AND STATE ADMINISTRATORS. THERE ARE NUMEROUS POLICY OPTIONS THAT CAN BE PURSUED. IMPLEMENTING THE NEW FEDERAL CHILD SUPPORT REQUIREMENTS ALONE WILL REQUIRE MORE THAN 30 STATUTORY CHANGES PER STATE. OTHER REQUIREMENTS IN THE LAW, SUCH AS THE TIME LIMIT PROVISION, ASSUME THE EXISTENCE OF INFORMATION SYSTEMS THAT ARE NOT IN PLACE OR FUNDED UNDER THE LAW. STATES WILL HAVE TO GRAPPLE WITH HOW TO HANDLE THESE KINDS OF POLICY DILEMMAS. I EXPECT THAT LEGISLATIVE CALENDARS WILL BE FULL OF PROPOSALS TO TAKE STATES DOWN ANY NUMBER OF COURSES SO THAT BENEFICIARY POPULATIONS, PARTICULARLY CHILDREN, CONTINUE TO HAVE SAFETY NET PROTECTION AND THAT REAL WORK OPPORTUNITIES ARE PRESENTED TO THEIR PARENTS

(IV) TECHNICAL CORRECTIONS

IT IS EVIDENT FROM COMPLETION OF THE NCSL-NGA-APWA ANALYSIS AND FROM OUR RECENTLY COMPLETED WELFARE REFORM CONFERENCE THAT SEVERAL TECHNICAL CORRECTIONS TO P.L. 104-193 ARE NEEDED. PREFERABLY, THESE WOULD BE ACCOMPLISHED BEFORE YOU ADJOURN THIS YEAR. STATES NEED AS MUCH CLARITY AS POSSIBLE IN ORDER TO MAKE FISCAL AND SUBSTANTIVE DECISIONS. WE NEED TO ASSURE THAT STATES HAVE MAXIMUM FLEXIBILITY UNDER THE BLOCK GRANT AND THAT COST SHIFTS AND UNFUNDED MANDATES ARE AVOIDED. TO THIS END, NCSL AND OUR PARTNERS AT NGA AND APWA PROPOSE SEVEN TECHNICAL CORRECTIONS FOR YOUR CONSIDERATION. I WOULD LIKE TO BRIEFLY DISCUSS TWO OF THESE WITH YOU .

(A) RESTORE THE FEDERAL MATCH FOR THE $50 CHILD SUPPORT INCOME DISREGARD. IN TITLE ONE OF P.L. 104-193, THE $50 INCOME DISREGARD FROM CHILD SUPPORT FOR DETERMINING AFDC ELIGIBILITY FOR INDIVIDUALS IS REPEALED EFFECTIVE JANUARY I, 1997. IN TITLE FOUR, THE FEDERAL MATCH TO STATES FOR THIS DISREGARD IS ALSO ELIMINATED. MOST STATES, HOWEVER, HAVE STATE STATUTES THAT MIRROR THE FEDERAL DISREGARD. THEREFORE, ELIGIBLE INDIVIDUALS WILL RETAIN THIS MONTHLY DISREGARD AND STATES WILL NOT HAVE FEDERAL MATCH MONEY FOR IT. THIS WILL BE COSTLY FOR ALL STATES, AND PARTICULARLY THOSE WITH HIGH MEDICAID MATCH RATES.

IT APPEARS THAT CONGRESSIONAL ACTION ON THIS ISSUE WAS INADVERTENT AND UNINTENDED. THEREFORE, WE URGE YOU TO RETAIN THE FEDERAL MATCH PROVISIONS FOR ALL STATES THAT MUST MAKE STATE STATUTORY CHANGES UNTIL THEY CAN MAKE THESE CHANGES. AS FOR THOSE STATES THAT DO NOT

NEED TO MAKE STATUTORY CHANGES, THE FEDERAL MATCH SHOULD CONTINUE UNTIL THEY CONVERT FROM THE AFDC PROGRAM TO THE TANF BLOCK GRANT.

(B) ENSURE THAT STATE EXPENDITURES FOR LEGAL IMMIGRANTS AND REFUGEES, INELIGIBLE TO RECEIVE FEDERAL ASSISTANCE, ARE COUNTED AS PART OF EACH STATE'S REQUIRED MAINTENANCE OF EFFORT. THERE IS A DRAFTING ERROR IN P.L. 104-193 THAT MAKES IT UNCLEAR WHETHER STATE ASSISTANCE TO LEGAL IMMIGRANTS OTHERWISE INELIGIBLE FOR FEDERAL ASSISTANCE IS AN "EXPENDITURE" FOR REASONS OF MEETING FEDERAL MAINTENANCE OF EFFORT REQUIREMENTS. THE LANGUAGE DEFINING QUALIFYING STATE EXPENDITURES UNDER THE MAINTENANCE OF EFFORT PROVISION REFERS TO THE WRONG SECTION CONTRARY TO CONGRESSIONAL INTENT AND REPORT LANGUAGE. BECAUSE STATES HAVE THE OPTION TO PROVIDE LEGAL IMMIGRANTS CERTAIN TYPES OF ASSISTANCE, WE BELIEVE IT IS A QUALIFYING STATE EXPENDITURE. REGARDLESS OF FEDERAL LAW, WE EXPECT MOST STATES WILL ASSIST LEGAL IMMIGRANTS IN NEED. WE STRONGLY BELIEVE THESE ARE MAINTENANCE OF EFFORT EXPENDITURES, AS DID CONGRESS IN ITS REPORT LANGUAGE, HOWEVER CLARIFICATION IS REQUIRED.

NCSL ALSO SUPPORTS THE FOLLOWING FOUR TECHNICAL CORRECTIONS:

(C) GIVE STATES RELIEF FROM MAINTENANCE OF EFFORT REQUIREMENTS ON STATE SSI SUPPLEMENTS. AS THE FEDERAL GOVERNMENT DROPS LEGAL IMMIGRANTS FROM SSI, STATES WITH DECREASING SSI CASELOADS MUST MAINTAIN THE SAME SPENDING LEVEL, BUT ON FEWER RECIPIENTS. WE BELIEVE THIS RELIEF WAS MISTAKENLY NOT INCLUDED IN THE CONFERENCE AGREEMENT.

(D) ALLOW STATES TO TRANSFER UP TO TEN PERCENT OF TANF FUNDS TO THE TITLE XX SOCIAL SERVICES BLOCK GRANT (SSBG) DIRECTLY. IT APPEARS THAT CURRENT LANGUAGE REQUIRES STATES TO TRANSFER FUNDS FROM TANF TO THE CHILD CARE DEVELOPMENT BLOCK GRANT (CCDBG) AND THEN ONE-THIRD OF THESE FUNDS TO THE SSBG. IF STATES CHOOSE NOT TO TRANSFER TANF FUNDS TO CDBG, THEY WOULD BE PREVENTED FROM TRANSFERRING ANY FUNDS TO SSBG.

(E) PERMIT STATES TO COUNT TWO-PARENT TANF CASES WHERE ONE OF THE PARENTS IS INCAPACITATED AS A ONE PARENT CASE FOR PURPOSES OF DETERMINING THE WORK PARTICIPATION RATE.

(F) CONFORM ELIGIBILITY DETERMINATION DATES FOR IV-E AND IV-E MEDICAID ASSISTANCE. CURRENT LANGUAGE REQUIRES STATES TO DETERMINE IV-E ELIGIBILITY BASED ON AFDC CRITERIA AS OF JUNE I, 1995. IV-E

RECIPIENTS QUALIFY FOR MEDICAID BASED ON MEDICAID CRITERIA AS OF JULY 16, 1996. THIS NEEDLESSLY COMPLICATES ELIGIBILITY DETERMINATIONS.

(G) MODIFY RECONCILIATION AND MAINTENANCE OF EFFORT PROVISIONS OF THE CONTINGENCY FUND SO THAT NEEDY STATES CAN HAVE GREATER ACCESS TO THE CONTINGENCY FUND.

(V) OTHER RECOMMENDATIONS

IT IS ESSENTIAL THAT FEDERAL, STATE AND LOCAL POLICYMAKERS AND ADMINISTRATORS COOPERATE EXTENSIVELY AS WE PROCEED WITH IMPLEMENTATION OF P.L. 104-193. WE ARE GENERALLY PLEASED WITH EARLY STEPS TAKEN--BUT A LONG-TERM, COLLABORATIVE PARTNERSHIP IS CRITICAL. TO THIS END, WE RECOMMEND THAT:

(A) THE HOUSE WAYS AND MEANS HUMAN RESOURCES SUBCOMMITTEE AND ITS STAFF CONTINUE TO PROVIDE GUIDANCE ON WHAT IT CONSIDERS TO BE LEGISLATIVE INTENT REGARDING THE PROVISIONS OF P.L. 104-193;

(B) THE WHITE HOUSE INTERAGENCY TASK FORCE CONSULTATIONS WITH NCSL, NGA AND APWA BE CONTINUED:

(C) FEDERAL AGENCY GUIDANCE AND REGULATIONS BE PROVIDED AS EXPEDITIOUSLY AS POSSIBLE:

(D) STATE IMPLEMENTATION EFFORTS BE REVIEWED PERIODICALLY, IN CONCERT WITH NCSL, NGA AND APWA, BY THE APPROPRIATE COMMITTEES AND SUBCOMMITTEES OF THE CONGRESS;

(E) THIS SUBCOMMITTEE REMAIN OPEN TO CONSIDERATION OF TECHNICAL AND SUBSTANTIVE CHANGES TO H. R. 3734; AND

(F) WE URGE YOU TO CLOSELY MONITOR ANY LITIGATION THAT MAY ARISE AND COST SHIFTS THAT STATES MAY INCUR AS STATES IMPLEMENT THE NEW FEDERAL WELFARE REFORM LAW.

(G) THIS SUBCOMMITTEE WORK CLOSELY WITH NCSL REGARDING IMMIGRATION AND WORK REQUIREMENTS PARTICULARLY, TWO ISSUES THAT WE HAVE CONSISTENTLY NOTED AS PRIORITY CONCERNS AND WHICH WE HAVE CONSISTENTLY QUESTIONED THROUGHOUT THE I 04TH CONGRESS.

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, I AGAIN THANK YOU FOR THIS OPPORTUNITY TO PRESENT THE VIEWS OF THE NATIONAL CONFERENCE OF

STATE LEGISLATURES TO YOU. I PARTICULARLY REITERATE THE NEED FOR THE CONGRESS TO MOVE FORWARD WITH THE TECHNICAL CORRECTIONS RECOMMENDED BY NCSL, NGA AND APWA. I WILL GLADLY RESPOND TO ANY QUESTIONS YOU MAY HAVE.

Chairman SHAW. Ms. Golonka.

SUSAN GOLONKA, SENIOR POLICY ANALYST, NATIONAL GOVERNORS' ASSOCIATION

Ms. GOLONKA. Good afternoon, Mr. Chairman, and Members of the Subcommittee. My name is Susan Golonka and I am a senior policy analyst for NGA, the National Governors' Association. On behalf of the Nation's Governors, I would like to thank you for your commitment to ensuring that the goals of the legislation are realized as States turn to the challenges of implementation. The Nation's Governors look forward to continuing to work with the Subcommittee in this next phase of welfare reform.

As my colleagues have already mentioned, last week, just 2½ weeks after the President signed the bill into law, over 500 State officials from all 50 States gathered here in Washington. They came with a sense of commitment and a sense of urgency. State officials at this meeting were optimistic about the opportunities and unprecedented flexibility in the act. But the breadth of the change, the speed at which changes must be made, and the complexity of the changes did not escape them.

Governors are supportive of the expanded role for States and welfare and the more limited role for the Federal Government. For purposes of planning and decisionmaking, however, State officials do need some clarification from the Federal Government. For example, they need to know the areas that HHS will regulate and those that the States will be able to define and determine. Where HHS does have regulatory authority such as in the area of penalties, HHS has already agreed to work with us in a consultative process, and we will urge them to move quickly to address these areas.

Several States have already submitted State plans and are waiting for a certification of completeness from the Secretary. Again, a prompt response is critical so a State can begin to receive the funds and implement the block grant. Additionally, if a State's plan is found incomplete, it is not clear how this finding impacts the effective date for the flow of block grant funds and the requirements for time limits and penalties. We would like some clarification on this.

Another area that State officials expressed some concerns about is in the area of the data collection systems that States will need to implement in order to comply with the bill. The new reporting, tracking, and monitoring required under the bill pose a tremendous challenge for States in terms of technical capacity, resources, and timeframe. To help States create effective, integrated systems, Federal agencies should also coordinate their efforts, and we urge them to provide some technical assistance to States and permit cost sharing across programs.

I would like to focus now on three technical changes among the seven that NGA, APWA, and NCSL have listed. We hope these corrections can be made as soon as possible because they have a direct impact on State policy decisions and most have considerable fiscal impact as well.

First, we believe there should be greater transferability of the TANF Block Grant funds directly into SSBG, the Social Services Block Grant Program. Title I allows States the flexibility to transfer up to 30 percent of TANF funds into the child care block grant

and the Social Services block grant. But the statutory language only allows a transfer into the SSBG if the State also transfers funds into the child care block grant.

In other words, in order for a State to transfer $1 into the SSBG, it must also transfer $2 into the child care block grant. We recommend that this language be amended to allow for the 10-percent transfer into the SSBG, independent of transfers into the child care block grant.

The NGA welfare reform resolution recommends that States have the flexibility to also transfer funds into child welfare and that no restrictions be placed on transfers into child care, SSBG, and child welfare beyond a 30-percent total limit. Increased flexibility to transfer funds enables States to provide short-term, preventive, noncash services to at-risk families without triggering the 60-month lifetime limit. Alternatively, to enhance flexibility within the TANF Program, Congress may wish to exempt certain preventive in-kind services from the 5-year limit.

Second, for purposes of the work requirement, we would ask that you allow States to count as single-parent families those two-parent families that include an incapacitated spouse who cannot work. This parallels the treatment of the incapacitated spouse in the JOBS Program and acknowledges the inability of the two-parent spouse to work without exempting the caretaker spouse. Without this change, these families would be included in a two-parent work participation rate calculation which requires the able-bodied parent to participate and work for 35 hours a week. This is a higher hourly requirement than for a single parent who does not have the additional burden of caring for a disabled spouse.

Finally, we urge you to consider several modifications to the contingency fund. As you may recall, the inclusion of a contingency fund is an essential component of the NGA welfare reform policy. NGA is concerned, however, that restrictions contained in the final bill diminish the value of the fund and will result in States drawing down fewer dollars from the fund. These restrictions include limiting the amount a State may access in any month and imposing a very narrow definition of what counts toward meeting the 90-percent maintenance of effort.

Mr. Chairman, I would be happy to answer questions on these and other issues. Thank you again for the opportunity to appear today.

[The prepared statement follows:]

STATEMENT OF SUSAN GOLONKA, SENIOR POLICY ANALYST NATIONAL GOVERNORS' ASSOCIATION

My name is Susan Golonka and I am a Senior Policy Analyst with the National Governors' Association (NGA). It is an honor to be here today on behalf of NGA to briefly review for you some of the issues and concerns facing states as they begin to implement the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193). On behalf of the nation's Governors, I want to thank you for your commitment to ensuring that the goals of the legislation are realized as states turn to the challenges of implementation. The nation's Governors look forward to continuing to work with the subcommittee in this next phase of welfare reform.

Last week—just two and one-half weeks after the President signed the bill into law—more than 500 state officials from Governors' offices, state legislatures, and state agencies gathered together in Washington, D.C., to learn more about the welfare bill and discuss strategies for implementing this comprehensive legislation. Those participating in the briefing came with a sense of commitment and a sense of urgency. Every state in the nation sent representatives to this meeting, which was jointly sponsored by NGA, the National Conference of State Legislatures (NCSL), and the American Public Welfare Association (APWA). State officials at this briefing were optimistic about the opportunities that this law provides, but were also realistic about the challenges that lie ahead. They recognized and appreciated the unprecedented flexibility given to each state, under the cash assistance and child care block grants, to design programs that address the unique needs of their state. At the same time, the breadth of the change, the speed at which the changes must be made, and the complexity of these changes did not escape the participants.

Our three organizations jointly sponsored the meeting because we know that welfare reform is squarely in the states' hands and it will take a partnership among the executive, legislative and administrative branches of state government to achieve successful welfare reform. State and federal roles have been redefined, and states will be looking to one another, rather than to the federal government, for answers to many questions. Governors support this more limited role for the federal government and the trust in the states that it implies.

Federal Regulations and Penalties. The federal role is particularly restricted in issuing regulations under the Temporary Assistance for Needy Families (TANF) block grant. For purposes of planning and decisionmaking, however, state officials need to know the areas that the U.S. Department of Health and Human Service (HHS) will regulate and the areas that states will be able to define and determine.

Where HHS does have regulatory authority—such as in the area of penalties—HHS has agreed to work with us in a consultative process. We urge HHS to move quickly to address these issues. Timing is of great concern to states that are implementing the block grant early, as they may be at risk of incurring penalties for actions made prior to the promulgation of regulations. We will ask the secretary of HHS to adopt a policy of not penalizing states for actions or decisions made before regulations or other guidance is issued.

Where HHS does not have regulatory authority, or where it chooses not to regulate, a state's own interpretation still could result in a penalty if the secretary believes a state went beyond the limits of the statute or used a definition she considers to be unreasonable. For example, a state may have a different view of what constitutes administrative costs under the TANF grant and could be penalized for exceeding the 15 percent limitation. Or a state may have a different view of which provisions of its waiver are "inconsistent" with the act and therefore permissible. We hope that in these instances, HHS will work with us to develop a process to alert the appropriate Governor of any concerns and work toward an early resolution, rather than waiting and penalizing a state at the end of the year.

State Plans. Several states have already submitted their state plans and are waiting for a response from the secretary. We hope the secretary will respond with the utmost urgency to these submissions. It is critical for the secretary to certify completeness promptly so a state can begin to receive funding and implement the block grant.

Information Systems. State officials at our briefing also repeatedly expressed concerns about the information and data collection systems that states will need to implement in order to comply with the bill. The new reporting, tracking, and monitoring required under TANF, the child care block grant, the new food stamp work requirement, and the child support enforcement program pose a tremendous challenge for states in terms of technical capacity, increased costs, and the compressed implementation schedule. States want to create effective, integrated systems that are coordinated across programs and states, but this requires time to plan and a significant investment of resources. Federal agencies must coordinate and provide technical assistance to

states to ensure that one system may meet multiple requirements and to permit cost sharing across programs. Additionally, any flexibility around timeframes would be helpful.

Recommendations for Technical Changes. There are several technical issues that we would also like to bring to the subcommittee's attention. We hope that these corrections or clarifications can be made as soon as possible—either through legislation or HHS guidance. They have a direct impact on state policy decisions and most also have considerable fiscal implications. I will briefly list the major issues we have identified to date and then focus on the first three in more detail. My colleagues at NCSL and APWA will provide greater detail on the others.

- Permit transfer of TANF block grant funds directly into the Social Services Block Grant (SSBG).
- Allow states the option to count as single-parent families those two-parent families in which one spouse is incapacitated for purposes of meeting the work requirement.
- Modify the reconciliation and maintenance-of-effort provisions of the contingency fund so needy states will have greater access to the fund.
- Reconcile the effective dates for eliminating the $50 child support pass-through so the federal contribution continues at least until a state submits its TANF plan or the necessary legislative changes have been made, whichever is later.
- Clarify that state spending on immigrant families that become ineligible for TANF will count as qualified spending for purpose of meeting the TANF maintenance-of-effort provision.
- Permit adjustments in the maintenance-of-effort requirements for state Supplemental Security Income (SSI) supplements when caseloads decline.
- Reconcile the "look back" dates to state Aid to Families with Dependent Children (AFDC) programs for child welfare and Medicaid eligibility.

Transferability. Title I allows states the flexibility to transfer up to 30 percent of TANF funds into the child care block grant and SSBG but only one third of the amount transferred may be transferred into SSBG. The manager's explanation suggests that the language is intended to allow states to transfer up to 10 percent of their TANF allocation into SSBG, regardless of whether they transfer funds into the child care block grant. The statutory language, however, appears to only allow transfers into SSBG if the state ***also*** transfers funds into the child care block grant. In other words, in order for a state to transfer $1.00 into SSBG, it must also transfer $2.00 into the child care block grant. We recommend that this language be amended to allow the full 10 percent transfer into SSBG, independent of transfers into the child care block grant.

The NGA resolution on welfare reform adopted this past summer recommended that states have the flexibility to transfer TANF funds into the child care block grant, SSBG, ***and*** foster care and child welfare programs with no restrictions beyond a 30 percent total limit. Increased flexibility to transfer funds enables states to provide short-term, preventive services without triggering the lifetime limit under the TANF block grant. In the past, many states used AFDC-emergency assistance funds for in-kind, noncash family preservation services to prevent family breakup and out-of-home placement of children. States have expressed concern that although these activities will be permissible under the new TANF block grant, the period during which families receive these services will count against the federal sixty-month lifetime limit on benefits. With greater flexibility to transfer into SSBG and child welfare, a state can provide noncash services to at-risk families to prevent welfare dependency without exceeding the time limit. Alternatively, to allow this flexibility within the TANF program, Congress may wish to consider exempting certain preventive, in-kind services from the five-year limit.

Incapacitated Adults and the Work Requirement. Under the Job Opportunities and Basic Skills (JOBS) Training program, two-parent families that include an incapacitated spouse who cannot work because of the incapacity or disability are considered single-parent families for purposes of participation requirements. In the work requirement under TANF, however, no allowance or distinction is made for two-parent families with an incapacitated spouse. This family will be included in the two-parent work participation rate calculation and the able-bodied parent must participate in work for thirty-five hours a week—a higher hourly requirement than a single parent who does not have the additional burden of caring for an ailing or disabled spouse. We urge Congress to adopt a technical correction that would allow states to count two-parent families with an incapacitated spouse as single-parent families for purposes of meeting the work requirement. This would acknowledge the inability of the incapacitated adult to participate in the workforce without exempting the caretaker spouse.

Contingency Fund. As you may recall, the inclusion of a contingency fund that would provide additional federal matching dollars to a state experiencing an economic downturn was a central component of NGA's welfare reform policy. Congress adopted NGA's recommendation of providing $2 billion in that fund for fiscal 1997 through fiscal 2001. NGA is concerned, however, that restrictions contained in the final bill diminish the value of the fund and will result in states drawing down fewer dollars from the fund. These restrictions include limiting the amount a state may access in any month to 1/12th of 20 percent of its TANF grant, imposing a very narrow definition of what counts toward meeting the 100 percent maintenance-of-effort requirement, and new language in the reconciliation provision that effectively reduces the federal match rate unless a state accesses the fund in every month of the fiscal year. We hope Congress will consider some modifications in these areas.

Work Requirements. States are expanding their job development and placement efforts, community service, and other work programs to meet the work requirements in the law. We appreciate that Congress will be monitoring states' progress in meeting the work requirements of the bill. We look forward to working with you if it is determined that adjustments to the work requirements or other provisions are needed.

Waivers. The Governors have consistently supported states' ability to continue existing waivers. As you know, many states have initiated comprehensive statewide welfare reform through waivers. Indeed, the innovations in these waivers provided the building blocks for many provisions in the new law including tough work requirements as a condition of receiving assistance. We hope that HHS, Congress, and the Governors can work together to ensure that interested states can continue to pursue the vision and options outlined in their waivers. We hope that any differences of interpretation can be resolved through consultation and discussion.

Funding for the Child Care Development Block Grant and SSBG. Although appropriations for the Child Care Development Block Grant and SSBG are not within the subcommittee's jurisdiction, we hope you will work with us to ensure that these block grants are funded at their authorized levels. Adequate funding for child care and support services are critical to the success of welfare reform. Any erosion of funding for these programs, just as states are beginning to implement the new legislation, threatens the future success of welfare reform efforts and sets a troubling precedent for future appropriations.

Mr. Chairman, I would be happy to answer questions on these and other issues. Thank you again for the opportunity to appear before you today.

Testimony before the Human Resources Subcommittee of the House Ways and Means Committe

Testimony by: Susan Golonka
National Governors' Association
444 North Capitol, Suite 267
Washington, DC 20001-1572
(202) 624-5967

The nation's Governors thank you for your commitment to ensuring that the goals of the legislation are realized as states begin the challenge of implementation, and look forward to continuing to work with the subcommittee in this next phase of welfare reform.

Areas of concern expressed by officials at the recent Welfare Reform Briefing

1. **Federal Regulations and Penalties:** Governors support the more limited federal role and the increased responsibility of states. Where HHS does have regulatory authority, NGA urges the Secretary to move quickly to write the regulations, and adopt a policy of not penalizing states for actions or decisions made prior to regulations or guidance from HHS. Where HHS does not have regulatory authority but a state's own interpretation of the legislation could result in a penalty, NGA hopes to work with HHS to develop a process to alert Governors to any concerns and work toward a resolution prior to imposing a penalty.

2. **State Plans:** It is critical for the Secretary to certify completeness of state plans promptly so states can begin receiving the block grant and implementing the TANF requirements.

3. **Information Systems:** States must create effective, integrated systems to comply with the bill, but this is a complex undertaking. Federal agency coordination and technical assistance will be important in designing the systems necessary to meet multiple requirements and permit cost-sharing across programs.

Technical Changes:
The testimony contains a list of proposed changes, with a focus on these three.

1. Amend the current language to allow the full 10% **transfer of TANF funds into the SSBG**, independent of transfers into the child care block grant. Greater flexibility to transfer funds into the SSBG will allow states to provide preventative, non-cash assistance to at-risk families without triggering the time-limit clock.

2. Allow states to count **two-parent families with an incapacitated spouse** as single-parent families for purposes of meeting the work requirement. This parallels the treatment of an incapacitated spouse in the JOBS program, and acknowledges the inability of the incapacitated adult to participate in the workforce without exempting the caretaker spouse.

3. Reconsider the restrictions on the **Contingency Fund** that diminish the value of the fund by liminting the dollars states can draw down. These restrictions include limiting the accessible funds to 1/12th of 20% of the state's TANF grant in any given month, and imposing a very narrow definition of what counts toward meeting the maintenance-of-effort requirement.

Chairman SHAW. Thank you. Mr. Greenberg.

STATEMENT OF MARK GREENBERG, SENIOR STAFF ATTORNEY, CENTER FOR LAW AND SOCIAL POLICY

Mr. GREENBERG. Mr. Chairman and Members of the Subcommittee, my name is Mark Greenberg. I am a senior staff attorney at the Center for Law and Social Policy. We greatly appreciate your holding this hearing today and signaling your interest in focusing on the issues that will be arising as States implement the Temporary Assistance for Needy Families Block Grant.

I particularly appreciate having been invited to testify as someone who did not support the decision to move to the block grant structure. I greatly appreciate your giving me an opportunity to speak with you about some of the issues that States now face as they move forward in this new structure. In my testimony, I would like to focus on three issues.

First, the need to have basic, accurate information about the choices States make as they implement their block grant programs.

Second, the importance of ensuring that States have sufficient flexibility to test an array of new approaches, hopefully in the effort to find more effective ways of reducing poverty among families with children.

Third, the importance of having effective ways of measuring the success of States in the new structure.

The first issue is that of having basic information on the choices States make. The issue that is now arising concerns the State plans under the new structure. The legislation sets forth a broad framework for information to be provided by States in their State plans, but there is considerable question about what level of detail will be sufficient for a State plan to be considered complete. It is, in our view, important that State plans provide information to Congress, to the public, and to residents of States about the basic choices that States make in their block grant programs.

In addition, as the statute is drafted, there is no express language that says if a State changes what it is doing over a 2-year period, the State should amend its State plan. In many instances, a State may submit a State plan quite quickly in order to draw down new funds under the legislation. Then there will be a legislative session and there may be substantial changes in the State's approach. There would be a real value in ensuring that States amend their State plans as appropriate to reflect changes in their policy so that the policy on file with the Federal Government reflects what the State is actually doing in its program and that States comply with those State plans.

The second issue I want to focus on is the need to ensure that States have flexibility to test alternative approaches. There are two key concerns here.

One is perhaps an unintended relationship between the use of block grant funds and assistance to working poor families.

Under the legislation, the 60-month limit applies to any month in which an individual receives any form of assistance funded under TANF. However, in State welfare reform efforts, a State may wish to extend assistance to working poor families as an income supplement when they are in low-wage jobs. Or, a State may seek

to use its TANF funds for different ways to assist low-wage working families. However, any month in which a working poor family receives any assistance funded with TANF dollars counts against the 60-month limit.

An appropriate change could be to say that States, at their option, should not be required to count a month against the 60-month limit if a family is working in unsubsidized employment above some threshold level of activity. That would ensure that States did not have to fear their policies under TANF were working at cross purposes with each other.

A related concern is that a whole set of the TANF requirements apply essentially to any month in which a family receives assistance funded under TANF—the work participation rate requirements apply, the time limits apply, the child support assignment provisions apply. States may be using their block grant funds for cash assistance, but may also want to use TANF funds for a very broad range of services and activities.

But as the law is drafted, it appears that even if a State is using its funds for a family preservation activity or a teen-parent program, taken literally, the participation rates, the time limits, and child support assignment provisions apply.

So one possible change here would be to modify the provisions to ensure that these basic requirements apply to cash assistance provided under the block grant or things very close to cash assistance, but not to other kinds of services and activities.

The final point I wish to highlight is the need to develop effective definitions of States success under the block grant structure. Perhaps the biggest issue here is that up until now States have very often viewed caseload reduction as a solid measure of success.

However, under the block grant structure, States can accomplish caseload reduction either by running very effective welfare reform efforts or by simply narrowing the circumstances in which families qualify for assistance. There will be some States, I assume, that will restrict aid to immigrants; others may not. There will be some States that opt for a 5-year time limit; others that opt for a 2-year time limit. Under the structure, caseload reduction may simply reflect the fact that a State has chosen to restrict the availability of assistance or families in need.

So as HHS, in consultation with the States and this Subcommittee, now begins the process of establishing a methodology to identify high-performance States, the ultimate focus needs to be not simply on caseload reduction, but on much broader measures of the well-being of families and children.

Thank you, and I look forward to discussing these and related issues further.

[The prepared statement follows:]

Summary of the Testimony of Mark Greenberg
Senior Staff Attorney, Center for Law and Social Policy
1616 P St., NW, Suite 150, Washington, DC 20036, (202) 328-5140

Between now and July 1, 1997, all States will begin to implement their programs under the Temporary Assistance for Needy Families Block Grant (TANF). As States develop their policies and programs under TANF, the following are among the issues for Congress to consider:

1. **State Plans:** State plans should provide adequate and accurate information about the choices States make in their programs under TANF. The new Act establishes a framework for State plans, but does not explicitly require States to identify how they resolve some of the key questions about their program design. The Act requires a new plan submission every two years, but does not explicitly provide that a State should amend its State plan when the State modifies its policies. Congress should ensure that State plans contain the information needed to determine how the State has exercised its basic policy choices; that States have a responsibility to file plan amendments as needed to ensure that their State plans accurately describe their current program designs; and that a State should have a responsibility to comply with its State plan until such time as the Plan is amended.

2. **Working Poor Families:** One of the principal directions taken by States in welfare reform has been to expand assistance to working poor families. Many States are likely to wish to continue this direction under TANF, but TANF rules relating to time limits could have the unintended effect of making it more difficult to do so, because any month in which a working family receives any assistance under TANF counts against the 60-month limit. This problem could be addressed if the Act were modified to permit States to adopt policies in which a month in which an individual worked in unsubsidized employment above some threshold level did not count as a month of assistance for purposes of the sixty-month limit.

3. **Non-Cash Assistance:** States may spend TANF funds on cash assistance, but also may elect to spend TANF funds on a broad array of other forms of assistance and service, e.g., child care, counseling, teen parent programming, activities to discourage out-of-wedlock pregnancies, family preservation activities. However, the 60-month time limit, participation and work requirements, and child support assignment requirements all apply to any month in which a family receives "assistance" under the State program funded under TANF. One possible solution could be to provide that TANF time limit, work, and child support assignment requirements only apply to receipt of "cash assistance" rather than any assistance under TANF.

4. **Waivers:** While a number of States used the waiver process to implement a time limit or strengthen their program's focus on work, the specific details of State approaches are often different from specific requirements of the Act. Given these State directions, the issue that needs resolution is whether States should be allowed to or precluded from pursuing their alternative approaches in the new structure. The waiver provision of the new Act allows States to continue waivers in effect as of the date of enactment if they are "inconsistent" with the new Act. This is basically a "grandfather clause." Any grandfather clause is inherently somewhat arbitrary in extending its benefits to some States while denying them to others. One possible resolution would be to give all States the same set of options by providing for additional flexibility for all States in the areas where there is greatest divergence between federal requirements and State waiver approaches.

5. **Measuring Success:** For many people, the strongest argument for the block grant approach was that States should be allowed substantially more flexibility and then held accountable for results. Toward that end, the hope would be that in the TANF structure, the federal government would shift its focus from measuring process to measuring outcomes. As the federal government seeks to do so, it is important to appreciate that caseload decline should not, in itself, be considered a measure of success under TANF because States can now generate a caseload decline simply by reducing the circumstances in which needy families receive assistance. Instead, measures of success ought to focus more broadly on the effectiveness of States in such areas as increasing workforce participation, reducing poverty, and improving the well-being of children.

Members of the Subcommittee:

My name is Mark Greenberg. I am a Senior Staff Attorney at the Center for Law and Social Policy. CLASP is a non-profit organization engaged in research, analysis, technical assistance and advocacy on issues affecting low income families. I have been involved for many years in the issues arising in federal and state welfare reform efforts.

In my testimony today, I will focus on some of the new challenges for States and the federal government in implementation of the Temporary Assistance for Needy Families Block Grant under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. As the Subcommittee appreciates, the new legislation includes some very controversial features, including the decision to repeal the AFDC Program and shift to a block grant structure. The Center for Law and Social Policy had, and continues to have, serious concerns about the possible adverse effects of the block grant approach. However, in my testimony today, I do not think it would be appropriate or productive to reargue the broad policy decisions that are reflected in the new legislation. Instead, I want to focus on a set of areas which generally received less attention during the legislative debates, but for which key questions are now arising as States begin the process of implementing the new law.

Before turning to specific details, I want to express my appreciation to the Subcommittee for holding this hearing, and for signaling to the States and concerned individuals your interest in following the developments that occur as States implement the TANF legislation. The legislation allows States to take a broad range of approaches to assisting poor families, and continuing oversight will be essential to the process of understanding the nature and consequences of the choices States now exercise. We greatly appreciate your willingness to include in this hearing the views of those who did not support the decision to shift to the block grant structure. I also want to express our appreciation for the role that has been played during this Congress by the staff of the Human Resources Subcommittee. While we have often had serious disagreements over issues of policy direction, the Subcommittee staff has always been willing to listen to and consider concerns that have been raised and to evaluate those concerns on their merits.

In my testimony this afternoon, I will highlight five areas:

- the need to ensure that State plans provide adequate and accurate information about the choices States make in their programs under TANF;
- the need to ensure that time-limit policies under TANF do not have the unintended effect of restricting States' abilities to assist working poor families;
- the need to consider whether TANF policies being applied to the cash assistance program (e.g., work requirements, time limits, child support assignment) should also apply to alternative uses of TANF funds for other services and activities;
- the need to resolve the degree of flexibility that States should have to pursue the policy options they have elected under their waiver programs; and
- the need to develop means of identifying "successful states" under TANF that look at the overall effectiveness of State performance in improving the well-being of poor families with children.

In discussing these issues, I want to make one principal point: TANF is not simply the AFDC Program with work requirements and time limits. Rather, the legislation provides States with a block grant and with extensive discretion to determine who will receive assistance, in what form that assistance will occur, and under what conditions. In light of this basic direction, it is essential that Congress and concerned persons have adequate information about the choices states make, and about the consequences of those choices. At the same time, if Congress' overall goal is to provide States with flexibility and then hold States accountable for results, it is appropriate to ensure that the legislation provides States with the flexibility to both reform their AFDC Programs, and to test new and different alternatives in the hope of developing more effective approaches to address poverty among families with children.

State Plans

As States begin to enter the TANF structure, an initial set of questions are arising around the nature and significance of TANF State plans. Given the array of new State options and choices under the legislation, it becomes particularly important to ensure that the federal government, residents of States, and other interested persons have access to information about the choices elected by States. A key issue now arising as States prepare their plans concerns whether the plans will provide adequate and updated information about the choices States make in implementing their programs under TANF.

Under the Act, each State must submit a State plan providing the information required by law in order to begin receiving its TANF funding. A State's TANF funding for the remainder of FY 96 or for FY 97 will be based on the date of submission of a State plan containing the required information. Thereafter, to be an eligible State, a State must have submitted a State plan within the past two years.

Most (though not all) States will have a fiscal advantage in entering the TANF structure as rapidly as possible. This is because a State's TANF allocation is based on the State's federal funding from an earlier year or years (generally, the higher of FY 94 federal funding, FY 95 federal funding, or the FY 92-94 average), and most States have had declining caseloads in recent years. While States generally have an interest in submitting State plans soon, the Act also envisions that TANF funds will be subject to appropriation by State legislatures, which in many cases will not begin their next sessions until January. Thus, in a number of instances, a State may submit its State plan prior to thorough legislative review of the new choices. However, there is no explicit statutory requirement that the State file amendments to its Plan to reflect the policy choices made between submission of the first State plan and submission of the next plan two years later. This concern is compounded because there is no explicit statutory requirement that a State operate its program in conformity with its State plan. As a result, there is a risk that the plans submitted by some States may not provide a current and accurate picture of the policy choices elected by States under the new structure.

In addition, the Act does not explicitly request information on some of the basic policy choices that States may make. Among the areas of concern are:

- **Basic Eligibility Rules:** The Act does not explicitly require that a State's plan describe its rules concerning which categories of families will be eligible for assistance, the conditions under which a family qualifies for assistance, or the amount of assistance that an eligible family will qualify to receive.

- **Statewide Variation:** Under the Act, a State plan must be designed to serve all political subdivisions in the State, though not necessarily in a uniform manner. However, there is no explicit requirement that the State describe the nature of variation within the State.

- **Time Limits:** Under TANF, a State may operate with a 60-month limit on assistance funded with TANF dollars (subject to limited exceptions), or a State may elect a shorter time limit. However, if a State elects a shorter time limit, there is no explicit requirement that the shorter limit be noted in the State plan.

- **Transfer of Funds:** Under the Act, a State may transfer up to 30% of its TANF funds to certain designated purposes. If every State elected to do so, this could involve nearly $5 billion in federal funds annually. However, there is no explicit requirement that a State indicate in its State plan whether it intends to do so.

Taken together, the overall effect of the State plan provisions is that initial State plans may not contain important information about State policy choices, and even if that information is initially provided, it may cease to be current quite quickly if States alter their policies without updating its plan to reflect the modifications.

To address these concerns, Congress might consider the following:

- Either explicitly expand the statutory requirements for information to be contained in State plans, or expressly authorize HHS to seek such information in State plans as is reasonably necessary to inform the federal government of the basic policy choices made by States;

- Provide that States have a responsibility to file plan amendments during the two-year period between State plans to ensure that their State plans accurately describe their current program designs; and

- Provide that a State has a responsibility to comply with its State plan until such time as the Plan is amended.

TANF and Working Poor Families

In recent years, one of the principal directions taken by States in welfare reform has been to expand assistance to working poor families. Many States are likely to wish to continue this direction under TANF, but TANF rules relating to time limits could have the unintended effect of making it more difficult to do so. The problem occurs because any month of any type of TANF assistance - even to a working poor family - counts against the 60-month limit. A modification to the time-limit rules to address the circumstances of working poor families could ensure that these policies do not operate at cross-purposes with each other.

In their welfare reform efforts through the waiver process, States have sought to increase requirements to participate in work and work-related activities, and to increase the penalties for families in which a parent fails to do so without good cause. At the same time, States have sought to increase support provided to families in which a parent enters a low-wage job. In particular, in the AFDC waiver process, some of the most common waiver requests have been to:

- alter rules concerning treatment of earnings to allow families with earnings to continue to receive assistance;

- eliminate barriers against receipt of assistance by two-parent families in which one parent is working;

- modify program asset rules so that working and other families who are able to save part of their income are not penalized for doing so; and

- expand the availability of transitional assistance when a family leaves AFDC due to employment.

On the one hand, TANF rules allow States the flexibility to implement all these policies and others to support working poor families. Under TANF rules, a State is free to provide for more generous earnings disregards, to eliminate barriers to two-parent eligibility, to remove or reduce program asset rules, and to expand transitional assistance. In addition, States are able to consider using TANF funds for new and different ways to assist the working poor. The legislation expressly authorizes States to make use of Individual Development Accounts to promote savings for specified purposes by families with earnings. In addition, States can expend their TANF funds for child care, transportation assistance, reemployment and retention assistance, bonuses to individuals who retain employment, education assistance to working families, and many other possibilities.

The problem, however, is that <u>any</u> month in which a working poor family receives any type or amount of assistance funded with a TANF dollar counts against the 60-month limit.[1] While States may wish to time-limit cash assistance for families in which a parent is able to work and

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[1] A State could, of course, expend State funds on working poor families, in the recognition that a month of State-funded assistance would not count against the federal 60-month limit. However, this may be administratively complex (as individuals move back and forth between being employed and unemployed), and States will vary substantially in the level of State funding in their programs and the other potential claims for using such funds.

does not do so, the issue of imposing time-limits on assistance to the working poor presents different concerns.

For example, in recent years, a number of States have developed "Work First" philosophies, in which individuals are encouraged to take the first available job, even if the job does not pay enough to meet a family's basic needs. The State often seeks to emphasize that cash aid is available as an income supplement during the period when a parent is working in a very low-wage job. However, if each month of assistance counts against the 60-month limit, it may be against the family's interest to receive the wage subsidy being offered by the State.

The problem becomes more complicated because one of the other policy goals of States has been to eliminate "cliffs", i.e., those times in which receipt of a single additional dollar of earnings results in total loss of assistance. To eliminate cliffs, States have often sought to have aid phase out gradually as earnings increase. However, under the TANF structure, a month in which a working poor family receives a $50 income supplement will count as a month of assistance just as does the month where a non-working family receives a $400 assistance payment.

This problem could readily be addressed if the Act were modified to permit States to adopt policies in which a month in which an individual worked in unsubsidized employment above some threshold level did not count as a month of assistance for purposes of the sixty-month limit. With this modification, States could more readily pursue policies of helping working poor families without needing to be fearful that a month of assistance now would preclude the State's ability to provide a month of assistance at a later point.

The Status of Non-Cash Assistance Under TANF

As States develop their programs, they are also facing the question of how to strike the balance between cash assistance and non-cash assistance to low income families in expending TANF funds. Necessarily, there are always a set of difficult policy trade-offs about how to strike the balance. However, the issue becomes further complicated because any time TANF funds are used to provide "assistance", a set of requirements are attached that may be considered appropriate for an AFDC-type program, but may not be appropriate for other forms of assistance.

Under the Act, States may elect to use their TANF funds to provide cash assistance to poor families, but a State may also elect to expend TANF funds for a broad array of other forms of assistance and services. For example, the State may elect to spend TANF funds on job training, education programs, child care assistance, counseling, teen parent programming, activities to discourage out-of-wedlock pregnancies, and the array of activities for which States previously expended Emergency Assistance funding, to name just a few of the possibilities. While people sometimes refer to TANF as a program, it is really a funding stream that may eventually be used for many different programs.

The difficulty now arising is that many of the rules relating to use of TANF funds were primarily written with the AFDC Program in mind, and these rules may be less appropriate or inappropriate in the context of other services and activities. For example, the 60-month time limit,[2] participation and work requirements,[3] and child support assignment requirements[4] all

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[2] The Act provides that a State may not expend federal TANF funds to provide "assistance" to a family with an adult that has received assisted funded with federal TANF dollars for 60 months, subject to exceptions permitted for up to 20% of a State's caseload.

[3] All families with an adult or a minor parent head of household who are receiving assistance under the State program funded under TANF are subject to program participation rates. Similarly, the State plan must provide that a parent or caretaker receiving assistance under the program must engage in work (as defined by State) after a period not later than 24 months. In addition, unless the State opts out, the State plan must provide that parents or caretakers receiving assistance under the program are subject to community service requirements after two months unless exempt from work requirements or engaged in work.

[4] A family receiving assistance under State program funded under TANF must assign its support rights, cooperate in establishing paternity, enforcing child support. State must pay federal government the federal share of support collected for any family receiving assistance under the State program funded under TANF.

apply to a family that receives "assistance" under the State program funded under TANF. Read literally, any month in which a family receives family preservation services, family counseling, or family planning services funded with TANF funds counts as a month for purposes of time limits, participation in work activities, and required assignment of child support. The issues will become more complex because private agencies may be using TANF as only one source of funding for services, and it may be difficult or arbitrary to determine who receives a service funded with a TANF dollar versus a dollar from another funding source.

One possible solution is to provide that TANF time limit, work, and child support assignment requirements only apply to receipt of "cash assistance" rather than any assistance under TANF. It may be possible to draft the requirement so that it would also extend to vendor payments or other near-cash assistance, insofar as it would not be desirable to create a structure in which States had an incentive to structure assistance in non-cash forms simply to avoid federal requirements that applied to cash assistance. The key point here, however, is that TANF is not the AFDC Program; it is a block grant, and if the hoped-for flexibility and creativity is to emerge, it is important for States to have the ability to use TANF funding for an array of services and activities without being burdened by requirements that are inappropriate to such services and activities.

Waivers

As the Subcommittee appreciates, there has been considerable controversy in recent weeks about the relationship between the requirements of the new Act and State waivers that were in effect or pending on the date of enactment of the Act. This is an area where I do not think there is an easy answer, but it may be helpful to clarify the problem. The principal issue here is that while many States have used the waiver process to strengthen their emphasis on work, the specific policies they have initiated are sometimes quite different from those reflected in the Act's requirements.

Generally, the new Section 415 divides States into three categories: those with waivers in effect on the date of enactment; those with waivers pending on the date of enactment and which are approved on or before July 1, 1997; and those who did not have waivers approved or pending on the date of enactment. Those without approved or pending waivers are fully subject to the requirements of the Act, but almost all States fall into the first two categories.

As to the first group, the Act says that if a State had a waiver in effect on the date of enactment, then the State may elect to continue the waiver, and if the State so elects, the amendments made by the new legislation "shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the waiver."

As to the second group, the Act says that if a State had a waiver pending before the date of enactment, and the waiver is approved on or before July 1, 1997, and HHS makes a determination that the waiver would be cost-neutral, then like the first group, the amendments made by the new law shall not apply to the State before expiration of the waiver to the extent they are inconsistent with the waiver; the only difference is that the granting of the waiver "shall not affect the applicability of section 407 [i.e., the Act's participation rate requirements] to the State."

The meaning of these provisions depends, of course, on when amendments made by the Act are considered "inconsistent" with a State's waiver. That turns out to be a difficult question. Before enactment of the Act, most States were moving in the direction of imposing time limits, but States differed in what should happen after the time limit (terminate aid to the family, terminate aid to the parent, require participation in a work program), States often wished to exempt a number of categories of families from the time limit and States typically wished to retain the flexibility to decide on a case-by-case basis whether it was appropriate to terminate aid. Similarly, before enactment of the Act, most States were moving in the direction of a stronger work-based focus, but often with an emphasis on job search or on maximizing participation but

allowing a highly individualized determination of what counted as an appropriate activity; States also allowed more access to education and training programs than will count toward the participation rates under the Act.

Given these State directions, the issue that needs resolution is whether States should be allowed to or precluded from pursuing these alternative approaches in the new structure. The waiver provision of Section 415 is basically a grandfather clause, and any grandfather clause is inherently arbitrary in extending its benefits to some States while denying them to others. One possible resolution would be to give all States the same set of options, by providing for additional flexibility for all States in the areas where there is greatest divergence between federal requirements and State waiver approaches. Another possibility might be to allow all States to formally opt out of policies they consider inconsistent with their welfare reform approach. For example, the Act provides that a State must require participation in community service after two months unless the State opts out, and the Act provides that a State must deny assistance to individuals convicted of drug-related felonies unless the State opts out. In both these cases, a Congressional policy preference is declared, while still leaving the ultimate decision to the States. Congress could take a similar approach in other areas.

If Congress elects to retain the approach reflected in Section 415, and is not inclined to allow for increased flexibility for all States, then it becomes an inevitable consequence that States will be treated differently based on whether they happened to have an application pending or approved on a particular date.

Measuring State Success Under TANF

For many people, the strongest argument for the block grant approach was that States should be allowed substantially more flexibility and then held accountable for results. Toward that end, the hope would be that in the TANF structure, the federal government would shift its focus from measuring process to measuring outcomes. Two features of TANF -- the bonus for high-performance States, and the bonus for States with reduced out-of-wedlock births -- are expressly designed to reward outcomes, and the work participation rate penalties are also designed to measure a combination of engagement in work and caseload reduction rather than simply measure the number of people "active" in an activity.

There is probably broad agreement that an ideal system would identify a set of desired goals and then seek to measure the progress of States in moving toward them. However, the process of measuring outcomes and determining the degree of State responsibility for them is often difficult, and the process will become more difficult under TANF because of the elimination of federal eligibility requirements and of State responsibilities to assist eligible families. In particular, a traditional measure of state effectiveness -- caseload decline -- ceases to be an informative measure of State effectiveness in the new structure, since a State can now generate caseload decline simply by reducing the circumstances in which needy families receive assistance.

As in the AFDC Program, a State's caseload under TANF may decline because of the strength of the State's economy or the effectiveness of its welfare reform strategy. However, under TANF, a State's caseload may also decline simply because the State has adopted new rules restricting eligibility. For example, consider two States, one of which adopts a five-year-limit on assistance while the other adopts a two-year limit. All else being equal, the State with the two-year limit will have a sharper caseload decline, but this will tell us little or nothing about the State's degree of success. Further, some States may have caseload declines under TANF because they exercise federal options to deny aid to legal immigrants, they restrict assistance to new State entrants, or because they restrict aid for other categories that qualify for assistance under current law. Moreover, since there is not a federal requirement to provide aid to eligible families, it is possible that even a State that has not formally restricted its eligibility rules may develop administrative practices under which eligible families do not actually receive assistance. The overall effect of this array of new options is that a report of caseload decline will not in itself be a meaningful indicator of the effectiveness of a State's efforts.

The problem of interpreting caseload declines may be compounded if States conclude that they have a fiscal incentive to reduce their caseloads as a less expensive way of satisfying federal work participation rates. Under the Act, States are subject to steadily escalating participation rate requirements, which can generally only be satisfied through engagement in employment or work (with limited exceptions). It is anticipated that States will face considerable pressure as the participation rates escalate, insofar as TANF family assistance grants remains constant for most States through FY 2002. However, under the Act, a State's participation rate is to be adjusted downward if the State has had a caseload decline since FY 95; the only restrictions are that a State is not to be credited with caseload reductions resulting from federal requirements or in circumstances where HHS can prove that the caseload reduction was the direct result of a change in State eligibility rules. As a practical matter, it may turn out to be difficult or impossible for HHS to determine what portion of a State's caseload decline is directly attributable to changes in eligibility rules. Accordingly, it is possible that some States may respond to the pressures of participation rates by identifying strategies to generate caseload declines, even if those strategies do not further the purposes of the Act.

The new opportunities and potential fiscal incentives to reduce caseloads make it especially important that caseload decline not be assumed to be a measure of success if the decline only reflects a State's reduction in the availability of assistance for poor families.

Another common measure of success, the percentage of families receiving assistance who enter employment, will also be less informative under TANF. The percentage of families who enter employment will depend in part on the strength of a local economy, in part on the effectiveness of the State's welfare reform effort, and in part on the characteristics of the families receiving assistance. While job placements have always reflected the combination of these factors, there may be very dramatic changes in the characteristics of families receiving assistance in some states under TANF. For example, if State A implements a two-year limit on assistance with an exception for the incapacitated and disabled, and State B implements a two-year limit with no such exception, one might anticipate that the job placement rate in State A will be lower, because a higher share of its caseload may be unable to enter employment.

The difficulties in measuring success by caseload declines or employment entry rates strongly suggest that there is a need for broader measures of success relating to a State's effectiveness in such areas as increasing workforce participation, reducing poverty, and improving the well-being of children. There is, of course, considerable difficulty in determining whether a reduction in poverty can be attributed to State performance, just as there will be a comparable difficulty in determining whether a reduction in out-of-wedlock birth can be attributed to State activity. However, if the broad goal of this legislation is to allow States flexibility and then hold them accountable for results, it is essential to ensure that the results that are measured directly reflect the well-being of poor children and their families, and the goal of reducing poverty among families with children.

One more factor that will impair the ability to make ready comparisons between State programs under TANF is that States begin their TANF efforts with very different levels of available resources. Federal TANF block grants essentially lock in place the level of federal funding that States were receiving in a prior year or years, and there have been substantial variations in the levels of federal funding drawn down by States. As a result, some States will begin their TANF efforts with federal funding equal or greater to $2000 per poor child per year, while others will begin with funding at or below $400 per poor child per year. The legislation does allow for annual 2.5% adjustments for some States for a four-year period, but the issue of substantial variations in available resources will be important to keep in mind in any effort to identify high-performance States. It will be particularly important to seek to determine whether those States with additional resources are able to generate higher levels of performance than those with very limited resources.

Conclusion

During the debate in this Congress, representatives of the States have often suggested that if given the flexibility of a block grant, they could develop more effective approaches to addressing the needs of their States and the poor families within their States. Now that the legislation has been enacted, it is appropriate that the States have the flexibility needed to design effective programs, but it will be essential for Congress and interested persons to be able to learn about the choices made by States, to measure the effectiveness of these choices in improving the well-being of our Nation's families with children, and to make necessary adjustments based on initial experience. We welcome the opportunity to work with the Subcommittee toward advancing these goals.

Chairman SHAW. Thank you, Mr. Greenberg.

Mr. Camp.

Mr. CAMP. Thank you, Mr. Chairman.

Mr. Johnson, I will ask you one question, but I know several people raised this point and that was the conflicting effective dates regarding the $50 passthrough. I think in your statement you say, and I am quoting from your statement, your written statement, "States are cutoff from the Federal reimbursement as of October 1, even if a State has not had the chance to file their State plan or change the necessary State laws, regulations, and computer systems."

I know there are two sections in the bill, section 395(b) which allows a grace period for State law changes until the close of the first regular session of the legislature or in States where it is a 2-year cycle, the grace period is 1 complete year. Then section 395(c) which has a 5-year grace period for States that need to have a constitutional amendment.

Given those grace periods contained in the legislation, I am a little bit confused as to what else can be done at the Federal level to clear up this situation.

Mr. JOHNSON. I would like to believe the sections you are quoting would be sufficient to resolve this problem. Our concern is on this $50 passthrough, it is very clear the Federal match stops October 1. The passthrough needs to continue until States make a decision in their State plan, whenever they may submit a plan. We are not sure the general references you make reference to protect States against that financial difficulty.

Mr. CAMP. So it is your view that the grace period specifically provided in the statute is not enough?

Mr. JOHNSON. We are concerned it is not sufficient to cover the added cost the States might assume under the provision that stops the Federal matching on October 1.

Mr. CAMP. So what else would you like done at the Federal level to clear it up, to make it clearer? If the specific grace period in the statute is not enough, what is it specifically that should be done?

Mr. JOHNSON. I will defer to Sheri Steisel who raised this in her testimony and addressed it more clearly. But it seems to me one remedy would be to provide for continued Federal assistance until such time as the State plan was submitted.

Mr. CAMP. Ms. Steisel, would you like to comment?

Ms. STEISEL. Yes, I would, Congressman. Thank you. I think the concern we have is, as Sid Johnson laid out, the loss of Federal matching dollars, especially since this is at the Medicaid match rate. So we are talking about a substantial share of the $50 that now would have to be assumed by State funds.

Perhaps it could be easily remedied with another statement of congressional intent, perhaps in consultation with the administration, that the grace period for legislation also applies to an extension of the Federal funds. Our concern is there is nothing in the legislation that ties those two concepts together, the grace period for statutory change and an extension of Federal funding.

Mr. CAMP. Thank you. Thank you, Mr. Chairman.

Chairman SHAW. Thank you.

Mr. Ford.

Mr. FORD. Thank you, Mr. Chairman and to the panelists. Mr. Johnson, the lookback provisions are designed to assure that children do not lose Medicaid or foster care eligibility as a result of this law. If you have ideas for assuring Medicaid and foster care eligibility in a way that is less burdensome, but equally effective, then I would like to hear from you, Mr. Johnson.

Mr. JOHNSON. I wish I had them, Mr. Ford. I am still hopeful that someone here is going to be smart enough to solve that problem. I think many of us have been looking at this issue for over 1 year and have come to the conclusion that lookback, while it is burdensome, appears to be the only way to assure that coverage. We are supportive of that coverage. I was just addressing as a short-term solution at least having those dates be the same dates, so that we would not have two separate systems of lookback. The larger question, I hope someone can address.

Mr. FORD. Thank you very much. I want to thank the other witnesses, the State legislature's representative, and the Governors' Association representative who is representing the Governors' Association because it is clear that those legislative bodies and the Governors of our States will be directly involved in the day-to-day process. Knowing that most legislative bodies do not work full time, however, they will be charged with the responsibility of implementing the type of welfare policies that will be needed by children in this country.

I would just like to say to my colleagues on the State level and the Governors as well, good luck to you, and we surely want to do what we can on this level from an oversight standpoint to assist in every way.

Thank you.

Chairman SHAW. Mr. Ford, you raised with Mr. Johnson, as he raised in his testimony, the $500 million question. If we can solve that, how to get rid of the double bookkeeping, we can take back the $500 million that we put in there to give the States in order to take care of that problem. I am sure we can all think of a lot of ways to do that.

Mr. JOHNSON. Mr. Chairman, perhaps there is another way to do this. [Laughter.]

Chairman SHAW. Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman. I appreciate your holding this hearing today. I find with amazement we are getting reports on things that we feel like, the people feel like are problems within the bill and possible results that are going to come from the bill.

But I would like to give a quick report on the status and the opinions of the leaders of the State of Georgia. I read with interest the other day in the paper that Governor Zell Miller was very proud of the welfare bill the President signed. It was a Work First Program. A Work First Program that paralleled one adopted in Georgia within the last year or year and a half. He felt Georgia would benefit and the people of Georgia and those who had been entrapped in the welfare system would benefit greatly from this new bill.

Then I found with interest later, it was not 1 week to 10 days, the director of the Department of Family and Children's Services

in Georgia was giving a speech in Columbus, Georgia, which happens to be in the Third District. He too was praising the President for signing this legislation. He thought it was the best piece of legislation possibly the President had signed since he had been in office.

So I am pleased to report the people of Georgia and leadership of Georgia are way out in front and they are well satisfied with this legislation. They look forward to implementing it and I know there are going to be some things we are going to have to go back and look at. That is the reason I am going to suggest to the delegation from Georgia that sometime within the early part of the year, maybe in April or May, that we as a delegation meet with the Governor, the director of Family and Children's Services, and the commissioner of Human Resources in Georgia, so that we can have a roundtable discussion to see just how this program is being implemented, where the problems are so that we can report back to this Subcommittee and to you, Mr. Chairman.

I thank you for this time. No questions.

Chairman SHAW. Thank you, Mr. Collins.

Mr. Levin.

Mr. LEVIN. Thank you, Mr. Chairman. I think we all again want to give thanks to the panel for their thoughtful comments and technical corrections. Mr. Greenberg, some of yours, I think, go beyond them, but they are thoughtful reflections. I hope we will take them into account, as we will others of your suggestions that really are not technical corrections.

One of them relates to the contingency fund, and if I might just say, Mr. Chairman, I hope again, whoever is running the show here, together we will look at the contingency fund before the next recession. There has not been one in a number of years and there is no recession on the horizon. But I think the problems you have specified, Ms. Golonka, are real problems.

When we debated the bills, I thought one of the several instances where the Castle-Tanner bill was stronger than the bill that was up there with it, related to the contingency fund. I do not think in the conference report there was adequate attention to the strength of the suggestions in Castle-Tanner on the contingency fund.

I hope we will work together to, for example, take the present formula and apply it to the last two recessions and see how it would have operated. I think many of the States that received considerably additional funds during the last two recessions—1990 through 1992, whenever, and 1981 through 1983, I do not think many of the States would have been able to utilize this contingency fund.

The 112th provision that you mentioned, I thought stuck out like a sore thumb when it was put in there. I also think the every month provision is a unnecessary impediment to a State that is really in a recession that may have some periodicity to it. Also, as we discussed the Castle-Tanner provision without a cap would have cost over 5 years, as I remember it, would have been scored, at less than $1 billion.

But be that as it may, I should not speak for anybody but myself, I do not think it is likely we are going to take the contingency fund suggestions as a technical correction in the next 2 weeks.

But we do need to take a sober look at this provision and these other suggestions. I think that is one reason we need to make sure there is adequate research money. Somebody is going to need to research the likely impact of these provisions, including the contingency fund, and I hope your organizations will allocate some resources. I once belonged to the—I think it was called the same thing then, was it not—the conference—no, you are the National Governors' Association. I once tried to belong to that, too. [Laughter.]

The Conference of State Legislators. I think there is a temptation to put off the discussion of these issues until the House is on fire. But we will regret it if we do not look at the contingency fund and other provisions and anticipate their likely impact. And maybe we should wait a bit to see the implementation, the operation of the new bill.

But I do not think, no matter how well it works, that it is likely the contingency fund will be any relevancy. I think the way economic cycles go in this country, we are likely to bump into the use of that and I think it should be ready when needed. I do not think it is now adequately prepared, if it is needed.

Thank you, Mr. Chairman.

Chairman SHAW. Sandy, we went through a bit of a transition with regard to the contingency funds. We started out with $1 billion. Then we went to $2 billion. There are those that say that is not enough.

I said during the debate on welfare reform that this is very much like unemployment compensation. If you get into a recession, the Congress will have to take another look at it and be sure that those funds are out there. If we find the States are uniformly having problems with that, the Congress will take a look at it and, of course, take what action that that particular Congress might feel appropriate. Hopefully, the $2 billion is enough, but if you get into a deep recession, it may be that what you are forecasting will come about and we will have to take another look at it.

Mr. LEVIN. I am hopeful that things will work out so we are going to take a look at it next year regardless. I will tell you why. It is not just a matter of the money. The way this is structured now, it is likely, I think, States could go into or some States could go into a recession and even if there were $2 billion and we were able to get a raise in that amount, they would not be able to access it.

The trigger mechanism, I think, is not adequate. We had talked about this before and we made some progress. Originally, there was not a contingency fund at all and then it was moved up in amount. But the mechanism within it, I do not think was improved so that absent a national—the trouble with waiting for a recession is, as we saw with the arguments over extended unemployment benefits, when a recession hits States unevenly, it becomes a matter of immense political jockeying within this institution and with the administration.

It seems to me if we are serious about getting people off of welfare into work and getting States into the effort to really get people into work off of welfare and not simply to mechanically reduce

roles, we need to be sure the States are endeavoring to do that, if they hit a recession, are not incapacitated.

So I hope we will take a look at this prior to an emergency. I hope we are in a position to make sure that that look is taken and whoever is running this institution will do it on a bipartisan basis because the recession did not hit us on a partisan basis. Mr. Camp and I happen to be in a State that was hit early and first. Your State was hit later and we were put in the position, Michigan and the mid-West, of trying to appeal to the rest of the country to alter unemployment compensation.

Chairman SHAW. I would make two observations that I think generally your heavy manufacturing States, such as Michigan, usually get hit first and then that trickles down to States, like the State of Florida, who get hit late and conversely we are late in getting out and you are early in getting out.

So I think those are truisms, but I can tell you having worked with your Governor, Governor Engler, he will be down here and he will be heard and this Member will listen to him, whether he likes it or not, I can assure you. We will react and however Congress acts at the time of a recession certainly is exactly the way that the funds will be made available.

Mr. CAMP. Mr. Chairman, if I might, on that subject.

Chairman SHAW. Yes.

Mr. CAMP. I think your complaint is not really so much with the amount as that was changed, but with the formula. I am certainly willing to work with you on that. I know we did add a food stamp trigger that was requested by a lot of people, and I certainly will make this commitment that regardless, I think we should look at this formula and how it plays out. So I think it is a very good suggestion. I would be willing to work with you to do that.

Mr. LEVIN. Well, we will get busy.

Thanks.

Chairman SHAW. I would like to point out to you, Mr. Johnson, we strongly support your attempt and the attempt of the National Governors' Association, as well as the HHS, to raise the private funds to provide technical assistance to the States in their striving to come up and formulate effective programs. We are learning from each other and I think that is tremendously important.

I appreciate all of the witnesses today that have come forth in a sense of cooperation. I would also like to thank the Members, those that supported welfare legislation and those that did not on both sides of the aisle, for the spirit in which we are coming together.

We have been through stormier times. I am sure we have provided more spirited debate than what you have seen today. But I think that now is the time for us to come together with the spirit of cooperation in trying to help the most fragile among us and, that is, the poor to get them out of poverty and to make this new law work for all of the American people.

Thank you all for being here and this hearing is now adjourned.

[Whereupon, at 3:31 p.m., the hearing was adjourned, to reconvene on Thursday, September 19, 1996, at 10 a.m.]

IMPLEMENTATION OF WELFARE REFORM AND CHILD SUPPORT ENFORCEMENT

THURSDAY, SEPTEMBER 19, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:04 a.m., in room B–318, Rayburn House Office Building, Hon. E. Clay Shaw, Jr., (Chairman of the Subcommittee) presiding.

Chairman SHAW. We will call this hearing to order.

This is the second in our two-hearing series on implementing the new welfare reform law. As everyone agrees, the new law constitutes a historic restructuring of the Nation's welfare system.

Our purpose in these two hearings is to make sure the restructuring gets off to a good start. Today our topic is child support enforcement. I think it is fair to say almost everyone agrees that child support enforcement is vital to welfare reform, and the new law is a superb bipartisan achievement.

If anything, child support is even more important now than it was in the past, because it could offer a stream of financial support to mothers and children trying to leave welfare. But to be honest with each other, everyone felt we had created great bipartisan reforms after we passed the 1988 legislation. And yet, here we are 8 years later, and none of us are satisfied with the child support program as it was.

Yes, the 1988 reforms were good, but they did not lead to a restructured and revitalized child support program. That is what we need to accomplish this time.

More specifically, we need to solve the interstate problem. We need to bring every State program up to the status of world class data management. We need to get the new-hire system up and running. And above all, we need to improve the bottom line, more paternity establishments, and more collections.

To be certain we are moving rapidly and smoothly toward implementing the new law, we have invited a small but very experienced and knowledgeable array of witnesses. We will hear from the administration, and in particular from Judge David Ross, who runs the Federal child support program. Then we will hear from a panel that includes State administrators, experts from the private sector, and child and family advocates.

I have asked several of our witnesses to focus on two issues in which the Subcommittee is especially interested; namely, the auto-

mated information requirements of the new law and the financing of the Federal-State program.

I remind the witnesses to hold their testimony to 5 minutes which will be signaled by a red light. If everyone follows this rule, the Members of the Subcommittee will have plenty of time to ask questions.

I would at this time like to recognize the Ranking Member of this Subcommittee, Mr. Ford. Before I do so, I want to make the point that this will probably be his last meeting, his last hearing of this Subcommittee, on which he has served as the Ranking Democratic Member as well as the former Chairman of the Subcommittee. Harold and I have disagreed, and occasionally, we have agreed. I think it is particularly important to note, this area of child support is one in which we have been in lock step in working together, and even though we may see the world differently on some matters, I think on the question of parental responsibility, we certainly see eye to eye. We are going to miss Mr. Ford next year. We certainly look forward to—I guess this may be the beginning of a dynasty, because we will be welcoming his son to Washington.

Mr. Ford.

Mr. FORD. Thank you very much, Mr. Chairman, and again, I want to commend you for convening hearings so quickly on implementation of the new welfare law. And I am pleased today's session is devoted to child support enforcement. The child support provisions of this bill enjoy near universal support, and I would remind you it was the Democratic Members of this Congress, and especially this Subcommittee, who insisted that child support enforcement be a part of any welfare bill.

The reason for that, in my view, is simple. The child support provisions of this bill offer the best hope for improving the lives of American children. As you know, Mr. Chairman, this is my last term as a Member of Congress, and probably my last Subcommittee meeting before we adjourn. So it is with both fond memories and the sharp recollection of our efforts over the past two decades that I participate in today's session. After all, I can remember when child support enforcement was not such a high priority, and I recall we have had to encourage, sometimes push, States to aggressively pursue their responsibilities, that we have made good progress, but much remains to be done in our States.

I am proud of the Family Support Act, the predecessor of this new law, which attempted to make work the cornerstone of our Nation's welfare system.

I have for sometime been discouraged that States were not more bold in carrying out this law. That is in large measure why I remain skeptical about the new block grant. I cannot urge you strongly enough to keep the pressure on the 50 States, Mr. Chairman. The fundamental responsibility for the well-being of millions of American children is shifted now to the 50 State capitols. By statute, the Federal Department of Health and Human Services must shift, too, from partners to bankers and auditors.

But our responsibility in Congress to ensure that both the letter and the spirit of this new law are carried out has not diminished. You noted on Tuesday that passing a new Federal law is only 10 percent of the work; you are absolutely correct, Mr. Chairman, the

success or failure of this law is in the hands of the Governors. The job of this Subcommittee is to act as an early warning system; and I wish you well, Mr. Chairman, and I certainly wish the best to all of the Members of the Subcommittee, the Full Committee, and my colleagues in the Congress. I would certainly hope that those of us who will be watching from the outside will keep that pressure on the States and make sure that our children in this Nation are protected. We all have a responsibility, not only to reform the welfare system, but to establish one that this Nation can be proud of.

I certainly join with you and hope that Harold Ford, Jr., will replace his dad in the Congress on November 5.

Thank you.

Chairman SHAW. Thank you, Harold. I have a sneaking suspicion I have not heard the last from you.

Judge Ross, would you please come to the table and proceed with your testimony. Welcome.

STATEMENT OF DAVID GRAY ROSS, DEPUTY DIRECTOR, OFFICE OF CHILD SUPPORT ENFORCEMENT, ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. ROSS. Good morning, Mr. Chairman, and Members of the Subcommittee. I am David Ross, the Deputy Director of the Federal Office of Child Support Enforcement. I am certainly pleased to be here today to talk about the child support enforcement provisions of the Personal Responsibility and Work Opportunity Reconciliation Act.

As you have indicated, child support is a critical component in ensuring economic security for millions of single-parent families, and I appreciate the Subcommittee's efforts to strengthen the program by including the child support enforcement measures that President Clinton proposed 2 years ago to the Congress.

The comprehensive reforms included in the law will ensure that parents are located so that they can support their children, paternity is established where necessary, and child support orders are enforced.

Over the next 10 years, these measures could increase child support collections by some $24 billion, and reduce Federal welfare costs by some $4 billion.

I would like to briefly share with you what we are doing to implement our new responsibilities. I will then focus on child support enforcement automated systems and program funding, which I understand are areas of special concern to the Subcommittee.

As I indicated, we welcome the child support provisions of welfare reform, and we are committed to their timely implementation. With many of the provisions based on successful State practices, our job is made easier.

In addition, recognizing the similarity of child support provisions contained in various legislative proposals, we began last year to work on a number of initiatives to plan for implementation of the anticipated requirements.

Many Federal-State welfare reform work groups have been formed, and we have accomplished much of the preliminary planning for implementing the new law, such as a complete review of

regulations, new-hire reporting system design, helping States with enactment of needed legislation, and preparing the way for the nationwide implementation of the Uniform Interstate Family Support Act.

We have also undertaken initiatives that focus on challenging areas addressed by the legislation. Federal staff are providing technical assistance, training, and knowledge about effective practices in other States. Implementation of the statute will be smoother as a result of all these activities.

Clearly, automation is key to implementation. Automated systems are integral to the efficient and effective operation of the Nation's Child Support Enforcement Program. Technology allows us to complete millions of transactions involving tracking, case processing and collection, with speed and accuracy, freeing staff to focus on those hard to collect cases.

The Family Support Act of 1988 mandated complex and comprehensive automated systems, and many States started from ground zero where caseworkers did not even have access to computers. Costly and time-consuming problems were encountered with the conversion process requiring file review, research, and data collection. It often involved tracking down court files and then reconciling and updating financial and arrearage data.

However, State support programs have been transformed by these automated systems. The system enhancements called for in the new law build on this computer infrastructure and the investment of additional enhanced funding will allow all States to move to the next level of automation, including centralized child support collections and disbursement. This will enable States to use technology more efficiently to monitor cases more effectively, and to do proactive matching of entire caseloads for location, establishment, and collection.

Let me now turn to the second issue the Subcommittee has expressed an interest in my discussing, and that is incentive financing. There is no disagreement, the current system does not create a significant incentive for long-term investment necessary for the achievement of program goals, and is in need of improvement.

The new law requires we work with the States to develop a new incentive funding structure, one that rewards results. We are to submit a report to Congress by March 1 of next year. This does not allow much time, but I am happy to report we have been laying the foundation by reviewing measures that might be used in changing the incentive payment system.

An improved results-based incentive system like that envisioned in the legislation will take into account other measurable program results such as paternity establishment, order establishment, collections, and cost efficiency. A better incentive system might also reward those States with the best and most improved performance in these areas.

We have been looking at the issues in the context of our GPRA, the Government Performance Result Act pilot, and within the context of the Federal and State performance measures work group. This work group has met a number of times and during that time, they have been mindful of the need to prepare for this report to Congress.

In closing, I look forward to working closely with the Subcommittee in the future as we implement these critical changes to our child support program, and I, of course, will be very happy to answer any questions that you might have at this time.

[The prepared statement follows:]

STATEMENT OF DAVID GRAY ROSS, DEPUTY DIRECTOR
OFFICE OF CHILD SUPPORT ENFORCEMENT
ADMINISTRATION FOR CHILDREN AND FAMILIES
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Good morning Mr. Chairman and members of the Committee. As the Deputy Director of the Office of Child Support Enforcement, I am pleased to appear before you today to talk about the child support enforcement provisions in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). Child support is a critical component in ensuring economic security for millions of single-parent families and I appreciate this Committee's efforts to strengthen the program by including the child support enforcement measures President Clinton proposed two years ago in this bill.

As President Clinton said when he signed the welfare reform bill, these Child Support Enforcement provisions "will help dramatically to reduce welfare, increase independence, and reinforce parental responsibility." These comprehensive reforms will ensure that parents are located to support their children, paternity is established when necessary, and child support orders are enforced. Over the next 10 years, these measures could increase child support collections by $24 billion and reduce federal welfare costs by $4 billion.

Under the PRWORA, a case registry and new hire directory will be established in every State, with a centralized case registry and national new hire database maintained at the Federal level. States will be given access to motor vehicle and law enforcement data to locate parents. Child support agencies will have legal authority to order paternity testing and State laws must ensure that the results are admissible as evidence of paternity. Every State will be able to suspend the drivers' and professional licenses of parents who do not support their children, and the passports of non-paying parents also will be withheld.

While we have made great strides over the last several years in improving child support, it was clear that much more still needed to be done, including addressing jurisdictional issues with tribal governments and issues involving interstate and international cases. The efforts of President Clinton and the Congress in child support have begun to have a positive impact. Collections have increased 40 percent since President Clinton took office and totalled $11 billion in FY 1995. Paternities established have also increased about 40 percent to a total of 735,000 last year, including voluntary in-hospital paternity establishments under the requirements of the Omnibus Budget Reconciliation Act of 1993. The new child support provisions will offer even greater advancements.

I would like to briefly share with you what we are doing to implement our child support enforcement responsibilities under welfare reform. Then I will focus my testimony on State Child Support Enforcement (CSE) automated systems and program incentive funding, the areas in which I understand the Committee is particularly interested.

OCSE's Welfare Reform Implementation Strategy

First, February 17, 1995, President Clinton issued Executive Order 12953, which declared that Federal agencies would be model employers and process child support wage withholding orders according to the same standards that private employers were held to, laying the foundation for related statutory changes in PRWORA. A training and outreach effort was directed at our sister agencies to familiarize them with the Executive Order and prepare them for automated matching scheduled in the near future.

We welcome the child support provisions of welfare reform and we are committed to their timely implementation. Since many of the provisions, like license revocation, new hire reporting, and bank matching, are based on successful State practices, our

job is made easier. In addition, recognizing the similarity of child support provisions contained in various legislative proposals, we began to work on numerous initiatives to plan for implementation of the anticipated requirements.

In the Spring of this year, President Clinton directed that further actions be taken to lay the groundwork for welfare reform. This included a pilot of a national new hire program. The pilot is currently underway and matches have already been made of data from 17 States against lists of non-paying parents. Over 60,000 cases have been matched and forwarded to the appropriate State. Over 30,000 of these matches were AFDC cases. We are very excited by these results, as well as by the information we are gaining which will help guide our efforts to develop the national program required by the statute.

Many Federal-State Welfare Reform workgroups have been formed and have accomplished much preliminary planning for implementing the new law, such as a complete review of regulations, new hire reporting system design, helping States with enactment of needed legislation, and preparing the way for nationwide implementation of the Uniform Interstate Family Support Act.

We have also undertaken initiatives that focus on challenging areas such as enforcing child support against members of the armed forces, and in cases involving other countries and American Indian tribal jurisdictions. Staff have been assigned to assist States with interstate, international, military, criminal non-support, and Indian tribal cases. These areas are now benefitting from the focused attention and coordinating role of Federal staff. Federal staff are providing technical assistance and training, and knowledge about effective practices to States. Implementation of related provisions in the statute will be smoother as a result of these activities.

In addition, a new State and Local Assistance Division has been formed to focus Federal staff resources on helping States and local jurisdictions assess problem areas and identify resources to enhance their efficiency and effectiveness. Federal-State workgroups on training and technical assistance have been working in partnership to better match Federal resources with State needs. This division will provide planning assistance and act as a clearing-house for best practices and new techniques in child support enforcement.

State Child Support Enforcement Automated Systems

Automated systems are integral to the efficiency and effectiveness of the nation's Child Support Enforcement program. Technology allows us to complete millions of transactions involving tracking, case processing and collection with speed and accuracy, freeing staff to focus on hard-to-collect cases. Automated systems are designed to allow the child support program to keep pace with increasing caseloads and limited government resources.

We have made a sizable investment in the automation of State Child Support Enforcement programs. Over the last 10 years, the] Federal Government has provided states with $1 billion in enhanced funding for automated systems, representing 5 percent of total child support expenditures. This investment has already made a difference. More than 40 jurisdictions have statewide automated CSE systems that are being used in day-to-day child support operations. While only 10 of these States' systems have been "certified" as meeting all of the automation requirements called for in the Family Support Act of 1988, all are providing critical services to States.

State child support programs have been transformed by automation efforts. Many States started from ground zero, where caseworkers didn't even have access to computers or networks to link county programs throughout the State. In States with county-operated programs, there often was no standardization of child support program and policies. Prior to automation requirements, case files were often buried in dusty county courthouse basements and if someone had to work on a case, he/she had to manually retrieve the case file.

Automation efforts began in earnest from 1981 through 1988, when the Federal government provided enhanced funding for States to develop systems to improve the child support enforcement program. The Family Support Act of 1988 mandated much more complex and comprehensive automated systems. These systems needed to meet all federal requirement by October 1,1995, including incorporating all IV-D cases in the state and training all workers to use the system. Many of the problems encountered were associated with converting paper child support files to an automated format. This costly and time-consuming conversion process required file review, research, and data collection; it often involved tracking down court files and reconciling and updating financial and arrearage data. Much of the effort was in ensuring consistent and standardized child support procedures within a State.

The Family Support Act requirements have brought us to the point where child support workers have computers on their desks and cases have been converted to an electronic format. These systems provide the foundation for meeting the reforms of the new law. The additional time congress provided in the recent extension of the Family Support Act certification deadline to October 1, 1997, is allowing States to conduct critical testing, piloting, training of staff, and conversion of cases.

As I indicated, the system enhancements called for in the Personal Responsibility and Work Opportunity Reconciliation Act build on the assumption that States have already completed the work of creating a computer infrastructure and the conversion of paper files to an automated database. The investment of additional enhanced funding is critical to allowing all States to move to the next level of automation, including centralized child support collections and disbursement. This will enable States to use technology more effectively, to monitor cases more efficiently, and to do proactive matching of entire caseloads for location, establishment, and collection.

In short, the next steps of automation provided in welfare reform are mass case processing and administrative enforcement remedies -- thus freeing the caseworker from handling the routine cases and allowing her/him to tackle the most difficult cases. Computer matches can be run at night against other State records, such as unemployment compensation, workers' compensation and other State benefits, as well as financial institution records and new hire data. The system will generate the matches and automatically print out the attachments or wage garnishments to be mailed in the morning. As we continue to work with States to improve their systems, we will also focus on privacy concerns associated with these types of activities.

Centralized collection and disbursement capabilities mandated in the new law will also allow States to make use of economies of scale and modern technology found in many businesses --such as high speed check processing equipment, automated mail and postal procedures, and automated billing and statement processing.

Finally, with the introduction of a potentially greater tribal role in the child support enforcement program, we are aware of the special needs of tribes related to automation. We

will work closely with tribes wishing to take advantage of the new authority in their planning for automated child support enforcement systems.

I will now turn to the second issue the Committee has expressed an interest in discussing: incentive financing.

Program Incentive Funding

The PRWORA seeks to change the current system of incentive funding to States which is based on maximizing current year child support collections (especially those for welfare cases), while restraining administrative costs. There is no disagreement that the current system does not create a significant incentive for long-term investment necessary for the achievement of program goals and is in need of improvement.

Under current law, a minimum incentive payment is made to all States, regardless of whether performance is good or poor. States can run inefficient programs and still make a profit. An improved results-based incentive system, like that envisioned in the legislation, would take into account other measurable program results such as paternity establishment, order establishment, collections and cost efficiency. A better incentive system might also reward the States with the best and most improved performance in these areas.

The PRWORA requires that we work with the States to develop a new incentive funding structure that rewards results and to submit a report to Congress by March 1, 1997. This does not allow much time, but I am happy to report on the success we have had in laying the foundation by reviewing measures that might be used in changing the incentive payment system.

As you are aware, OCSE was designated as a pilot for the Government Performance and Results Act of 1993. OCSE is just finishing up the two year pilot phase of its implementation of GPRA and is reviewing with the Executive Branch the successes and problems associated with that effort. During the pilot we have been working with States to look at many issues, including;

- A National Strategic Plan with a mission, vision, goals and objectives.
- Some options for outcome measures for Strategic Plan goals and objectives so that progress can be tracked.
- 35 States have entered into partnership agreements with ACF Regional Offices that detail performance goals, technical assistance initiatives, and a shared commitment to working together.
- OCSE and the association of State child support program directors are, as I speak, drafting an outline for a partnership agreement that will emphasize communication, joint planning, and co-responsibility for improving America's child support enforcement program.

These activities have provided the building blocks to move to a more results-oriented management of the national child support enforcement program.

A Performance Measures Workgroup was formed with representatives from HHS central and Regional offices and State and local child support agencies. During the past 18 months this workgroup has met six times and drafted and redrafted proposed outcome measures, which are still under review. During drafting, the workgroup was mindful of pending welfare reform legislation

and hoped its work would be useful in identifying changes to the incentive funding system.

We are now coordinating a group of State and Federal partners to develop a proposed incentive funding system for the report to Congress. We are already in agreement that some key indicators from the outcome measures developed for the Strategic Plan will be reviewed for potential use in a new incentive funding formula. I am confident that with the progress we have made together, we will be able to offer to the Congress our vision of a results-oriented incentive funding system by March 1, 1997, that does not increase incentive payment outlays, as required by the statute.

We are committed to working with our State and local partners to improve their programs and to ensure that we will witness the anticipated benefits of the new legislation.

Conclusion

In conclusion, Mr. Chairman, let me restate three key points:

- Efforts to implement the child support provisions of PRWORA began long ago, with State and Federal partners working closely on a number of fronts including new hire reporting, enactment of State legislation, and regulatory reinvention.

- The Federal investment in State child support automated systems is paying off. States are benefitting greatly and moving towards federal certification of their systems.

- OCSE and its State partners are working to develop a new incentive funding system that will move the national child support enforcement program to results-oriented management by rewarding performance.

Again, I want to thank this Committee for giving me the opportunity to testify today, and look forward to working closely with this Committee in the future as we implement these critical changes to the child support program. I would be happy to answer any questions you may have at this time.

Chairman SHAW. Thank you.

Mr. Ford.

Mr. FORD. Thank you. Thank you very much, Mr. Chairman, and Mr. Ross. Thank you for your testimony.

In 1988 the Federal Government has spent about $2 billion on automated computer systems for child support enforcement despite that HSS has certified only 10 States meet the requirements of the 1988 Family Support Act. And 10 States do not have a statewide computer system in place yet. I mean, why, what barriers do States face or what is the problem?

Mr. ROSS. What is the reason for that? Well, to answer the question very simply, I think to start with, we required too much of the States in 1988 with regard to what they had to do. I think we were not aware at the time of the difficulty of collecting the data, getting it out of court files, getting it converted, eliminating duplications, bringing it online and all the rest, and that has been a major obstacle. There have also been contractor problems here and there.

Across the board, the States have had great difficulty as you indicated in simply getting their systems up.

I would like to point out, though, that an automated system not being certified does not mean there has not been massive growth in the program and success in the program. I like to use the analogy that it is almost like graduation from high school. The diploma itself, while important, does not mean that those in their junior and senior years have not advanced and have not learned. I think we have learned a great deal. And with regard to the new date that the Congress gave the States, no State has told us that they will be unable to meet that date.

So, I think probably it was too big a job and we did not recognize that at the time. I think we have done a lot.

Mr. FORD. What else can we do?

Mr. ROSS. What we need to do now is, of course, be supportive of the States. There are lots of political questions within the States as to who gets to make automation-related decisions, and I think we need to convince——

Mr. FORD. I mean, just to make sure all 50 States are computerized and making sure that automation is there, what else can we do to beef that up somewhat?

Mr. ROSS. You have done that in the new legislation with regard to the technical assistance and training requirements. I believe today or tomorrow, a group of users are meeting with our office to discuss the true ability of the States as a group to meet these requirements.

We have formed task forces, including State people, including all the folks involved in the process. We did not do that last time. I think last time we simply said, "This is the law and you will abide by it." And we did not ask anyone what their idea was on how to implement it. We are certainly doing that now. We have learned that lesson. And I think that what is going to produce success for us is the fact that we have involved the States in that we are asking their people to do things to help us essentially write the regulations which will spell out the requirements.

I told State representatives the other day, that we were partners in this; collectively, we really were in fact partners, and we had to get it done, and get it done very quickly.

Mr. FORD. Mr. Ross, let me move on to staff and—am I correct that the new law requires substantial reductions in the staff at HHS, some 75 percent reduction in staff? The new law gives HHS a lot of new responsibilities in the area of child support. Given staff cuts, can you carry out these responsibilities with the cuts in the staff?

Mr. ROSS. It is the Office of Family Assistance, of course, which runs the JOBS Program and the AFDC Program where the cuts were required by what we call the Gramm amendment. I am not sure how we are going to get there. We are again in the process of deciding what the new responsibility will be.

Within my office, I have taken a number of the people and redirected their efforts. The new law, for instance, requires that we for the first time have a role in international affairs; we have a role in Native American affairs. I have taken people who were doing other things within the Office of Child Support Enforcement, and reassigned them to those tasks.

We have reorganized. We have a new Division of State and Local Assistance in order to fulfill the obligations under the law with regard to technical assistance and training. We have done that so far with existing staff; whether we need more is something we need to address within the Department at the appropriate time.

But to answer your question very clearly, I think the cuts in another part of the Department of Health and Human Services, even within the Administration for Children and Families, will not adversely affect our current operation.

Mr. FORD. So that staff cutting does not impact or does not affect the child support——

Mr. ROSS. No, staff cuts were only in the Office of Family Assistance.

Mr. FORD. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman. It is good that you are holding these hearings. It gives us a chance to hear from the administration and others about their opinions of how things are going to work. It is also interesting to listen to the opinions of others, and try to imagine just exactly how it is going to work, and what the success is going to be.

I tell people at home that basically, the duties of Congress are to fund the operation of government and set into law policy by statute. But the day-to-day operation is handled by the administration, and those that the administration choose and hire to run the different agencies; the secretaries, commissioners, directors, and deputies. So the success or failure is really in your hands as to whether you will move toward working as Congress has intended with the laws that we have passed, and the policies that we have put in place by law, or will you, as some agencies do with the laws that we pass, make rules so stringent or so unreal, and forget common sense so that the new rules do not work. So basically, this thing is in your hands.

The child support recovery portion of the bill is very important. I hope you will work with the States, with the Subcommittee, because it is our intent that these people who are noncustodial parents pay their bill. And with that, I will say thank you for being here.

Chairman SHAW. Judge, you have the good fortune, or I might say, the awesome responsibility, of heading up an effort on which there is unanimous support of this Subcommittee. Under the law, we now reimburse the States for the moneys they spend under the child support activity. There are some that say we should be more result oriented in rewarding the States for success in collection.

Do you have any thoughts you care to share with the Subcommittee regarding that matter?

Mr. ROSS. The law itself and our direction of the program will certainly lead to a results-oriented program in terms of assessing the performance of the States.

We have announced that our implementation strategy really has four components. The first is a partnership with the States. The second is results. The third is flexibility, and the fourth is accountability.

Working within the structures of accountability, obviously, we are developing performance measures which we will agree to with the States if we can, and with those performance measures, States will be rewarded with incentive money based upon their performance.

As you know, we must report back to the Congress early next year with a plan. We are meeting again today. I think 38 of the 54 directors from around the country are in town and the ones not here are meeting this morning. We are talking about an agreement between myself and the IV–D directors of America, so that the States themselves have a major role in helping us create, as the law requires, a plan for a new incentive funding structure for this program.

So, I think to answer your question, what has been wrong with the program is that we did not reward results. It was also wrong that our audit was too concerned with procedures, so that we asked ourself the question, "Did you do a certain thing on a certain day," not whether or not you achieved an order ultimately.

Our audit rules require that if you did not send a letter to the possible father within 15 days of the receipt of a form X, Y, Z from the AFDC agency, there was a problem.

And that was a "gig," as they call it in audit. And if they sent it on the 17th day, and the result was positive, we found a fault in that file.

Now what we are doing with regard to the audit is two things. Number one, ensure those programs that are successful are known to be successful. And what we are doing differently about those that are not successful is providing technical assistance and training—we are essentially going to try and help the States come up to the point where they need to be.

In the old days we simply told them what to do, and then we audited them to see if they did it. We have added some other components now, and they are going to help us determine what needs to be done. Then we are going to use our technical assistance to help

them and audit later. If they in fact have done a good job, then obviously, they will be rewarded through the incentive process.

Chairman SHAW. If you have any legislation the administration might want to send up to accomplish some of those purposes as affecting the existing legislation, be sure to bring that to our attention.

Mr. ROSS. Certainly, sir. We need to provide technical amendments within a certain period of time, and I think they are being worked.

Chairman SHAW. Let me change the subject slightly, but this question has come up, and I have been asked to ask it. And it does get a little bit away from child support to another important issue in implementing the welfare reform.

What I am talking about is effective dates. In recent days, the Subcommittee has received questions about apparently conflicting signals on the effective date of the provision that ends cash welfare and food stamps for persons convicted of felonies involving illegal drugs. States want to implement this provision so that both cash welfare and food stamps are denied drug criminals beginning on the same date.

The legislation indicates that for cash welfare, the effective date is whenever the State begins operating this new block grant, which may be as late as July 1 of next year, but also could occur sooner.

In contrast, the Agriculture Department seems to be taking the position that food stamp benefits may be denied no sooner than July 1, 1997.

Can you help clarify that, or would you want to perhaps send me a written memo——

Mr. ROSS. I think I better do that, frankly. It is kind of out of my department.

Chairman SHAW. If you could help us out with that, the States have requested some information on that, and they have inquired as to our staff, and we are trying to get some clarification.

Mr. ROSS. Yes, sir.

[The following was subsequently received:]

Section 116(a)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 states that in general, except as otherwise provided in title I, this title and the amendments made by this title shall take effect on July 1, 1997. However, subsection (b)(1) allows States to accelerate the effective date for implementing the TANF provision if the State submits a plan described in section 402(a) of the Social Security Act, as amended. Should the Secretary receive a plan, then the amendments made by this title, including the provisions in section 115 regarding the denial of cash benefits only to convicted drug related criminals, shall apply with respect to the State as of the accelerated effective date.

Ms. Dunn.

Ms. DUNN. Thank you very much, Mr. Chairman. Thank you, Mr. Ross, for testifying before our Subcommittee.

You indicate in your testimony that the data system enhancements called for in the new law build on the assumption that the States are already in completion of the work of creating a computer infrastructure and getting all their paper files onto computer files.

In your opinion, are the States ready to move to the next step, and if so—or if not, what does HHS have to do to help them?

Mr. ROSS. The State of Washington, of course, has been certified as well as the State of Georgia. But the answer to the question is

there is still more work to be done in every jurisdiction. Again, we have formed a work group on everything, and there is a work group on where do we go from here with regard to the enhancements required under the new law. That work group involves those who are actually in the field doing the work in partnership with their regional and central office counterparts, and they in fact have to give me a plan fairly soon as to how we are going to accomplish that.

I learned when I was a private in the Army in basic training that to fail to plan is to plan to fail, and we simply need to have a plan. Our office has developed a strategic plan for the next 5 years, and that has taught us to listen. In every aspect of this law we have so many new responsibilities that we need to plan for every particular aspect. And that is why we have, in fact, formed 16 work groups. Not with the same people, but with specially interested and talented people who work in that particular area.

Ms. DUNN. So, you are quite confident the working group will address any States that are in a problem situation that we will not have laggard States that are not going to be able to implement the new requirements of the welfare reform——

Mr. ROSS. I absolutely believe that. I have spent a great deal of my time out visiting the States, listening to them, listening to their problems, and it is amazing how many of the problems are similar in the different parts of the country. And those on our systems staff, Robin Rushton and Larry Guerrero, really are knowledgeable. We really are working in partnership again to get those problems solved.

Ms. DUNN. Thank you. Thank you, Mr. Chairman.

Mr. ROSS. We have no alternative. We just have to get it done.

Chairman SHAW. Ms. Kennelly. No questions.

Judge we thank you—oh, excuse me. Mr. McCrery.

Mr. MCCRERY. No questions.

Chairman SHAW. Thank you for being here, Judge. We appreciate it. We look forward to working with you over the next whatever it is.

Mr. ROSS. Yes, sir. Thank you.

Chairman SHAW. Thank you.

We next have a panel of witnesses. If they would come up to the table and seat themselves, Wayne Doss, who is director, District Attorney's Bureau of Family Support Operations, Los Angeles, California; James R. Weaver, director, Unisys Corp. of Blue Bell, Pennsylvania; Leslie L. Frye, chief, Office of Child Support, Department of Social Services from Sacramento, California; Robert Melia, vice president of Policy Studies, Inc., Boston, Massachusetts; David Levy, Esq., president of Children's Rights Council, Washington DC; Elisabeth Donahue, counsel of the National Woman's Law Center in Washington, DC; and Marilyn Ray Smith, associate deputy commissioner and chief legal counsel of the Department of Revenue, Child Support Enforcement Division, Cambridge, Massachusetts.

We have each of your statements, and would ask if you would feel free to summarize.

Mr. Doss.

STATEMENT OF WAYNE D. DOSS, DIRECTOR, DISTRICT ATTORNEY'S BUREAU OF FAMILY SUPPORT OPERATIONS, LOS ANGELES, CALIFORNIA

Mr. DOSS. Thank you, Mr. Chairman, and Members of the Subcommittee. I appreciate the opportunity you have extended to us to appear here and talk about this very important problem.

The district attorney's office in Los Angeles County is responsible for operating a Child Support Enforcement Program that is larger than all but 42 or 43 States. We have 650,000 cases in Los Angeles County involving almost 2,000,000 participants if you count all children and parents in that number. We have developed in Los Angeles County a very complex web as we have in the entire State of California to approach the task that you have given us through the Child Support Enforcement Program, and the laws and regulations that implement that program.

That network of responsibility extends to agencies at the State level including our supervising agency, the Department of Social Services, the Franchise Tax Board, the Department of Motor Vehicles, any number of State licensing agencies, and more and more as time progresses.

At the local level, we also have a number of agencies that we work with on a regular basis, not only our welfare and children services departments, but our auditor, controller, our registrar recorder, to ensure that liens are established against real property.

We have entered into private sector partnerships as well to assist us in doing the work you have given us.

Clearly this work cannot be done, and not certainly in a county of my size, with a caseload that we have to deal with without the benefits of automation. Automation has given us some great challenges, and you have heard about some of the criticisms. I know one of the reasons you are having this hearing is because of the concerns you have about the progress of automation in the States. And I was specifically invited to tell you a little bit about the experience we have had in Los Angeles County.

I am very pleased to tell you my county was able to implement an automation system prior to the Federal deadline of October 1, 1995. Because I was given a 1115 waiver, the system we built in Los Angeles County is not a level two certification system, because we are not statewide—although some would say we are a State—but we will be certified with the rest of the State of California prior to the October 1997 deadline.

Even so, we are certified as functional in every area that the Federal Government requires, and in fact, we exceed these functional requirements.

The benefits of automation are palpable, tangible, and they are for everyone to see. I brought some charts. I have attached them to my testimony, but I have them here on display for you to look at as well, which show what automation can do. The charts I have given the time to put together and show you give a sense of the sequential benefits that we have been seeing from automation.

The biggest challenge we have faced over the years in child support in my view is the failure to adequately locate absent parents so that we could enforce orders, establish orders, do whatever it is you ask us to do under the child support program.

As a result of the automation system we brought up in the middle of the fiscal year, 1994–95, we have seen a dramatic increase in the number of locates to the degree that now we are over 700,000 a year in locates.

Now, granted, we are finding information from a lot of multiple sources on the same people, but we are also having to locate people several times during the same year, because even after we find them for purposes of serving them with a court order, we may have to find them again for purposes of attaching wages, or attaching a bank account.

So, that factor notwithstanding, we have had great success in locating the absent parent population.

As a consequence of being able to locate noncustodial absent parents, we are now able to serve them. In calendar year 1995, my office was responsible for filing 75,000 lawsuits in Los Angeles County to establish paternity and support. That is a huge number. That is over 80 percent of all the family law filings in Los Angeles County; it is over 60 percent of all the civil filings in Los Angeles County.

This calendar year, we are projecting we will file over 175,000 lawsuits in Los Angeles County. That will be virtually all of the family law filings in my county, and it will be over 95 percent of all the civil filings in my county. This would not be possible without automation.

As a consequence of this, we have been able to do some good things for the families in my county. The next charts demonstrate what we have been able to do in terms of establishing paternity and establishing support.

In the area of paternity, in 1 year, as a result of automation, we have doubled the numbers of children for whom we have established paternity, from 25,000 to almost 50,000. This is what automation is all about. This is what automation can do. This is what you are paying for, and you should be proud of it. You have nothing to be ashamed of, and you should be aware that changes like this are happening all across the country. And they are happening even before systems come online.

As Judge Ross said in his remarks, the process is not unlike that of getting a diploma. I liken my remarks to the space program. Before we put a man on the moon, we had achieved a lot of tangible benefits here on Earth, and the same thing is happening with child support automation.

Thank you, Mr. Chairman, I will be happy to answer any questions.

[The prepared statement and attachments follow:]

TESTIMONY OF WAYNE D. DOSS
DIRECTOR, BUREAU OF FAMILY SUPPORT OPERATIONS
LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

Before the Hearing of the

HOUSE WAYS AND MEANS COMMITTEE
HUMAN RESOURCES SUBCOMMITTEE

Held on

SEPTEMBER 19, 1996

Mr. Chairman and Members of the Committee:

My name is Wayne Doss. I am the Director of the Bureau of Family Support Operations of the Los Angeles County District Attorney's Office. On behalf of our District Attorney, Gil Garcetti, I thank you for providing our office with this opportunity to address you on the important issues which this Committee is undertaking to study.

The Bureau of Family Support Operations is responsible for carrying out day to day operational functions of the Title IV-D child support enforcement program in Los Angeles County. The scope of that responsibility extends to providing services in more than 650,000 cases involving almost 2 million custodial parents, non-custodial parents and children. This makes our program larger than those of all but seven or eight states.

The Expanding Child Support Enforcement Network

The geographic size, population density and demographic diversity of Los Angeles County make the delivery of child support services a complex--some would say daunting--task. These services are provided by more than 1200 district attorney staff located in seven offices throughout the county. Their efforts are integrated with those of welfare caseworkers in 25 Department of Public Social Services offices around the county and with caseworkers from our Department of Children's Services situated in 16 locations.

To secure, enforce and modify court orders for child and medical support, our staff of more than 90 attorneys make appearances in 33 Superior Court family law departments located in 14 courthouses around the county. Criminal prosecution of parents who fail to pay support involves daily appearances in as many as 10 divisions of the Municipal Court.

Public sector partnerships are essential to support the Bureau's work. Working under the supervision of the California Department of Social Services, the District Attorney has established, and in some cases piloted, valuable cooperative agreements with state level agencies such as the Franchise Tax Board, the California Parent Locator Service in the Department of Justice, the Department of Motor Vehicles, the Employment Development Department, the Department of Health and state professional licensing agencies.

At the local level, in addition to the welfare and children's' services departments and the courts, the District has entered into cooperative agreements with county agencies such as the Registrar-Recorder to ensure the filing of real property liens against delinquent obligors and the Department of Community and Senior Services to supervise counseling, job training and placement of unemployed parents participating in the Parents' Fair Share Project. Information sharing agreements currently exist with a number of local municipalities, such as the City of Los Angeles, municipally owned agencies, such as the Los Angeles Department of Water and Power and school districts to match employment data and retirement benefit information which is not otherwise reported to the state. Efforts to establish more such information sharing opportunities are now underway.

Not only public sector but also private sector partnerships are necessary to assist in carrying out our federally mandated functions. Services such as receipting, posting and accounting of payments, service of process, genetic testing to establish paternity and information exchange with credit reporting agencies are conducted under contract with the District Attorney's office.

My purpose in outlining the broad network of arrangements described above is to demonstrate that current operation of the child support enforcement program involves the efforts of many agencies beyond those vested with direct responsibility for carrying out the mandates of the program. As caseloads have proliferated and demands for services have escalated, the need to establish still larger and even more comprehensive networks of cooperation to enforce the financial responsibility of parents to support their children has become all the more apparent.

The New Challenges of Welfare Reform

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, passed by Congress and signed into law by the President last month, increases still further the need for state and local child support agencies to broaden the scope of their reach in providing services for families in need. Now, for example, hospitals, pre-natal clinics and vital records offices will be mandated to assist in securing voluntary acknowledgments of paternity for children born out of wedlock. Banks and other financial institutions will be required to provide greater access to information about their depositors. New requirements to create and enforce child support liens against personal as well as real property will mean interaction and cooperation with many more agencies than is the case today.

At the same time, the ramifications of the new federal law make it all the more critical that state and local child support agencies operate effective child support enforcement programs. Because of the time-limited nature of welfare benefits, it will be more important than ever that paternity be established sooner and support collected reliably whenever possible. The apparent desire of Congress to move toward a performance based incentive structure also means that states will have to become more effective in producing positive outcomes.

The complex nature of the services we provide, the size of the caseloads we manage and the amount of information we must maintain and process to carry out our obligations make automation a necessity. This is not news. Congress recognized the need for states to computerize their programs eight years ago, when it legislated the Family Support Act of 1988. While some states were able to meet the original certification deadline of October 1, 1995, implementation efforts continue to be carried out around the country. As part of the *Personal Responsibility and Work Opportunity Reconciliation Act*, Congress has extended the certification deadline for state systems two years beyond the original date to October 1, 1997.

The Positive Value of State Automation Efforts

In some quarters, questions have been raised about the wisdom of granting states an extension of the Family Support Act's original systems deadline. Even though the *Personal Responsibility and Work Opportunity Reconciliation Act* does not increase the existing cost ceilings approved for state systems, some critics charge that granting states

more time to complete the implementation and certification of their systems is tantamount to throwing good money after bad. They argue that states which have failed to secure federal certification of their systems are now being rewarded for failure to properly manage computer development in the first place. These critics allege that the child support automation process has largely been a waste of taxpayer dollars, another boondoggle which has left the federal government with a big bill and nothing to show for it. In some minds, the experience is an argument for scrapping the process, taking it out of the hands of the states and starting over with a new and wholly federalized system.

I strongly disagree. The progress taking place around the country toward effective automation of child support systems is measurable and significant. If that progress has been slower than some, including Congress, would have preferred, the experience of states which have successfully implemented statewide automation proves that it can, in fact, be done--and done well. No one need doubt that child support automation, for all its complications, is within the realm of the possible. Further, the record of the states which are now automated is proof that computerization can be achieved within the financial limitations set by federal regulators.

It is easy--and perhaps all too tempting--to charge that delays in achieving automation are the product of poor management. The truth is that strong management of automation efforts often demands that those in positions of responsibility take the time to do the job right. The original time frame for states to achieve certification of their automation efforts was conceived out of the correct perception that the child support program could not any longer be managed without a national effort to achieve computerization. Absent the deadline imposed by Congress, there is no question that states would not have made the progress we have seen to date.

The drafters of the Family Support Act undoubtedly thought of the October, 1995, deadline as a reasonable target at the time. But that deadline was not the result of a process of long term planning nor was it based on feasibility studies or surveys of states' capacity and readiness to automate on that schedule. Most assuredly, in setting the target Congress did not foresee the delay in promulgating regulations that followed the enactment of the Family Support Act, which greatly slowed the states' ability to properly plan for automation. Nor is it likely that Congress contemplated the difficulties in identifying sufficient vendor resources to support more than fifty separate automation efforts taking place at the same time and on the same deadline. State procurement processes and vendor protests acted as further brakes on some state developments.

As a family support administrator with an operational system, I am pleased that Los Angeles County was able to meet the 1995 deadline. Successful completion of our project prior to the deadline is a tribute to the commitment, hard work and cooperation of everyone on the County team, the Lockheed-Martin project team, the staff at the state Office of Child Support, the staff of federal Office of Child Support Enforcement and the staff of the Division of Child Support Information Systems. Still, I know that with a few more slips here or delays there, a far different result could just as easily have been the case.

In evaluating the benefits of the federal investment in child support automation thus far, observers would do well to contemplate the progress and positive changes that have taken place. Ten, soon to be 13, state systems have been certified as fully functional and statewide in application (so-called Level 2 certification). Bear in mind certification itself is,

to some degree, an artificial process. Many states have systems which are certified as functional under the Family Support Act but which have not yet achieved statewide application (so-called level 1 certification). Even systems which are not certified as fully functional under the Family Support Act can be operational and productive, supporting efforts of staff to meet many of the demands of the program. Taken altogether, there are currently forty systems which are operational to a greater or lesser degree.

The Los Angeles County Experience

Although only one-fifth of the states have received level 2 certification, I believe that the process which began with the automation requirements of the Family Support Act has been extremely beneficial in moving the states toward greater productivity and increased responsiveness to public need. In this regard, I know that our experience in Los Angeles County is emblematic of similar efforts which have taken place all around the country. Long before the first lines of software programming code were written, staff began a comprehensive evaluation of the way we did business. The point of this effort was to avoid a common pitfall in automation projects, that is, simply automating the status quo. Instead, we committed ourselves to rethinking each and every one of our procedures and work processes in the light of the benefits automation could bring.

The task we set for ourselves was to automate every function that did not require the individual attention or discretion of a staff member. If, for example, programming criteria could be developed to evaluate the need for and initiate action to locate a new address or employer for a non-custodial parent, then staff would be freed from this necessary but onerous and routine task to focus efforts on activities which might more closely and directly support the establishment of paternity or the enforcement of a support order. Along the way, every assumption which underlay our approach to our work–no matter how long-standing–was challenged and rethought. Existing organizational structures, policies and procedures were also rethought and, in many cases, redesigned, retooled or even scrapped.

As a consequence of this process, Los Angeles County's automation system exceeds the functional certification requirements of the Family Support Act and its implementing regulations. As part of their certification review, staff from the Division of Child Support Information Systems of the Administration for Children and Families identified several components of our design as "best practices," model features worthy of emulation.

As pleased as all of us in Los Angeles County are with the architecture and design of our system, we are far more pleased with the productivity which is now being realized as a result of automation. As attachments to this testimony I have included graphs which demonstrate in sequential terms the practical outcomes which have resulted from the implementation of our system:

- Graph 1 displays the explosion of successful locate activity which has occurred since the Los Angeles system came on line in February of 1995. Locating non-custodial parents, their employers and their assets is essential to successful operation of any child support program. Our system records each locate activity which occurs, maintains a file of all historical locate data and generates subsequent tasks which flow from a successful locate effort.

- Graph 2 describes one direct consequence flowing from the successful locate efforts described in Graph 1. In calendar year 1995, the District Attorney's office filed 75,309

lawsuits to establish paternity and child support on behalf of families in our caseload. As large a number as that is, we are projecting that the number of lawsuits filed in calendar year 1996 will approach 175,000--an increase of more than 130%. This is made possible not only by the increased effectiveness of our locate efforts but also because the system is designed to generate the necessary paperwork for the lawsuit as soon as all necessary data elements are in place.

- Graphs 3 and 4 depict Los Angeles County's increased success in establishing paternities and securing court orders for support over the last three years. These are ultimate outcomes which flow from our escalating success at locating non-custodial parents and filing the lawsuits to bring them before the courts. As dramatic as the increases--particularly the doubling of paternities established--already seem, our expectation is that the lawsuits filed this year will yield even more impressive results in years to come.

As I hope the successes described in the accompanying graphs make clear, automating the child support program is a task worthy of our time, effort and expense. If measured only in terms of the increases in staff productivity and outcomes achieved, the payback period is short. In fact, payback often begins to take place even before a system achieves "certified" status. This is because states are reengineering their business practices in anticipation of automation, in much the same way that I described the process we followed in Los Angeles. States are also expending considerable effort in preparation for automation by cleaning up their caseloads, identifying gaps in information and taking action to update their case records.

Many of these efforts result in increased positive outcomes well before automation systems are ready to go on-line. In one sense, the situation is not unlike the experience our nation had after the launch of the space program. Long before we landed on the moon, our nation benefited in diverse ways from the scientific effort which supported our attempts to explore space. Similarly, even in states where automation has not been fully realized, families are seeing benefits from the efforts undertaken in preparation for start-up.

There was a time, not all that long ago, when Los Angeles County's performance in the child support program was well below the average of the other counties in California. With all our efforts, the process of trying to manage hundreds of thousands of cases in a paper driven system under the complex mandates of Title IV-D yielded poor results at best. Because of our size, the impact of that poor performance had statewide, even national, implications.

I am pleased to tell you that such is no longer the case. Today, Los Angeles County is not a giant anchor dragging down California's overall performance. Instead, in key areas such as successful locates and paternity establishment, our performance can be likened more to a sail, leading the statewide average and acting as a positive force to pull statewide improvement forward. None of this would be possible without automation. And automation could not have been achieved without the commitment of resources by Congress in the child support enforcement program.

Future Measures of Success

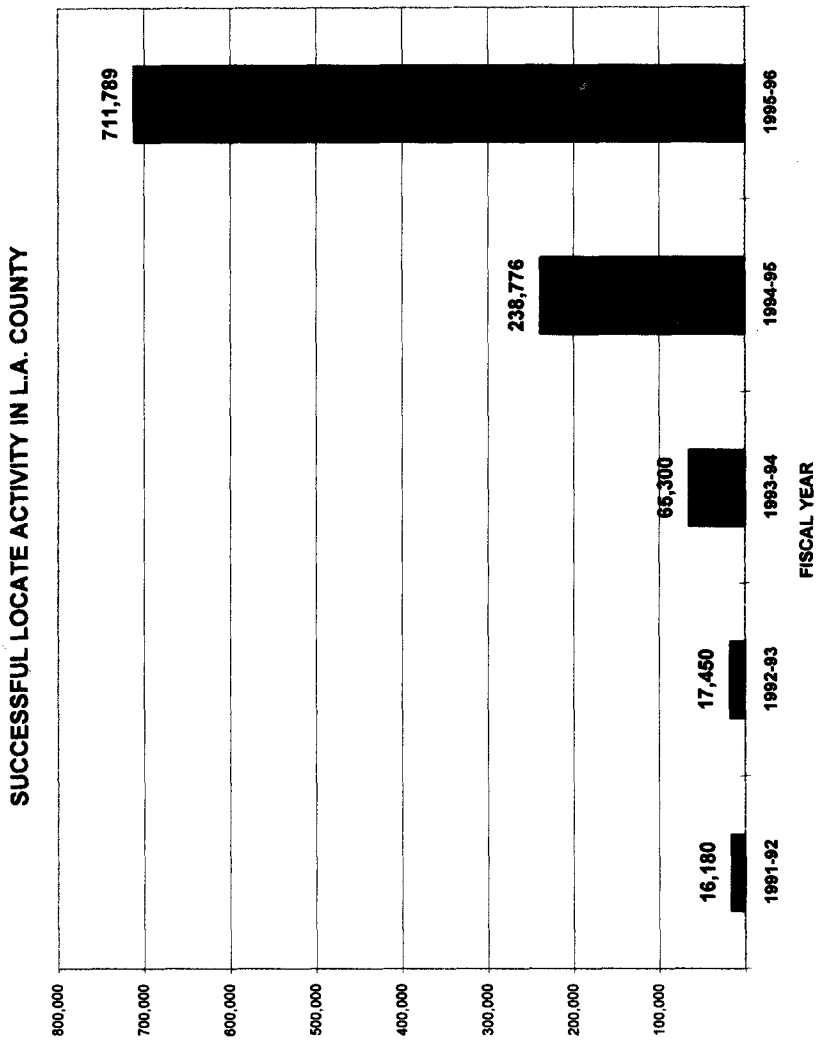
In enacting the *Personal Responsibility and Work Opportunity Reconciliation Act,* Congress has taken a historical step in the reform of our nation's welfare system. At the

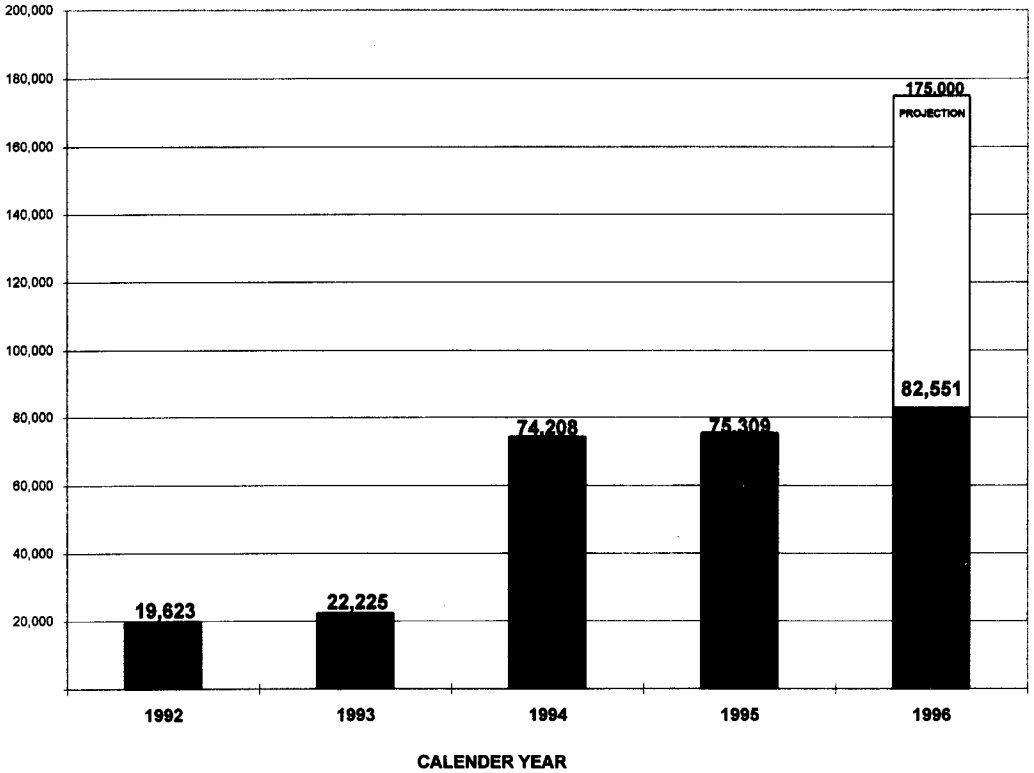
same time, Congress has elevated the importance of the child support enforcement program in securing better lives for our youngest citizens. It is essential that you continue to critically examine the progress we in the states are making toward the goal of ensuring that parents assume primary responsibility for the financial well being of their children.

As you continue to examine this program, and particularly as you contemplate the future funding structure that will govern the federal and state partnership in this effort, I ask that you keep the following in mind. As a nation, we do not hesitate to maintain a defense force that we hope never to use because we know that not every nation will act with peaceful intent toward us. As citizens, we understand the need to maintain and support law enforcement and justice systems to protect us from members of our society who do not abide by commonly accepted norms of behavior. In neither instance do we measure the return on our investment in dollar value; instead, we measure the return by the level of the security we enjoy.

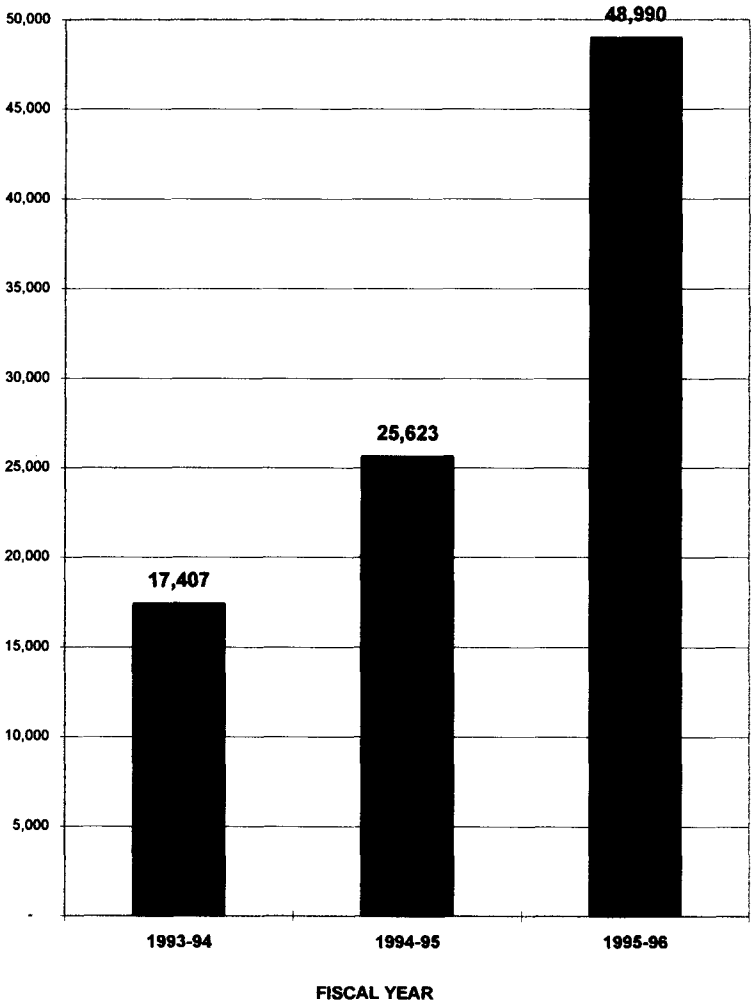
The basic obligation of parents to support their children is one which all of us here today recognize and accept. Nevertheless, we know that not all parents demonstrate the same acceptance of this proposition. It is important and necessary that we engage in efforts to ensure that parents honor their financial obligations to their children. While the result of our efforts to recapture taxpayer dollars is a useful measure of our success, it is not by any means the only measure. The child support enforcement program is important because it has ramifications for the protection of all families, not only those who have been made so vulnerable by abandonment that they must seek government assistance to survive. As more and more families move away from long term reliance on welfare, future measurements of our program, and the value of taxpayer investment in it, must include consideration of the benefits and protections offered to all those we serve. Whether the dollars spent are earmarked for automation, administration or other services provided through the program, the security enjoyed by all children, not only those who are aided, must be the ultimate assessment.

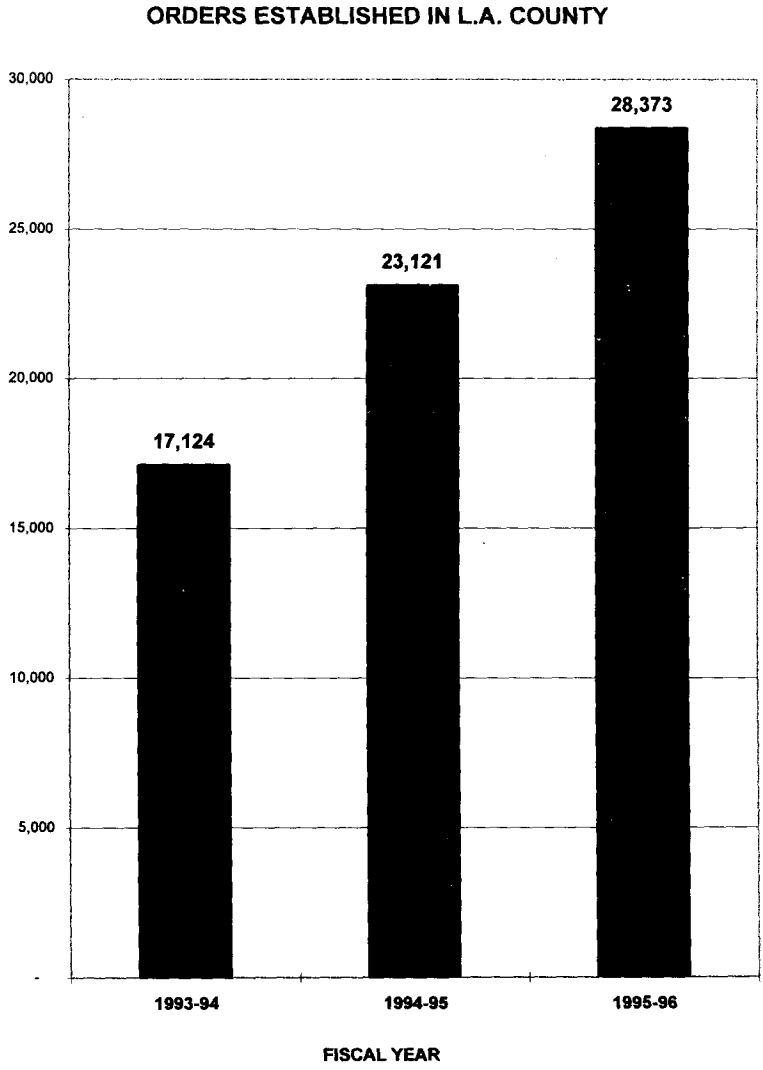
Thank you, again, Mr. Chairman and Members of the Committee, for inviting us to participate in this hearing. I shall be happy to answer any questions you may have.


SUCCESSFUL LOCATE ACTIVITY IN L.A. COUNTY
800,000
700,000
600,000
500,000
400,000
300,000
200,000
100,000
16,180
17,450
65,300
238,776
711,789
1991-92
1992-93
1993-94
1994-95
1995-96
FISCAL YEAR


LAWSUITS FILED TO ESTABLISH JUDGMENTS FOR PATERNITY AND CHILD SUPPORT
200,000
180,000
160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
19,623
22,225
74,208
75,309
82,551
175,000
PROJECTION
1992
1993
1994
1995
1996
CALENDER YEAR

PATERNITIES ESTABLISHED IN L.A. COUNTY




ORDERS ESTABLISHED IN L.A. COUNTY
30,000
25,000
20,000
15,000
10,000
5,000
-
17,124
23,121
28,373
1993-94
1994-95
1995-96
FISCAL YEAR

Chairman SHAW. Thank you, and congratulations for the great success.

Mr. Weaver.

Mr. WEAVER. Thank you.

STATEMENT OF JAMES R. WEAVER, DIRECTOR, CHILD SUPPORT, UNISYS CORP., BLUE BELL, PENNSYLVANIA; AND HUMAN SERVICES INFORMATION TECHNOLOGY ADVISORY GROUP

Mr. WEAVER. Mr. Chairman, and distinguished Members of the Subcommittee, I thank you for this opportunity to present concerns around the areas of automated systems development in the Child Support Enforcement Program.

My name is Jim Weaver, and I am director for Child Support Services for the Unisys Corp., and I have held both public and private sector positions for the past 15 years, starting in Pennsylvania where I worked as a hearing officer, and then I held various management positions in both the State of Pennsylvania and the State of Virginia.

Unisys has been involved in the systems development area in child support, and we have activities currently in 10 States. Our involvement ranges from providing hardware and technology to being the full systems integrator.

Unisys is also an active member of the Human Services Information Technology Advisory Group. This informal group of public companies working with State and local governments in the human services area was formed more than 3 years ago. The group advises on modern management methods, improved delivery of human service programs through information technology, and provides industry perspective on information technology issues related to the delivery of the services to the Nation's human services agencies.

Many of these companies are engaged in providing services to State and local child support enforcement agencies. My testimony today reflects the position of this group.

Chairman Shaw, you asked that I specifically address the issue of child support enforcement automated data processing, and the benefits and critical need for information technology in child support enforcement as we move into the 21st century.

We believe that States have made substantial improvements in the child support program consistent with the testimony that has been provided so far. It is important to recognize the dynamic environment in which States operate. There have been significant program and policy changes resulting from Federal legislation that affect changes in scope and schedule of the automation initiatives. I would like to highlight some of these changes and the impacts on the States.

In 1980, as you are aware, Congress authorized enhanced Federal funding to encourage States to develop and install child support systems. Congress believed the State's information systems would provide better program management and expedite coordination among programs across jurisdictions.

Beginning in 1994, enhanced Federal funding was provided for hardware and costs to automate the income withholding programs.

The majority of the States began developing child support systems in the early and mideighties, and for the most part, the earlier Federal efforts to persuade States to adopt the national model were not successful.

In 1986 HHS had helped to fund over 300 separate State and local automated systems development projects. And in 1988, 39 States and territories had received enhanced funding. An additional 13 had claimed regular funding for system-related costs.

While all these positive initiatives were taking place, States were faced with additional requirements with the result of the Family Support Act of 1988. The Family Support Act required States to computerize child support programs and enact other major policy changes.

This legislation had a significant impact on State's child support system development efforts. States were forced to enhance or replace legacy applications with fully certified systems by October 1, 1995.

The administration has acknowledged the situation was further complicated by not issuing the Federal rules implementing the FSA requirements until October 1992, and the revised certification guide until June 1993. The constant legislative changes to the child support program have had an impact on State's efforts to automate their programs, we believe.

The Child Support Enforcement Program is one of the most complex programs in the health and human services area. Many States have and continue to be confronted with the difficult task of integrating pervasive legislative changes into their systems development life cycle.

In spite of these dynamics, many States have realized significant benefits from the automation efforts. To cite several examples, Washington State has reduced clerical staff by 400 positions while increasing the average collections for full-time employees from $162,000 to $371,000.

System development efforts have also allowed States to improve service in a number of other ways. System development efforts have provided an opportunity to purify and clean up existing data, to allow workers to focus on active cases, and not cases that needed to be purged from the system.

The State administrators have been able to reevaluate staff needs and roles as automation redirects their resource allocation.

States focusing on program outcomes have had to take a proactive approach in changing service delivery even before the recent welfare reform legislation was enacted. Forty-one States have some form of license revocation, 18 States have centralized collection units, and numerous States across the Nation have employed creative techniques with partners from the private sector to enhance delivery to their clients.

In 1995, Congress extended the certification deadline to October 1, 1997, and the recent welfare reform legislation has extended the funding through 1997 for those funds that have been approved in the APDs as of October 1, 1995. To date, 10 States have certified systems under FSA, an additional 3 States are pending certification.

My people I believe would agree that the welfare reform legislation will strengthen the child support program. This legislation will again significantly impact the States' abilities to computerize the necessary requirements. While provisions will specifically require additional child support systems or system modifications, others will result in less pervasive changes.

However, every child support enforcement provision depends upon State automation capacity, and requires major or minor changes to the State application.

First, the legislation requires States to add or enhance new databases for the child support program.

Second, the legislation requires States to add or enhance automated interfaces between the IV–D Program and in a variety of public and private agencies.

Third, legislation requires States to increase the IV–D case management capacities of their systems.

Fourth, the legislation requires States to improve their ability to collect, calculate, and report on performance measure.

And fifth, the legislation requires State automated systems to implement a range of new child support policies. And as indicated earlier, we believe this legislation to some extent assumes that States' systems are already up and statewide and fully operational, which we know is not the case.

We believe it is important to recognize the advancements and the successes in the child support program, and the direct results that have come through automation. It is also important to support the continued efforts of the States to completely install their systems without additional program revisions.

The Child Support Enforcement Program is and we believe will be successful only with the necessary support of automated systems.

The welfare reform measure is including State registries, and as they expand and locate, automated enforcement is an important step in the strengthening of the program, but will be an additional strain on existing State systems.

Automation of the Child Support Enforcement Program we believe is essential. This Subcommittee and Congress have supported the efforts and shall continue to do so to enable the child support program to continue to achieve the results it has demonstrated to date.

Thank you for the opportunity.

[The prepared statement follows:]

UNITED STATES HOUSE OF REPRESENTATIVES
WAYS AND MEANS SUBCOMMITTEE ON HUMAN RESOURCES

HEARING ON CHILD SUPPORT ENFORCEMENT AUTOMATION
SEPTEMBER 19, 1996

Statements of
James R. Weaver
Director, Child Support
UNISYS CORPORATION
and representing
HUMAN SERVICES INFORMATION TECHNOLOGY ADVISORY GROUP

Chairman Shaw and distinguished members of the Subcommittee, thank you for this opportunity to testify before you concerning automated systems development in the child support enforcement program. I am Jim Weaver, Director of Child Support for Unisys Corporation. I have held both private and public sector positions in the child support program for more than 15 years. I started my career in child support enforcement as a Hearing Officer in Pennsylvania and have held various management positions in Pennsylvania and Virginia.

Unisys has been involved in over 10 state child support system development projects across the Nation. Our involvement ranges from providing hardware and technology to being the full systems integrator.

Unisys is also an active member of the Human Services Information Technology Advisory Group (HSITAG)[1]. This informal group of private companies working with state and local governments in the human services area was formed more than three years ago. The group advises on modern management methods, improved delivery of human service programs through information technology, and to provide industry perspectives on information technology issues related to the delivery of these services to the nation's human services agencies. Many of these companies are engaged in providing services for state and local child support enforcement agencies. My testimony today reflects the positions of this group.

Chairman Shaw, you asked that I specifically address the issues of child support enforcement automated data processing, and the benefits and critical need for information technology in child support enforcement as we move into the 21 century.

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[1] The following companies are involved in the Human Services Information Technology Advisory Group (HSITAG): American Management Systems, Inc., Andersen Consulting, BDM Technologies, Deloitte & Touche, Digital Equipment Corp., Integrated Systems Solutions Corp., Lockheed Martin IMS, EDS, Maximus, National Comprehensive Services Corp., Network Six, Inc., SHL Systemhouse, Inc., Software AG, Sun Microsystems, and Unisys Corp.

We believe that states have made substantial improvements in child support enforcement since the program began and that many of these improvements are the result of automation initiatives. It is important to recognize the dynamic environment in which states operate. There have been significant program and policy changes resulting from Federal legislation that effect changes in scope and schedule of automation initiatives. I would like to highlight some of these changes and the impact on states.

In 1980, Congress authorized enhanced federal funding to encourage states to develop and install child support systems. Congress believed that state information systems would provide better program management and expedite coordination among programs and across jurisdictions.[2] Beginning in 1984, enhanced federal funding[3] was provided for computer hardware and the cost to automate income withholding programs.

The majority of states began developing child support systems in the early and mid - 1980s. For the most part, early federal efforts to persuade states to adopt a national model failed.[4]

By 1986, HHS had helped fund over 300 separate state and local automated child support systems. By 1988, 39 states and territories had received enhanced funding, and an additional 13 had claimed regular funding for systems-related costs.[5]

While all these positive actions were taking place, states were suddenly faces with additional requirements as a result of the 1988 Family Support Act (FSA). ,[6] The Family Support Act required states to computerize child support programs and enact other major policy changes[7]. This legislation had a significant impact on every state 's child support system development efforts. States were forced to enhance or replace legacy applications with a fully certified system by October 1, 1995. The Administration has acknowledged this situation was further complicated by not issuing Federal rules implementing the FSA requirements until October 1992, and the revised certification guide until June 1993.[8]

The constant legislative changes to the child support enforcement program have had an impact on states' efforts to automate their programs. The child support enforcement

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[2] Sen. R. 96-408, 1980 U.S. CODE CONG. & AD. NEWS, 1346.

[3] Authorized by the Child Support Enforcement Amendments of 1984, 98-378.

[4] *See* 46 Fed. Reg.47788 (Sept. 30, 1981); OCSE, *Child Support Enforcement: Seventh Annual report to Congress* (for the period ending September 30, 1982). OCSE advanced two prototypes of a comprehensive, transferable computer system called "Model I" and "Model II". Model I was for jurisdictions with smaller caseloads and Model II was for jurisdictions with larger caseloads.

[5] *OCSE, Child Support Enforcement: Thirteenth Annual Report to Congress (for period ending Sept. 30, 1988)*; GAO, *Child Support: State Progress in Developing Automated Enforcement Systems,* GAO/HRD-89-10FS (1989). According to OCSE data, only Guam and the Virgin Islands claimed zero systems funding in 1987 and 1988. *See* OCSE, *Child Support Enforcement: Sixteenth Annual Report to Congress (for period ending September 30, 1991),* Table 31.

[6] P.L. 100-485.

[7] These policies included mandatory child support guidelines, review and adjustment of orders, immediate income withholding, and genetic testing in paternity cases.

[8] OCSE, *Automated Systems for Child Support Enforcement: a Guide for States* (rev. June 1993).

program is one of the most complex programs in the health and human services area. Many states have, and continue to be confronted, with the difficult task of integrating pervasive legislative changes into their system development lifecycles.

In spite of these dynamics, many states (and the families and children they serve) have realized significant benefits from automation efforts. To cite several examples, Washington State has reduced clerical staff by 400 positions, while increasing the average annual collection per full time employee from $162,000 to $371,000, due to their automation efforts over the past eight years. Likewise, the state of Georgia has gone from generating child support payments on a weekly basis to generating checks daily.

System development efforts have also allowed states to improve service in a number of other ways. For example, data purification and clean-up activity have allowed workers to focus on active cases and not cases which need to be purged from the system. State administrators have been able to re-evaluate staff needs and roles as automation redirects resource allocations. Likewise, administrators have engaged in critical reviews of case handling activities, as a function of process re-engineering. These activities are all by-products of system automation.

States focusing on program outcomes have taken a proactive approach in changing service delivery even before the recent welfare reform was signed into law. Forty-one states have some form of license revocation. Eighteen states have centralized collection units. Numerous states across the nation have employed creative techniques with partners from the private sector to enhance service delivery to clients. .

In September 1995, Congress extended the certification deadline to October 1, 1997. The recent welfare reform legislation provided a funding extension through October 1997. To qualify, a state had to have an approved APD for funding effective October 1, 1995. To date, ten states have certified systems under FSA[9] and an additional three states are pending certification[10].

Most people would agree welfare reform legislation will strengthen the child support enforcement program. This legislation will again significantly impact state computerization efforts in several ways. Some provisions will specifically require additional child support systems or system enhancements. Others will result in less pervasive change. However, nearly every child support provision depends upon state automation capacity and will require major or minor changes to state computer applications.

First, the legislation requires states to add or enhance new data bases to the child support program, including:

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[9] Montana, Delaware, Georgia, Virginia, Washington, West Virginia, Arizona, Wyoming, Utah, and Connecticut.

[10] New Hampshire, Mississippi, and Louisiana.

- a central case registry of IV-D cases and support orders established or modified in the state after October 1, 1998,
- a new-hire directory,
- a centralized unit to collect and disburse child support payments, and
- a registry of paternity orders and acknowledgments.

Second, the legislation requires states to add or enhance automated interfaces between the IV-D program and a variety of public and private entities. These interfaces are intended to improve the IV-D program's ability to locate non-custodial parents, to initiate enforcement actions, and to coordinate with state public assistance programs.

Third, the legislation requires states to increase their IV-D case management capacity, by imposing new data collection, data security, case monitoring, and case processing requirements.

Fourth, the legislation requires states to improve their ability to collect, calculate, and report performance measure.

Fifth, the legislation requires state automated systems to implement a range of new child support policies, including:
- revised distribution rules,
- new paternity and cooperation policies,
- new non-custodial parent provisions, and
- expanded medical support requirements.

Again, this legislation assumes a state will be able to build on its current automated system, many of which are not yet in place. While states with certified or nearly certified operational systems may be able to absorb new system changes, other states may run the risk of falling farther behind as they attempt to develop old and new systems concurrently.

It is important to recognize the advancements and successes in the child support program that are the direct result of automation. It is also important to support the continued efforts of the states to completely install their systems without additional program revisions. The child support enforcement program is, and will be, successful but only with the necessary support of automated systems.

Welfare reform measures, including state registries, expanded locate interfaces, and automated enforcement, are important steps in strengthening the child support program but will put additional strain on existing state systems. Automation of the child support program is essential. This subcommittee and Congress has supported these efforts and should continue to do so to enable the child support program to continue to achieve the significant results it has demonstrated to date.

Thank you again for this opportunity.

Chairman SHAW. Thank you, Mr. Weaver. There is a vote on the floor. The Members will recess at this point to go over and vote. We will be back in approximately 15 minutes, and we will lead off with Ms. Frye.

[Recess.]

Chairman SHAW. We will wait just another moment to give the Members just another minute to return. There should not be any further interruptions to the hearing. On the floor they are taking up the partial birth abortion issue, and that is going to take a couple of hours, so I do not think we will be interrupted again.

Ms. Frye.

STATEMENT OF LESLIE L. FRYE, CHIEF, OFFICE OF CHILD SUPPORT, DEPARTMENT OF SOCIAL SERVICES, SACRAMENTO, CALIFORNIA

Ms. FRYE. Thank you, Mr. Chairman.

As Judge Ross stated this morning, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires the Secretary of the Department of Health and Human Services to work with States to develop recommendations to Congress for changes to the child support incentive system by March 1, 1997.

It is especially important to redesign the current system as we implement a new commitment to moving families to self-sufficiency.

The current Federal system of paying incentives to States is wrong. It is wrong because the better a State does to meet the key program outcomes, the worse the State will be financially.

California has been engaged over the last several years in changing the basis for incentive payments to our 58 counties which operate the programs locally. We have departed from the Federal system which rewards only collections and cost effectiveness in favor of a performance-based system. Given that 14 of our counties are larger than at least one other State, that Los Angeles County would be the fourth largest State if it were to secede from California, and that our county government in California is very strong and comprehensive, I believe we have some good advice and insight to offer Congress and the Secretary in considering how to approach this task.

The California experience with performance-based incentives shows that significant progress can be achieved through a focus on outcomes, agreement on criteria, and a commitment by all of the partners to program improvement.

In California, we did away with the differentiation that the Federal system now has between public assistance and nonpublic assistance collections in determining incentive payments. We did this because we recognize that many of our so-called nonpublic assistance families were just one child support check away from having to return to the welfare department. More than 50 percent of the families we call "nonassistance" or "nonpublic assistance" are actually continuing service families who entered our system through an application for cash benefits.

Clearly, it is in all of our best interests to maintain vigilance with regard to child support for these families. The current funding

system considers only two factors in determining a State's incentive level; collections and cost effectiveness.

In other words, the State that collects the most money at the least cost wins. States which invest in educating their teens and their public about responsible parenthood, States with innovative programs to obtain private medical insurance for children, States that have effective paternity establishment programs, and States that invest in user friendly order establishment processings, will not necessarily fare as well as States which focus solely on bigger and better enforcement tools to get more money at lower cost from the available pool of obligors.

In California, we found that focusing on a few widely acknowledged program outcomes has led to significant improvements in a relatively short period of time. I refer you to the charts at the back of the testimony called California's Performance-Based Incentive System Results. And I will show you these.

This tracks our paternity establishment progress for a 10-year period. In the middle of the chart we began our performance-based incentive system, and I think you will see that performance improved markedly once we started focusing on those outcomes.

The next chart is Orders Established, and similarly, we had progress before, but once we began this performance-based system, things really picked up.

And the last chart is Collections. Again, we had been making improvement, but the graph shows a marked improvement, especially in the last year or so.

We think we can reach some kind of a consensus with the States and with the Federal Government to develop a performance-based system. Our system is based on several underlying principles which I think are important to keep in mind.

First, we must agree that everybody, States, the Federal Government, and families wins when child support performance improves. Securing regular child support for families does more than just save title IV–A dollars. Regular monthly payments mean that families can actually seek employment and move out of dependency.

We need to quantify the actual effects of child support as we recognize that more and more, the recruitment of welfare dollars is no longer going to be the sole way that we measure our success in this program. We must agree that the purpose of the new system is to secure improvements, not to cut child support budgets.

The new incentive system must be responsive to actual improvements in performance unlike the old AFDC quality control system that was hung up for years in appeals and disagreements about the measurement system.

At the same time, we should not disrupt State budgets and allow sufficient time for States to retool their programs to focus on these new performance expectations. We need to evaluate a simple set of widely agreed upon performance measures and move to that system over time.

The new incentive system must focus on outcomes which can be readily agreed upon, and States must be able to win either by beating some national standard, or beating their own past performance, which is the method that Congress has used with regard to the paternity establishment percentage.

I do not have a magic formula. As Judge Ross indicated, a lot of work, ground work, has already begun, and we look forward to working with his office in developing these recommendations for Congress. This will not be an easy task, but by working together toward a common goal, and with common sense, we can develop a funding structure that does not reward the wrong behavior in trying to move families to self-sufficiency.

Thank you.

[The prepared statement and attachments follow:]

TESTIMONY OF LESLIE L. FRYE
HOUSE WAYS AND MEANS COMMITTEE
SUBCOMMITTEE ON HUMAN RESOURCES
SEPTEMBER 19, 1996

Thank you for the opportunity to address the Subcommittee on Human Resources today, on the subject of the incentive system for the Child Support Enforcement Program. My name is Leslie Frye, and I am Chief of the California Office of Child Support, which oversees the administration of the Title IV-D Child Support Enforcement Program throughout the state.

The Child Support Enforcement Program collected over $10.8 billion in Federal Fiscal Year 1995 at a cost of $3 billion nationwide, recovering $2.7 billion in public assistance expenditures (FY 1995 Preliminary Data Report, May 1996, Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement). Federally funded incentives are paid to states based on their collections and their cost effectiveness ratios. These incentives are used in many states to provide matching dollars which fund the services of the program. In California, the combination of federal financial participation and incentives provides a total federal funding level of about 83 percent of program costs.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193, H.R. 3734) requires the Secretary of the Department of Health and Human Services to work with state child support administrators and others to develop recommendations to Congress for changes to the incentive system by March 1, 1997.

It is especially important to redesign the current system as we implement a new commitment to moving families to self-sufficiency. The current incentive system values collections for persons actually receiving public assistance benefits under IV-A of the Social Security Act more than collections for persons who have made the move to independence. In other words, states that have done a good job helping families off the public assistance rolls are actually jeopardizing their funding, compared to states that keep people on the dole. This makes no sense, yet, heretofore Congress has capped incentives for non-public assistance collections at 115 percent of the amount paid for collections on behalf of public assistance recipients. To the extent that states become more able to move families into self-sufficiency under the terms of the Personal Responsibility and Work Opportunity Reconciliation Act, this illogical effect will increase, unless the incentive system is revised.

This is particularly true considering the changes Congress made with regard to the ownership and priority of payment of child support arrearages. States have "owned" arrearages that accrue prior to a welfare episode; after the year 2000, these will belong to families. States now have the option of "paying themselves back" for welfare costs before paying families for post-welfare arrearages which accrue after the family leaves public assistance; under the Personal Responsibility and Work Opportunity Reconciliation Act, families will receive their arrearages before government is reimbursed for welfare costs. While these changes mean that families may be helped to sustain self-sufficiency, which we all support, the traditional method of evaluating success in the Child Support Enforcement Program--looking at the recovery of welfare funds--will become less and less meaningful, to the extent that we are successful in helping families avoid dependency.

The current federal system of paying incentives to states is wrong. It is wrong because the better a state does to meet the key program outcomes, the worse off the state will be financially. In fact, the incentive system is topsy-turvy. A state that behaves rationally earning the greatest incentive under the current system will likely be dismally out of compliance with program standards and therefore subject to audit sanctions.

In order to counteract the logic of the current incentive system, the Office of Child Support Enforcement (OCSE) must employ an army of auditors to conduct time- and resource-intensive case reviews every three years to make sure that states are not behaving rationally under the current scheme.

California has been engaged over the last several years in changing the basis for incentive payments to our 58 counties which operate the program locally, under the elected district attorneys in each county. We have departed from a system which rewards only collections and cost effectiveness, in favor of a performance-based system. Given that 14 of our counties have caseloads larger than at least one state, that Los Angeles County would be the fourth largest state if it were to secede from California, and that county government in California is strong and comprehensive, I believe that we have some good advice and insight to offer Congress and the Secretary in considering how to approach this task. Further, the California experience with performance-based incentives shows that significant progress can be achieved through a focus on outcomes, an agreement on criteria and a commitment by all of the partners to program improvement.

In California we did away with the differentiation between public assistance collections, in the determination of incentive payments to counties, more than five years ago. We did this because we recognized that many of our so-called "non-public assistance" collections, in the determination of incentive payments to counties, more than five years ago. We did this because we recognized that many of our so-called "non-public assistance" families were just one child support check away from having to return to the welfare department. We estimate that about 50 percent of the families we serve as "non-welfare" are actually "continuing services" families who entered our system through an application for cash benefits. In low grant states the continuing services population is even higher, up to 75 percent in Texas. Clearly it is in all of our best interests to maintain vigilance with regard to child support to ensure that families remain self-sufficient.

California made the investment in these incentives for non-welfare families, and the counties' funding is not capped the way states' funding is capped by the federal incentive system. The result has been that performance increased across the board, for both public assistance and non-public assistance families. But states currently earn no additional incentives for keeping families off cash aid and perversely can increase their incentives by keeping families on the welfare rolls.

Another anomaly in the current system is that the activity which establishes paternity and orders for support, the activity to reduce Medicaid expenditures by securing private medical insurance for children, and the activity to encourage responsible parenthood and prevent unwanted pregnancies that all child support programs engage in, are not supported by the incentive system. The current system considers only two factors in determining a state's funding level: collections and cost effectiveness. In other words, the state that collects the most money at the least cost wins. States which invest in educating their teens and their public about responsible parenthood, states with innovative programs to obtain private medical insurance for children, states that have effective paternity establishment programs, and states which invest in user-friendly order establishment processes will not necessarily fare as well as states which focus solely on bigger and better enforcement tools to get more money at lower cost from the available pool of obligors. While strengthening enforcement capabilities, which California and many states have done in advance of the Personal Responsibility and Work Opportunity Reconciliation Act, is very important, and we applaud the features of the Act, it will take a broader approach to recognizing and rewarding performance to achieve significant improvements in the long run.

In California we have found that focusing on a few widely acknowledged program outcomes has led to significant improvement in a relatively short period of time. I refer you to the charts titled **California's Performance-Based Incentive System**, which track our improvements in paternities and support orders established, and in collections from 1985 through 1996. The line in the center of the chart marks the beginning of our new incentive

system. As these charts show, once we began paying counties for performance, performance improved markedly. There was growth in the key indicators of program performance--the number of paternities established and collections--during the years before we implemented this system. But please notice that the pace of improvement increased considerably when we began to reward counties for outcomes.

Underlying California's performance-based incentive system are several principles which I would encourage Congress and the Secretary to consider when embarking on the design of a new incentive system. Without agreement on these concepts it is unlikely that states and the federal government will be able to reach consensus on any new approach. First, we must agree that everybody--states, the federal government and families--wins when child support performance improves. Securing regular child support for families does more than just save Title IV-A dollars. Regular monthly payments, along with private medical insurance where available, bring stability to families, shoring up the custodial parent's ability to gain and hold employment. It lets children know that two adults are looking out for their well-being. It relieves the pressure on any number of public and private assistance funding pools.

Much work needs to be done to quantify the cost avoidance contributions of the Child Support Enforcement Program. The paradigm has shifted with the Personal Responsibility and Work Opportunity Reconciliation Act. We must recognize that we, the federal and state governments, are partners in the success of families, helping them avoid or shorten welfare dependency by putting child support collections in their hands, not in our treasuries.

We must agree that the purpose of the new system is to secure improvements, not to cut budgets in the child support program. The more successful we are in enabling families to move off welfare rolls, the more each dollar of public assistance may cost to recover. Single parent families with minimal resources with which to establish independence from the welfare system will likely have non-custodial parents in similar circumstances. These parents, fathers mostly, may need additional investment if they are going to shoulder their responsibilities to provide for their children. It is important that we look beyond the recovery of expended welfare dollars as the single measure of program success.

The new incentive system must be responsive to actual improvements (or declines) in performance, unlike the former AFDC quality control system which looked at years-old data and was mired in endless appeal processes. At the same time, the new system should not be disruptive to state budgets, allowing sufficient time for states to re-tool their programs to focus on performance expectations. These principles argue for a simple evaluation of a few key program outcomes and a phased-in approach. In California, we gradually increased the impact of the new system on counties over a five-year period, and provided a great deal of assistance with corrective action and re-engineered business practices, with the result that performance in every county improved over time.

The performance indicators on which incentives are based should be measurable and consistent. Data consistency and integrity are major barriers to nationwide performance evaluation, and likely to remain controversial. Additionally, states currently are at varying levels of performance. In order to address these issues, the new incentive system must focus at least initially on performance outcomes which can be readily agreed-upon and measured, and states must be able to "win" either by beating some national standard or by besting their own past performance. Congress has already taken this approach with the Paternity Establishment Percentage which requires that states meet a standard or improve by a specified amount each year to avoid sanction.

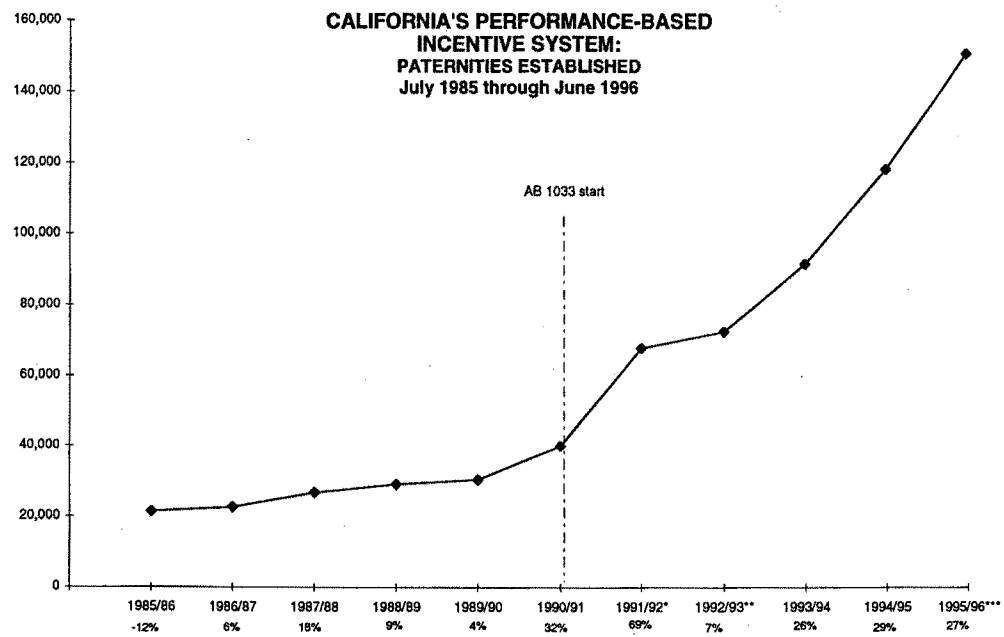
I do not come before you today with a magic formula to recommend. There already has been a great deal of discussion within the child support community and with OCSE about performance measures and outcome-based incentive systems. This work can serve as a starting place for us to develop a new incentive system that supports program goals. We will need the assistance of the Secretary to develop a cost-avoidance analysis to address the real effects of the Child Support Enforcement Program in the new environment where the recovery of public

assistance funds is no longer the sole measure of a successful program. Congress provided resources for technical assistance to the Office of Child Support Enforcement in the Personal Responsibility and Work Opportunity Reconciliation Act, and I believe this analysis is an important first task to be tackled. We will need to agree on consistent and measurable performance criteria and an approach to implementation that does not devastate states that are in the midst of program improvements. We will need to gain consensus among the states and the many partners involved in the child support community that the new system provides incentives for the right program outcomes.

This will not be an easy task. But I believe that working together toward a common goal, and with common sense, we can develop a funding structure that pays for results, that is not perverse in its incentives, and that makes an investment in the self-sufficiency of the nation's families.

California Department of Social Services
Office of Child Support

Source: CS 850
July 1985 - June 1996



* 4 counties did not report
** 1 county did not report
***1995-96 amount is preliminary

California Department of Social Services
Office of Child Support

Source: CS 850
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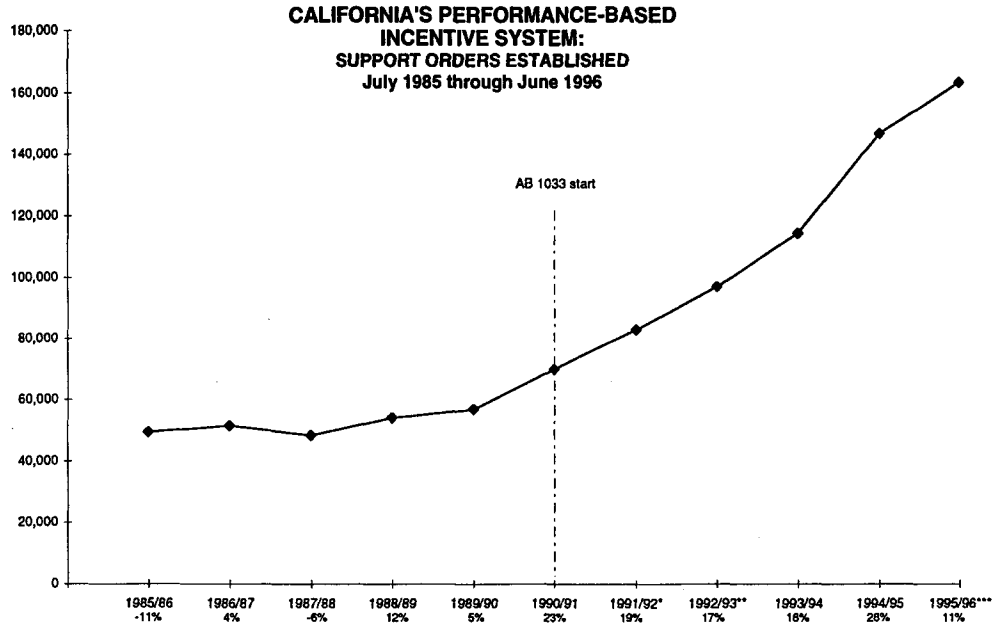
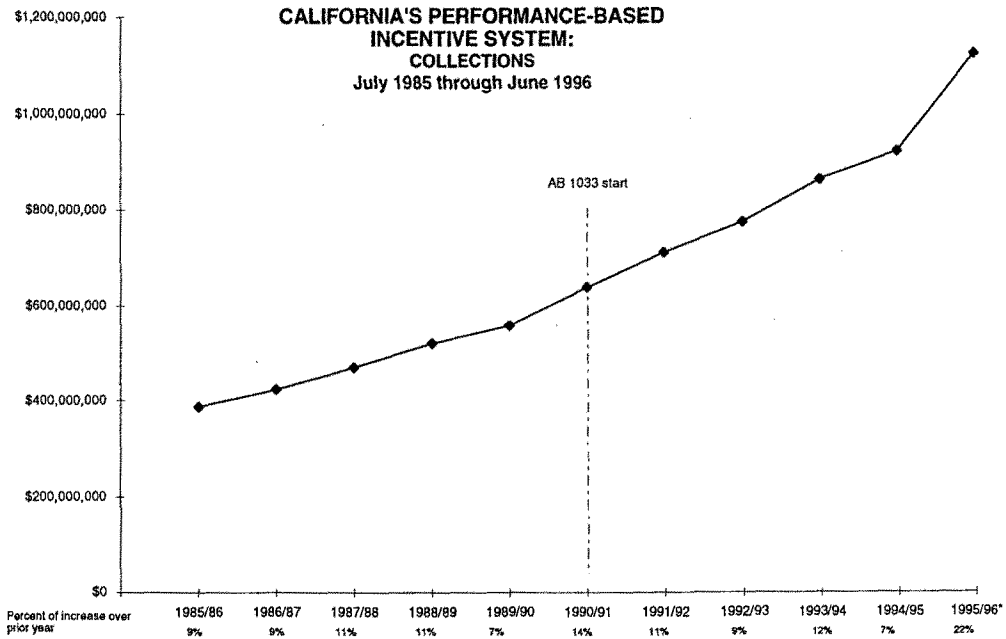


* 4 counties did not report
** 1 county did not report
***1995-96 amount is preliminary

California Department of Social Services
Office of Child Support

Source: CS 820
July 1985 - June 1996



*1995-96 amount is preliminary

Chairman SHAW. Mr. Melia.

STATEMENT OF ROBERT M. MELIA, VICE PRESIDENT, POLICY STUDIES INC., BOSTON, MASSACHUSETTS

Mr. MELIA. Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to testify. I am vice president of Policy Studies, Inc. Policy Studies is the Nation's largest private provider of child support enforcement services. We manage cases under contract to half a dozen States.

In fact, we manage more cases and collect more child support than 18 of the 50 States. And I am here today to focus on some of the bad news in child support; that the current method of funding the program will impede and perhaps undermine the central goal of welfare reform—to help families move from welfare to work.

It will do that in three ways. Number one, it will distract States from maximizing child support collections.

Number two, it will discourage, and in some instances penalize, States from helping mothers leave the welfare rolls.

Number three, it contains no incentive to States to enforce medical support orders. And as we all know, access to health care, or lack of it, is one of the key barriers to families getting off and staying off public assistance.

Over the last 15 years, Congress has been instrumental in encouraging States to use more efficient methods of collecting child support. Yet despite those new tools, and despite all the money poured into automation, there has been no overall increase in the productivity of the program.

Fifteen years ago, for every $1 we spent on child support, we collected $3.80. Today, we still collect $3.80 for every $1 spent. One of the main reasons for that is that while Congress has given with one hand, that is, encouraged and helped to finance more effective ways of collecting child support, it has taken away with the other hand. What I mean by that is that Congress has promulgated, or caused to be promulgated, scores and scores of rules and regulations that have absolutely nothing to do with actually helping to collect child support. What that does is it requires States to take time that they ought to spend tracking down delinquents, and instead, spend it tracking down data elements to prove that they are complying with all the necessary rules and regulations.

When it comes to productivity and efficiency in this program, it seems that every time we take two steps forward, we take two steps backward. The root cause of this, I believe, is the open-ended reimbursement system whereby Congress essentially says, "Our wallet is open, spend what you will, send us the bill, and we will give you two-thirds of what you spent." And that causes a reaction on the back end to build an excruciatingly elaborate system of rules, reports, and audits, to make sure that States are in fact doing what Congress would like them to do.

I think it will be a lot simpler for Congress to pay States in the first place to do what you want them to do. As far as I can tell, that is two things; collect more child support, and establish more paternity.

When my company bids on child support programs, that is in fact how States treat us. They do not pay us for complying with process

oriented rules and regulations. We have to comply with all of them, but we only get paid by collecting more child support, or establishing more paternities. That is probably one big reason why we collect 42 percent more per case than the average of the five States where we operate. I think if Congress extended this performance type funding system to all States, you would see similar, very significant improvements in performance.

Second is what happens when a State does do a good job in collecting child support and the mother starts to realize, "OK, I am getting my $250 or $300, or $350 in child support every month like clockwork, now I can afford to take that job at $6 an hour and make ends meet. I am going to leave the welfare rolls."

The existing funding system does two things to States, both of them bad.

First, it says, "OK, you have helped the mother leave the welfare rolls; as a result you will get less Federal money." That is number one.

Number two, it causes your staff and OCSE's staff to produce reports that say that every time a State helps the mother leave the welfare rolls, the Federal Government loses more and more money on this program, because there is no effort made yet, and there is no existing methodology that recognizes the fact that when families leave the welfare rolls, both the State and Federal Government save money.

As far as health insurance, the existing funding system does not provide any incentives, does not make any payments to States for enforcing health insurance orders. In fact, under some State guidelines, States can actually lose Federal money by doing a good job in enforcing health insurance orders.

There is potentially big money here. Preliminary data indicates that in Massachusetts, the efforts of a child support program cut Medicaid spending by at least $25 million, and the State does not treat it as a priority, partly because the incentive system does not treat it as a priority.

If Congress wants to maximize the chance of making welfare reform work, we have to recognize the fact that many of these families are going to need all the help that they can get from the child support program, and they cannot do that under the existing cost reimbursement system. We need to move—I think we need to move fairly quickly, to a performance-based reimbursement system.

I would be glad during the question and answer period to take more detailed questions on this.

Mr. Chairman, thank you for the opportunity to testify.

[The prepared statement follows:]

TESTIMONY OF ROBERT M. MELIA
VICE PRESIDENT
POLICY STUDIES INC

BEFORE

SUBCOMMITTEE ON HUMAN RESOURCES
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

THURSDAY, SEPTEMBER 19, 1996

Mr. Chairman, distinguished members of the committee, thank you for the opportunity to testify. My name is Robert Melia and I am Vice President of Policy Studies Inc (PSI). PSI is the private sector's largest and most experienced operator of full service child support offices, with 16 offices in six states. We also manage another four specialized services offices in Iowa, where 40 PSI staff provide establishment-only services, covering approximately one-half of the state's unobligated caseload. If PSI were a state, we would rank above 18 other states in both the size of our caseload and the dollar amount of support collections.

Before joining PSI, I was the First Deputy Commissioner of the Massachusetts Department of Revenue, where I directed the child support enforcement program from 1991 to 1995. As committee members may recall, many of the key child support requirements incorporated into the 1996 Personal Responsibility and Work Opportunity Reconciliation Act — liens arising by operation of law, automated review and adjustment, quarterly bank matches, centralized payment processing with automatic enforcement capabilities, new hire reporting — were based on innovations that were either pioneered in Massachusetts or first put into widespread use there.

In this testimony I discuss the merits of changing the way the federal government funds child support enforcement, moving from a cost-reimbursement system to a performance based system. I also examine the need for a performance based system to recognize and reward two key aspects of child support enforcement, medical support and cost-avoidance. Finally, I discuss how a performance based funding system might make child support assurance affordable, and how child support assurance would help further the goals of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act — paternity establishment, work and time-limited welfare.

THE CURRENT FUNDING SYSTEM: AN "A" FOR EFFORT

For nearly twenty years, federal funding has played a dominant role in the development of the child support enforcement program. Federal dollars have underwritten an enormous increase

in staff — now numbering more than 45,000 — and have financed the development of expensive computer systems. Over the last decade, federal spending on the program has grown at an average annual rate of 13 percent, and by federal fiscal year 1994 broke the $2 billion barrier. Moreover, in recent years Congress has been receiving alarming reports that the federal government is losing money on the program. That is to say, the federal government's share of administrative costs exceeds the amount of child support that the federal government receives to help offset AFDC costs.

Not surprisingly, Congress is now asking what it gets for its money and whether the existing financing system can be improved upon. These questions take on new urgency when we realize that there has been no increase in productivity over the last 15 years. In 1979, every dollar spent on child support enforcement yielded only $3.70 in collections. Since then, Congress has done a great deal to strengthen the effectiveness of enforcement efforts and improve productivity. Thanks to federal reform efforts, the following tools are now used in every state:

- child support guidelines, designed to increase the amount, fairness and uniformity of support orders;
- wage withholding, intended to make collection fast and simple;
- tax refund intercept, developed to be a highly cost-effective way to collect past-due child support;
- unemployment compensation intercept, intended to be a reliable way to ensure the continued flow of child support when obligors are between jobs;
- liens, designed to efficiently collect arrears; and
- the Federal Parent Locator Service, intended to be an effective way to locate obligors who move out of state.

In addition, states have developed many innovations to increase collections and productivity, including:

- voluntary, in-hospital paternity establishment to avoid the expensive, time-consuming process of proving paternity in court;
- genetic testing, to quickly and easily resolve contested paternity cases;
- new hire reporting, to get near real-time information on where obligors work; and
- license revocation, to provide a faster and more effective way of collecting arrears than the traditional contempt route.

There is no denying that these innovations work. Child support professionals can hardly imagine working without them, and studies have demonstrated that they are indeed more cost-effective than the methods they replaced. Yet their very effectiveness produces a paradox. With all of these innovations in widespread use, the program collected just $3.86 for every dollar spent in 1994. That means that there has been virtually no productivity improvement in the program over the past fifteen years. How can this be?

Part of the answer is that by doing a better job establishing paternity, states are working harder, more labor intensive cases. But more paternity cases have been balanced by a large increase in the number of middle class, easy to enforce, never-AFDC cases. So a change in the caseload mix cannot account for all or even most of the lack of productivity increase. The answer is that while the federal government has given with one hand, it has taken away with the other. Congress has in fact mandated that all states adopt the more effective techniques discussed above, and has provided generous funding to allow states to do so. However, federal generosity has come with a host of regulations that have nothing to do with collecting more child support. To comply with those regulations, states must divert time and effort away from collecting child support. All the productivity improvements discussed above, then, are offset by the busy-work of complying with regulations that measure not results, but process.
The root cause of these non-productive regulations is the existing funding structure. For every dollar states spend, the federal government reimburses states 66 cents, without regard to whether that money was spent wisely or simply squandered. Because this type of funding structure contains no incentive for efficiency or economy, Congress has tried to create artificial performance measures and has closely monitored those measures.

The federal Office of Child Support Enforcement (OCSE), attempting to implement the will of Congress, has written reams of regulations covering the most mundane processes. There are regulations governing when cases must be opened. There are regulations governing when cases can be closed. There are regulations governing how many letters and notices must be mailed, what those notices must say, when they must be sent, and which can be sent first class mail and which must be by registered mail. Each year more regulations are issued, roughly counter-balancing any productivity gains.

These regulations also help explain why virtually every state has missed the original deadline (October 1995) for developing new computer systems, and why those systems are running far over budget. A major purpose of the new computer systems is to make it easier for OCSE to audit states and determine whether they are complying with all of the process- oriented regulations. This means that states must gather and track many hundreds of data elements. Gathering and tracking these data elements requires scores — even hundreds — of different computer screens. Managing the interaction between all this data and all these screens requires enormously complicated programs that have proved to be far more difficult, time-consuming and expensive to write than anyone ever imagined. When these systems are finally developed, the total cost will approach $2 billion. A large chunk of this cost will have been spent complying with pure process rules; rules that don't help collect more child support and that don't help families build better lives.

It's time for a more rational financing system, a system that allows child support professionals to do what they thought they signed up for — tracking down delinquents, not tracking down data elements.

PERFORMANCE BASED FUNDING

There is almost unanimous agreement among child support professionals that the current system whereby the federal government audits states for process ought to be scrapped and replaced by a system that audits results. OCSE Deputy Director Judge David Ross has prepared a strategic plan that could serve as the basis for such a results oriented system. But this consensus begs another question: if auditing for results makes sense, why not fund for results? It would be relatively easy to develop a funding system that rewards results. At it's simplest (and most effective), such a system would have only two measures, the number (or percentage) of paternities established and the amount of child support collected. For example, the system might pay states $400 per paternity established (regardless of whether the child was in the IV-D caseload) and 18 cents for every dollar of child support collected. Such a system would be revenue-neutral, meaning that it would cost the federal government about the same amount as the current system.

This system would have three results. First, federal funds would shift to states that established the most paternities and had the most cost-effective child support enforcement programs. For example, under this system Virginia would have received $43.8 million in 1994, $4.8 million or 12 percent more than the $39 million it actually received. Because the entire system would be revenue neutral, Virginia's gain would come at the expense of some other state. But precisely because Virginia has a relatively effective program, it would be able to use that extra $4.8 million to collect more support and help more families than could any of the states with weaker programs. As this shift of resources happens across the nation, many more families will receive child support.

Second, this financing system would encourage states to adopt more efficient business practices. For example, it costs more than $500 to establish a paternity in court but much less than $500 to establish a paternity voluntarily, in the hospital. This means that states would have a strong incentive to maximize the effectiveness of their in-hospital paternity establishment programs. The current system rewards just the opposite behavior: states with the weakest in-hospital programs end up in court more often, spending more money to litigate — and receiving more federal reimbursement!

Finally, all states would be freed from the tangle of process-oriented regulations that currently put a strangle hold on productivity and effectiveness. Without the need to collect data and report on these pure process measures, states will be free to devote more resources to actually collecting child support.

The advantages of a results-driven reimbursement system that shifts resources to the strongest programs are simply common sense. Such a system is implicitly used in almost all other aspects of our society. Successful corporations discard pilot products that are rejected by

consumers and concentrate their resources on promoting products that show the greatest potential. Intelligent investors prune their portfolios of poorly managed companies and buy more shares in well managed companies. Drug companies underwrite expensive clinical trials on the most promising new drugs, not the least promising.

If the advantages of moving to results oriented funding are so clear — and so widely adopted in almost all other aspects of our society — why are most child support professionals opposed to such a change? Most objections to results oriented funding fall into one of three categories. First, and most important, is the fear that cutting federal funding to weaker states will throw those programs into chaos, causing collections to stagnate or even decline, and hurting families who live in those states. Second, is the fear that the federal government won't live up to its side of the bargain — that the open-ended, 66 percent federal reimbursement will end, but the red tape will continue, thereby preventing states from achieving the promised productivity improvements. Third, is the fear that without stringent federal requirements (and financial penalties to back them up), states will simply not do a good job in the child support enforcement arena. Let's briefly examine each of these fears, assess the degree to which such fears are valid, and recommend some strategies to mitigate the most worrisome fears.

Shifting to a revenue-neutral, performance-based funding system will certainly reduce federal funding to a number of states. It is probably not realistic to expect that those states to pick up the slack, so total funding will decline in a number of states. In the long-run, this will cause those states to cut costs in ways that do not harm the program. For example, if the federal government were not paying two thirds of the cost, very few states would still be processing checks manually, on a county or local office basis, at a cost of over $2 per check. These states would instead move to a modern lockbox or electronic funds transfer system, and cut their costs by 50-75 percent. Nor would most states continue to have expensive caseworkers print and mail wage assignments, when a computer can do that job for a fraction of the cost. But wringing all the inefficiencies out of the system takes several years, and in the interim there would indeed be chaos, layoffs and lost opportunities to collect child support. To prevent this from happening, Congress must provide some type of transition provision. For example, in the first year of a shift to a performance based funding system, states would also get to calculate their federal reimbursement under the old rules. If the old, cost-reimbursement system resulted in more federal dollars, states could claim 100 percent of the excess. The following years, states could claim 75 percent, 50 percent and 25 percent of the excess. This type of arrangement should provide the necessary cushion to allow all states to successfully make the transition to performance based funding.

The second fear and third fears are closely linked. Many advocates, in particular, have pushed for federal micro-management of the program because they distrust the states' ability and willingness to run effective programs. I think this fear is greatly exaggerated. Every effective innovation in child support enforcement has come from the states. Moreover, welfare reform, with its block grants and work requirements, gives states a tremendous incentive to make child support enforcement a top priority. Bottom-rung jobs are not much better than remaining on welfare. For hundreds of thousands of families, being able to rely on $200 to $300 dollars a month in child support will make or break their efforts to get off public assistance. Most states

understand this. That's why, even as welfare reform was stalled at the federal level for two years, many states went ahead and enacted new hire reporting, license revocation, and in-hospital paternity laws. The notion that only the federal government cares about child support and the states must be dragged kicking and screaming into doing a good job is simply not supported by the facts.

MEDICAID SAVINGS AND COST AVOIDANCE

Deregulating child support should produce the same benefits that deregulation has had in other areas — productivity improvements and ultimately better service. But for any new federal-state partnership to succeed, both sides must be convinced that they are benefiting. And for this to happen, we need to address one of the myths of child support funding; that the states make money on the program and the federal government loses money. OCSE's 19th Annual Report to Congress claims that the states made a profit of $452 million on the program in FFY94, while the federal government lost $943 million. Profit or loss is determined by subtracting AFDC collections from total administrative expenses. Because the federal government pays for two-thirds of administrative expenses but AFDC collections are shared about equally between the states and the federal government, the states' bottom-line is in better shape than the federal government's.

However, this analysis does not account for two very significant factors. First, most child support orders also contain an order for health insurance. When these medical support orders can be enforced, it means that private insurance pays for those families medical costs, not Medicaid. In some cases, the savings to government from a medical support order exceeds the savings from the monetary part of the order. However, Medicaid savings are not included in the analysis that concludes that the federal government loses money on the child support program. In Massachusetts, preliminary data suggest that $25 million annually in Medicaid costs are recouped or avoided because of the efforts of the child support program in enforcing support orders. If this experience holds true in other states, it means that there is at least $1 billion in annual Medicaid cost savings that ought to be credited to the child support enforcement program. (Moreover, few if any states are doing a good job enforcing medical support orders. A performance based funding system that rewards states for enforcing medical support could spur a very significant increase in Medicaid savings).

Second, child support enables some families who would otherwise receive AFDC to become or remain independent of AFDC. The Massachusetts Department of Revenue has recently looked at this issue. They studied 16,556 families which were once on AFDC in Massachusetts, but by the time of the study (1993), were no longer on AFDC. By looking at their earnings and child support payments, the study concluded that 5,122 of those families would have been eligible for AFDC if they had not received child support payments. Total public assistance to these families, AFDC, Food Stamps and Medicaid, would have totaled $38.5 million.

These savings, while real, are not counted in OCSE's annual report to Congress. Yet to get a true picture of the child support enforcement program's finances, medical support and cost

avoidance must be included. Together, these two items amount to about $70 million in Massachusetts, compared to FY96 AFDC collections of $74 million. With the AFDC caseload continuing to decline in Massachusetts, and health care costs continuing to rise, Medicaid savings and cost-avoidance will soon exceed the cash AFDC collections. By ignoring the fact that helping families become independent of welfare saves taxpayer money, the existing funding system is on a collision course with the goals of the 1996 welfare reform law. As time limit and work requirements reduce the number of welfare cases, "AFDC" child support collections will stagnate or decline, leading to the illusion that the federal government is losing more and more money on the program. If Congress, deceived by this illusion, cuts child support funding, it will inadvertently cut one of the key strategies that families use to stay off welfare — supplementing a low wage job with child support payments.

With this in mind, Congress should direct OCSE to develop a methodology to calculate both medical support savings and cost avoidance. Determining how to measure medical support savings is especially important if Congress wishes to move to a performance based funding system. It costs money to enforce medical support orders. Moreover, under some states' child support guidelines, when the obligor provides medical support the amount of cash child support declines a little. If Congress wishes to maximize Medical support savings, it is important to figure out how to incorporate such savings into a performance based funding system.

There is no doubt that — properly measured — the federal government makes money on the child support program. But there is also no doubt that the current financing formula encourages states to gather data elements not child support. Performance based funding will allow all states to devote more resources to collecting child support instead of filling out federal reports. It will encourage innovation. And it will give all states an incentive to adopt techniques and tools that have already proven to be more cost-effective.

CHILD SUPPORT ASSURANCE

Many members of Congress are concerned about what will happen two and five years from now, when welfare time limits kick in. The performance based funding system discussed here, by driving states to create more effective child support programs, may help greatly reduce the number of families who will be thrown off welfare, by making it possible to create a child support assurance program.

Both Republican and Democrats have proposed child support assurance bills in the past, but those proposals did not go anywhere, in large part because of concerns over the potential cost of a child support assurance program. Before discussing how performance based funding can help create a child support assurance program, I'd like to briefly outline what, exactly, child support assurance is.

The program has a simple premise: a single parent family with a child support order would be assured of a minimum level of child support, regardless of whether the government could collect on that order. In its simplest form, the government would pay a minimum child

support benefit to a custodial parent on the first of each month. Government would then try to enforce the child support order. If the order is enforced, the government has recouped its cost (assuming that the child support order is high enough to cover the assured benefit). If the order in not enforced, government would have to eat the cost of the assured benefit.

To understand how this works, assume that the assured benefit level is $300 per month and that there are two families, Family A and Family B, in the child support system, neither of whom is on welfare. Family A has a child support order of $500 per month and Family B an order of $200 per month. If government succeeds in enforcing the $500 order, it keeps $300 to offset the cost of the assured benefit and passes the additional $200 along to Family A. Because the support order is high enough to cover the assured benefit and has been successfully enforced, there is no net cost to the government. If the government is able to enforce and collect the $200 order for Family B, it will keep to $200 to help offset the assured benefit. However, the government will still incur a net loss of $100 on this case, because Family B's support order is too low to cover the assured benefit. If the government is unable to enforce either order, it will lose $600. Obviously, this puts a premium on a strong enforcement capability.

If Family A were on welfare, the assured child support benefits would offset the welfare benefit, dollar for dollar. If Family A's welfare benefits were $500 per month, the government would send that family a $300 child support assurance check and a $200 welfare payment. So even if the government fails to collect child support for families on welfare, there is no additional cost to the government.

Two points are worth mentioning here. First, only families with child support orders are eligible for child support assurance, giving a mother a strong financial incentive to identify the father and establish paternity. Second, the child support assurance payment is not time limited and is paid even when the mother finds work.

A child support assurance system encourages work. A single parent working at the new, higher, minimum wage will earn about $900 per month. If her welfare grant and food stamps come to $700 a month, she is $200 better off working. This is not much of an incentive, especially considering that she may incur some work related costs (transportation, clothing, day care). Many observers fear that welfare recipients will wait until their two years are almost up before trying to find a job, increasing the odds that their welfare benefits will expire before they can find work.

In this example, a $300 assured child support benefit would increase monthly income to $1,200, making this family $500 better off each month. With a much higher incentive, welfare recipients are likely to look for jobs earlier.

A major objection to this idea is cost. So far, the child support enforcement program is simply not effective enough to make child support assurance affordable. One study estimates that child support enforcement programs would have to collect at an 80 percent rate for child support assurance to be revenue-neutral. (Because child support assurance encourages

families to leave welfare faster, welfare savings can offset the remaining 20 percent of the cost of a child support assurance program). However, even the best programs are collecting at only about a 65 percent level. While the new child support tools in the welfare reform law will increase collections, not many states are likely to reach 80 percent compliance anytime soon.

This is where performance based funding can help. By rewarding states with the strongest, most cost-effective child support programs, those states will receive additional money that they can plow back into their child support programs. This will help them improve faster and reach the 80 percent rate more quickly. These states could then serve as pilot states for a child support assurance program. If child support assurance works as advertised — encouraging mothers to establish paternity and choose work over welfare — then we can both end welfare as we know it and give single parent families a realistic shot at living above the poverty line.

Chairman SHAW. Thank you, sir.

Mr. Levy.

STATEMENT OF DAVID L. LEVY, ESQ., PRESIDENT, CHILDREN'S RIGHTS COUNCIL

Mr. LEVY. Good morning. Our Children's Rights Council is impressed with the welfare reform law you have passed and which the President has signed, because welfare reform is the critical vehicle for improving child welfare in the United States.

Our Children's Rights Council, which has chapters in 31 States, Japan, and the District of Columbia, has been working to improve child welfare for 11 years. We have expertise and experience in many areas that the welfare reform bill law will address, and we are eager to help the States in implementing welfare reform.

Our Children's Rights Council is credited as being the catalyst for Congress providing $2 million in access visitation grants in section 504 of the 1988 Family Support Act, and we are glad that Congress has expanded those access grants in the welfare reform law so that all the States can participate in up to $10 million a year to improve access for the benefit of children.

We also applaud the law's expansion of the Federal Parent Locator Service to require government entities to use the service for the purposes of enforcing child custody and access visitation purposes.

Here are some ideas for the States to further the aims of the legislation, and to qualify them for bonus grants for successful programs.

Kinship care. In cases where a child is removed from the home because of child abuse and neglect, some States like New York allow the child to be placed with kin; father, aunts, uncles. This is a step in the right direction, but States should not limit their efforts to the worst case scenarios, but should also look to the other relatives of the child for placement as an alternative to welfare.

States will save considerable money if relatives are allowed to take in their children and grandchildren voluntarily if they wish to. It is not a forced thing.

If the mother applies for welfare, the Cato Institute says Florida would save $853 million; Tennessee would save $323 million; other States would save comparable money if there were placements with kin in 20 percent of cases where otherwise there would be welfare.

That is kinship care.

Also, welfare and financial child support officials should be able to explain the benefits of marriage to their clientele, both financially and in terms of child welfare. Welfare and financial child support officials should be trained to explain to applicants for welfare and financial child support that economies of scale exist. That is, two-parent families are better able to avoid welfare and poverty than single-parent families.

The number one predictor of preventing poverty is marriage.

Written material and training of staff could be developed that inculcates the message that marriage is the best child support program, and best immunization program for kids against all the social pathology that affects children of single-parent homes.

Financial child support and welfare are backstops in case parents still need those resources, but parents—States interested in quali-

fying for the incentive payments in the law that encourages family formation and maintenance of two-parent families will want to look at encouraging marriage.

Next is schools. Education and parenting skills should be available to schools. This is far different from sex education.

It means that young people should be told, "Someday you will have a child. Let us tell you how big a job that is. Let us tell you about the responsibilities of being a father and a mother."

Materials regarding parenting education programs in schools are available, and could help prevent teenage pregnancy and encourage the institution of marriage.

Next, parenting education. There are about 55,000 parenting education programs in the United States. Our Children's Rights Council received an award from the National Parents Day Coalition in Washington, DC, in July for our parenting education efforts. Elizabeth Hickey, developer of Utah's first in the Nation required parenting education for all separating parents, is our National parenting education director.

But I want to emphasize that parenting education should be used before marriage, during marriage, and in the event that a marriage does not last.

Next, mediation. Mediation is a proven way of conflict resolution, before, during, and after divorce, in which a third party helps parents and others to avoid problems without recourse to the courts.

Mediation has helped to improve financial child support compliance as well as to resolve other problems in daily life. My written testimony gives examples of how mediation works.

There are also access visitation mediation programs, such as in Prince George's County, where our Children's Rights Council got a program started which has a high success rate in resolving complaints.

Conflict resolution skills can be taught to help people to resolve problems contemplating marriage, who experience problems during the marriage, and in the event of divorce.

Mediators, marriage counselors, family therapists, qualified individuals in churches, synagogues, and the communities, can help people.

Current and former welfare recipients can be encouraged to take advantage of existing resources, or to obtain help within their communities.

All of these resources can be used if there is the right formula and incentives for family formation and family preservation.

Shared parenting. States should encourage joint custody shared parenting for all the reasons stated above, to keep both parents involved in the child's life and to minimize children against problems and to decrease welfare dependency.

The other parent is not the enemy, but a resource to be developed psychologically and financially. The Census Bureau found that fathers who have joint custody and access to their children pay more than parents who do not.

And in a study of reasons for nonpayment of child support by noncustodial parents by Sumati N. Dubey, University of Illinois, which has not yet been publicly released by HHS, researchers found that the 150 fathers who responded gave the following rea-

sons for nonpayment of support; 39 percent indicated they had no money, 23 percent said they did not pay because the mother or child would not allow visitation, 14 percent indicated they did not have any control over however the money is spent, and other reasons which are very interesting in this study, one of the few studies I have ever seen, as to why people do not pay financial child support.

David Gray Ross, the outstanding director of the Federal Child Support Program, has said at our Children's Rights Council national conferences that child support will not truly work until most parents pay voluntarily.

If the States can bring noncustodial parents in as partners in the child support process, including the 2 million noncustodial mothers in this country, whose organization, Mothers Without Custody, is affiliated with our Children's Rights Council, we can induce for more compliance than we have now.

We also suggest a waiting period for divorce. In Virginia, it takes 6 months to get a divorce; but if you have children, you must wait 1 year. This "braking mechanism," which is not going back to the fault divorce, just a slowing down of the process, may also help to slow down divorce.

For custody and economic issues, give preference to the parent trying to preserve the marriage. States should consider "leaning a little" in the direction of the parent who does not wish to obtain the divorce. This would not be the only factor in granting of custody rights, but it could be one factor among several to be considered. Knowing that where there are fit parents, a factor in deciding who might obtain custody would be a parent who opposes the divorce, might help slow down the divorce process.

Finally, the formula for eligibility, one of the most important requirements, is for a formula to be developed to determine the eligibility of States for the bonus grants. Our Children's Rights Council is offering to work with HHS to develop these criteria.

Thank you.

[The prepared statement follows:]

HELPING PARENTS HELP KIDS

Children's Rights Council

220 Eye Street N.E., Ste. 140, Washington, D.C. 20002–4362
Telephone (202) 547–6227 • Fax (202) 546–4CRC (4272)

OFFICERS:
David L. Levy, Esq., President
Joan Longworthy, Treasurer
Ellen Dublin Levy, Secretary

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David Brenner, Entertainer
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Anna Keller

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Grandparent Rights in New Strength
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Santa Monica, California

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Jamesville, New York

Elliott H. Diamond, Co-Founder, CRC
Reston, Virginia

Phyllis Diller, Comedienne
Los Angeles, California

Warren Farrell, Ph.D., Author
Former Member of the Board of
Directors-New York City N.O.W.
Leucadia, California

Larry Gaughan, Director, Family
Mediation of Greater Washington, D.C.

Jonathan M. Goodson, President
Mark Goodson Productions
Los Angeles, California

Jennifer Isham, President
Mothers Without Custody (MWOC)
Crystal Lake, Illinois

Joan Berlin Kelly, Ph.D.
Executive Director
Northern California Mediation Center
Corte Madera, California

Elisabeth Kübler-Ross, M.D.
Author, Psychiatrist
Head Waters, Virginia

Vicki Lansky
Author, Columnist
Deephaven, Minnesota

Testimony of David L. Levy, Esquire
President, the Children's Rights Council (CRC)

before the Subcommittee on Human Resources
of the House Ways and Means Committee,
September 19, 1996
on the Personal Responsibility and Work Opportunity
Reconciliation Act of 1996 (P.L. 104-193)

Our Children's Rights Council is impressed with the Welfare Reform bill you have passed and which the President has signed, because welfare reform is the critical vehicle for improving child welfare in the United States.

Our Children's Rights Council, which has chapters in 31 states, Washington, D.C. and Japan, has been working to improve child welfare for 11 years, and we are pleased that a bill has passed which we think is going to strengthen the family.

Our Children's Rights Council has expertise and experience in many areas that the Welfare Reform bill addresses, and we are eager to help the states in implementing this welfare reform.

Our Children's Rights Council is credited as convincing Congress to provide $2 million in seven access/visitation demonstration grants in Section 504 of the 1988 Family Support Act. We are glad to see those access/visitation grants expanded now in this new law to $10 million a year for all the states to share in, for the benefit of children.

We also applaud the bill's expansion of the Federal Parent Locator Service to require government entities to use the Service for the purposes of "...enforcing child custody or visitation orders...."

There are many other advances in this legislation, including the provision that block grants to the states are to be used to "encourage the formation and maintenance of two-parent families," rather than just applying band-aids to aid children and families after damage has been done.

A NON-PROFIT, TAX EXEMPT ORGANIZATION STRENGTHENING FAMILIES THROUGH EDUCATION AND ASSISTING CHILDREN OF SEPARATION AND DIVORCE

Janine Levine
Families and Work Institute
New York, New York

John Money, Ph.D., Professor of
Medical Psychology and Pediatrics
Johns Hopkins University and Hospital
Baltimore, Maryland

Linda Nagelsmann, President
Parents Without Partners (PWP)
Chicago, Illinois

Here are some ideas for the states to further the aims of the legislation and to qualify them for bonus grants for successful programs.

A. Kinship care.

In cases where the child must be removed from the home because of child abuse and neglect, some states, such as New York, look to the kinship care network--the relatives of the child--for placement, rather than to the foster care system. This is a step in the right direction, but the states should not limit their effort to the worst case scenarios, but also look to the other parent, grandparents, aunts, uncles, and other relatives for placement as an alternative to welfare. One of the stated purposes of the law is to provide assistance so that children may be raised in their own homes or in the homes of relatives. In this and other provisions of the law, states will find the door is open to the kinship care network as an alternative to welfare.

States will save considerable money if fathers (or other immediate family members) are allowed to take in their children or grandchildren if the mother applies for welfare. Minimal government money could then be expended to train the mother for the workplace. An example of the savings available if 20% of fathers or other family members were allowed to do so:

Arizona	$ 213 million
Florida	853 million
Iowa	137 million
Kansas	100 million
Massachusetts	540 million
Michigan	787 million
Mississippi	148 million
Nevada	52 million
New Mexico	117 million
South Carolina	166 million
Tennessee	323 million
Texas	857 million
Virginia	290 million

(data based on Cato Policy Analysis # 240)

B. Welfare and financial child support officials should be able to explain the benefits of marriage to their clientele, both financially, and in terms of child welfare.

Divorce economics is part of family formation and family preservation. Welfare and financial child support officials should be trained to explain to applicants for welfare or financial child support that economies of scale exist; that is, two parent families are better able to avoid welfare and poverty than single parent families. The number one predictor of preventing poverty is marriage. Resources spread over two households do not go as far as

when the resources are all concentrated in one household. The benefits of marriage are economic, as well as in providing the best setting for the raising of children.

Written material and training of staff could be developed that inculcates the message that marriage is the best child support program and best immunization program for kids against all the social pathology that affects children of single parent homes.

The Children's Rights Council has experience in this area, and we stand ready to train staff at every level where the public comes into contact with welfare and financial child support officials.

Financial child support and welfare are backstops in case parents still need those resources, but states interested in incentive payments for encouraging family formation and maintenance of two-parent families will want to look at this alternative.

C. Schools.

Education in parenting skills should be available in schools. This is far different from sex education. It means that young people should be told that some day you will have a child, Let us tell you how big a job that is. Let us tell you about the responsibilities of being a father and a mother. The materials to develop parenting education programs in schools are available, and could help prevent teenage pregnancy and to encourage the institution of marriage.

D. Parenting Education.

The Pew Foundation reports that there are about 55,000 parenting education programs in the U.S. There is truly an explosion of interest in this topic, and parenting education can help with family formation and family preservation.

Our Children's Rights Council received an award from the National Parents Day Coalition in Washington, D.C. in July, 1996 for our parenting education efforts, and I and other award winners met at the White House with First Lady Hillary Clinton the following day.

Our director of National Parenting Education is Elizabeth Hickey, M.S.W., developer of Utah's first in the national required parenting education for all separating parents. But I want to emphasize that parenting education should be used before marriage, during marriage, and in the event that a marriage does not last.

CRC has videos and books on parenting education, as well as on divorce as seen from the perspective of children. When parents see how divorce affects the children, this is parenting education that truly hits home!

E. Mediation.

Mediation is a proven way of conflict resolution, before, during and after divorce, in which a third party helps parents and others to resolve problems, without resource to the courts. Mediation has helped to improve child support compliance, as well as to resolve other problems that arise in daily life.

In divorce mediation, a mediator helps parents to arrive at

their own agreement. If the mother thinks the father is being too intimidating in his language, the mediator will point out how the father can soften his language. If the father says the mother seeks to bankrupt him financially, the mediator will point out that it is in everyone's interests for both parents to remain solvent. The mediator cannot impose a solution, but enables the parents to arrive at their own agreement, with they are more likely to follow than a decision imposed upon them by a third party, such as a judge.

There are also access/visitation mediation programs, such as in Prince George's County, Maryland. Prince George's County started its program 10 years ago at the urging of our Children's Rights Council. The access mediator helps parents resolve access/visitation complaints, with a reported 80 percent success rate at resolving complaints, at an average time of 1 hour and 37 minutes, at an average salary cost of $25 per case.

F. Conflict resolution skills.

Conflict resolution skills can be taught so that people can help to resolve problems themselves. Conflict resolution is invaluable to people who are contemplating marriage, who experience problems during the marriage, and in the event of divorce. It can also help people to perform well on their jobs.

G. Counseling.

Marriage counselors, family therapists and other qualified individuals provide counseling to individuals before and after divorce. Sometimes this counseling takes place within the context of a church, synagogue or school. Current and former welfare recipients can be encouraged to take advantage of existing sources of help within their communities. Counseling can help a child to not drop out of school, help someone to avoid or end substance abuse, or help someone to avoid violent behavior. All of these can contribute to family formation and family preservation.

H. Shared parenting.

States should encourage joint custody (shared parenting) for all of the reasons stated above, to keep both parents involved in the child's life, that is, for child immunization against problems and to decrease welfare dependency.

The second/other parent is not the enemy, but a resource to be developed psychologically and financially.

In polling of mothers only, the Census Bureau reports that fathers with joint custody (8 percent of fathers) pay 90.2 percent of their support, fathers with access/visitation (55 percent of fathers) pay 79.1 percent of their support, and fathers with neither joint custody nor visitation (37 percent of fathers) pay only 44.5 percent of their support.

In "A Study of Reasons for Non-Payment of Child Support by Non-Custodial Parents" by Sumati N. Dubey, University of Illinois at Chicago Jane Addams College of Social Work, which has not yet been publicly released by HHS, the researchers found that the 150

fathers who responded, gave the following reasons for non-payment of child support: 39 percent indicated that they had no money; 23 percent indicated that they did not pay because the mother of the child would not allow visitation; 14 percent indicated that they did not have any control over how the money is spent, 13 percent said that they were not responsible for the children because they did not want to have a child and the women were the ones who wanted to have a child; 13 percent indicated that they were not the fathers of the children for whom child support was sought.

This is one of the only studies I have ever seen as to why people do not pay financial child support.

David Gray Ross, the outstanding director of the federal child support program has said at our Children's Rights Council national conferences that child support will not truly work until most parents pay voluntarily.

If the states can bring non-custodial parents in as partners in the child support process, including the 2 million non-custodial mothers in this country, we can induce far more compliance than we have now. And parenting will also improve with those parents involved in their children's lives.

I. **Waiting period for divorce.** In Virginia, there is a six-month waiting period for divorce, but if you have children, you must wait a year. This is not fault divorce, but a "braking mechanism"--to slow down the divorce process, where there are children. Other states could also consider similar braking mechanisms for divorce.

J. **For custody and economic issues, give preference to the parent trying to preserve the marriage.** States should consider "leaning a little" in the direction of the parent who does not wish to obtain the divorce. This would not be the only factor to be considered in granting of custody rights, but it could be one factor among several to be considered. Knowing that where there are fit parents, a factor in who might obtain custody would be a parent who opposed the divorce, might help slow down the divorce process. Again, I am emphasizing fit parents here, not parents with severe problems, nor am I suggesting a return to fault divorce. I am only suggesting a slight advantage to a fit parent who wants the marriage to work where there are children to be cared for.

K. **Formula for eligibility.** One of the most important requirements is for a formula to be developed to determine the eligibility of states for bonus grants for complying with the intent and purposes of this law. Our Children's Rights Council is offering to work with HHS to develop these criteria.

Thank you very much.

The Best Parents is Both Parents. A Guide to Shared Parenting in the 21st Century, edited by David L. Levy, Esquire, President, Children's Rights Council (Hampton Roads Publishing Company, 1993)
Putting Kids First. by Michael L. Oddenino, General Counsel, the Children's Rights Council, (Family Connection Publishing, 1995)
Healing Hearts. Helping Children and Adults Recover from Divorce", co-authored by Elizabeth Hickey, M.S.W., Director of Parenting Education, Children's Rights Council (Gold Leaf Press, 1994).
Children's Rights Council's Multi-Organizational Welfare Reform Position (1994)

Chairman SHAW. Thank you, sir.
Ms. Donahue.

STATEMENT OF ELISABETH HIRSCHHORN DONAHUE, COUNSEL, NATIONAL WOMEN'S LAW CENTER

Ms. DONAHUE. Mr. Chairman, and Members of the Subcommittee, I thank you for the opportunity to testify today on behalf of the National Women's Law Center.

I commend the Subcommittee for all its work in the past 2 years on the child support provisions of the welfare bill. I want to focus today on the fact that these reforms will only help families if they are truly implemented by the States, and I hope that we do not all lose sight of the fact that families are really the reason we have done all this, and there are a lot of custodial families out there who are in desperate need of the reforms that have been enacted in this recent child support law.

There are three areas that I think need particular vigilance by the Federal Government. The first is automation which others have talked about in more detail than I will go into. I only want to just add that we really need to look at what happened with the 1988 law, and why only one State was certified by the deadline. It is not to point fingers and decide who deserves the blame, it is more that the reasons are very complex, and we need to identify them in detail so we can make sure the Federal financial effort in this time does not get wasted again.

Another area of the new law that I think needs particular vigilance is the centralized collection and disbursement unit. This is a controversial area of the bill as I think all of us realize because there are States out there that want to maintain their localized systems. But what we have seen from States that have centralized collection and disbursement is that it truly helps families because it gets them their money faster, and it gets it to them on a more reliable basis.

The new law does make a provision that States that want to maintain localized systems can do so as long as families are not hurt in the process, and there are a very, very clear criteria in the new law that says when a State can maintain its localized system. I would hope that HHS in deciding whether a State can keep its localized system, or whether it has to go through a centralized disbursement unit, really sticks to that criteria. The criteria are very clearly laid out in the statute, and there is no reason to deviate from it.

I think a third provision that really needs vigilance from the Federal Government in the new law is the new provision that allows families who were formerly receiving public assistance and who have left to keep more of the back due support collected on their behalf. This is money that used to go to the States, and now due to a provision that I think is quite good in the new law, it will go to families.

I have just two concerns about the new provision, concerns that this provision might be undermined in some way. One is I think the Federal Government has to make sure States do not now ease up on collecting those arrears simply because they cannot now keep the money. This provision should not be a green light to States to

become lax in their efforts to collect arrears, because this money is just too important to families to not make sure that they get what they are due.

The second thing is something I think actually needs a change in legislation. An anomaly was created in the new law which allows States to keep all money collected from the tax refund intercept program for back due support, but makes States pay the family all the money that States collect in arrears. What you have is a perverse incentive so that money collected when the States do not do any of the work goes to the State, and money collected by the States when they do all of the work goes to the family. The way to fix this, I think, because this money is so important to families, is to make the tax refund intercept dollars follow the same distribution scheme as set out for back due support that is collected by the State.

Now, as many people here have pointed out, none of these reforms are possible if States do not have adequate funding, and I think it is very, very, important that funding not be cut at this point, because States are going to really need the funding to implement the reforms. That said, I think the Federal Government has every right to and should say, "We want to see some results for the money that we put into this program." And that is not true under the current system. I think the best example of that is in 1994 Indiana had an effective Federal match of 112 percent. It basically made money off of the child support program, and yet it had an 8.6-percent collection rate.

So the Federal Government is not getting its money's worth from this program from a number of States.

I think there are some things that can be changed. I think States do need a base match. I think we cannot move to a complete performance-based funding system, because there are going to be poor performing States that need the base match in order to remedy their past errors, and improve their systems.

That said, on top of that, States should not be given increased funding if they do not truly perform. And in my written testimony, I give an example of a system that I think would truly reward States for true performance, and in fact, it is a system that was in the original Ways and Means bill that was passed by the Committee in 1995.

Finally, I just want to end by saying the States have been given a lot of tools to improve enforcement, and the Federal Government has to ensure that they are truly implementing and using them. Therefore, the audit process has become very, very, important. States really have to show the Federal Government that they are using the money the best way that they can, and the numbers and the audit criteria that are submitted to the Federal Government have to be uniform, and have to truly tell a picture of what the States are doing. Otherwise, we are making public policy on numbers that we are not really sure are right, or accurate.

So, I would just like to conclude by saying I thank you for this new law, and I hope it turns into true financial support for families.

[The prepared statement follows:]

STATEMENT OF ELISABETH HIRSCHHORN DONAHUE
COUNSEL
NATIONAL WOMEN'S LAW CENTER

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today on behalf of the National Women's Law Center. The Center is a non-profit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women and their families, including child support, employment, education, reproductive rights and health, child and adult dependent care, public assistance, tax reform and Social Security -- with special attention given to the concerns of low-income women.

The Center wishes to commend the Subcommittee for its strong leadership on child support issues, particularly in the past two years. We are heartened by many of the detailed improvements made in the child support provisions of the recently enacted welfare bill. These provisions were designed to augment the current federal-state Child Support Enforcement program contained in Title IV-D of the Social Security Act, often referred to as the IV-D program. Specifically, the new law provides important tools to ensure that child support obligations are enforced in a timely and efficient manner: improved automation and locate functions; establishment of state and federal registries to track and enforce child support obligations; centralized collection of child support payments; uniform state laws; and procedures to revoke licenses and passports, and impose liens on delinquent noncustodial parents. It includes reforms that build on provisions passed in 1993 to make the establishment of paternity an easier, fairer, and more accessible process for parents. It contains an important provision that is the first step to ensuring that former welfare families receive more of the child support collection on their behalf, helping them to leave and stay off welfare. In an effort to ensure that states' successes and failures are adequately measured, the new law changes the current audit system to ensure that states improve their method of reporting information to the Department of Health and Human Services (HHS) by making the audit process more performance-oriented, automated and uniform. The Center has advocated for several years that many of the above reforms be enacted, and we applaud this Subcommittee for its work in turning our policy recommendations into law.

If the new child support law is to have real positive impact on custodial families, however, the provisions must be effectively implemented by the states. States must be given adequate funding to do the job, but in return states must produce results and improve their often-dismal past performance in establishing paternity and establishing and enforcing child support orders. Careful monitoring of, and technical assistance to, the states at the national level -- especially in the key areas of automation, centralized collection, and distribution of arrears to former welfare families -- are crucial to ensure that the reforms in the new law are implemented correctly, cost-efficiently, and in a way that truly helps custodial families. If not, the child support reforms in the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" will be reforms on paper only.

The states have been handed a bold, new law that revamps the current child support system, and provides them with the tools to ensure that more families get the child support to which they are entitled. But with an 18.3 percent collection rate and no discernible improvement in collection rates since 1975 despite repeated overhauls of the system, states have a sorry track record to repair. With the new law as their roadmap and continued investment and leadership by the federal government, states must make the needed improvements in the program work this time around; for the sake of our families, they must succeed.

I. ADEQUATE FUNDING IS NECESSARY FOR STATES TO IMPLEMENT THE REQUIREMENTS OF THE NEW LAW

Without proper resources, IV-D agencies will be unable to implement the complex requirements of the new child support law. An adequate base match, coupled with an incentive system that rewards states for good performance in the establishment of paternity, establishment and enforcement of orders, and cost-effectiveness, is necessary to handle a burgeoning caseload, build effective computer systems, and ensure that families receive the child support to which they are entitled.

Under the current system, states receive a base match rate (Federal Financial Participation, or FFP) of 66 percent -- for every $ .34 that the state contributes to the IV-D

program, the federal government matches that with $.66. In addition, states receive a minimum "incentive payment" of 6 percent of the amount of child support they collect, and can receive an additional incentive payment of between 6.5 and 10 percent of the support they collect if their collection programs are cost-effective -- that is, if the money invested in the program sufficiently exceeds the amount of support collected.[1]

The initial six percent incentive payment bears no relation to state performance and the additional percentage payment rewards only state performance in collecting child support, ignoring performance in establishing paternity and establishing awards. Moreover, because incentive payments are measured as a percentage of collections, there is almost no limit on the actual dollar amount a state can earn, since the amount a state can collect in child support is open-ended.[2] Open-ended incentive payments, coupled with an FFP of 66 percent, actually make it possible states for states to make money on the child support program; in 1994, with a combination of the 66 percent match rate and incentive payments, two states earned an effective FFP of over 100 percent, while eight states earned over 90 percent, 36 states earned over 80 percent, and no state earned less than 74 percent. Compounding the problem, high federal incentive payments do not translate into high collection rates. Indiana, which earned an effective FFP of 112 percent in 1994 -- the highest of any state -- collected child support in only 8.6 percent of its IV-D cases -- the second-lowest of any state. Put in stark terms by the 1994 Greenbook produced by the House Committee on Ways and Means, "states can run inefficient programs and still make a profit from the CSE [child support enforcement] program."

The new law keeps in place the current match rate of 66 percent, correctly recognizing that without a sufficient base match of at least 66 percent, poor-performing states -- the ones that need funding to improve but will not earn much in incentive payments -- will not have sufficient resources to improve their programs. Unresolved under the new law, however, is the structure of the incentive system. The new law maintains the current incentive payment system, but requires the Secretary of HHS, in consultation with state IV-D directors, to develop and transmit to Congress by March 1, 1997, a new incentive system to replace the current scheme. This new incentive system must be designed to reward states for good performance, but it cannot cost the federal government any more than the current incentive system.

To carry out this mandate, we hope that HHS will recommend the adoption of an incentive system that mirrors closely the system established in the welfare bill originally passed by the full Committee on Ways in Means in 1995 (H.R. 1157), and in the welfare bill passed by the House of Representatives on March 24, 1995 (H.R. 4).

Under the system proposed in these bills, states would be able to earn up to 12 percent in incentive payments for meeting certain benchmarks established by the Secretary of HHS to measure improvements in establishing paternity and establishing child support orders, as well as improvements in collecting support and the overall cost-effectiveness of the program. In addition, there would be an overall cap of 90 percent on the total federal match. Rather than making incentive payments a percentage of collections, the incentive percentage would be added to the base match FFP (so, for example, a state earning 12 percent in incentive payments would have an overall FFP of 78 percent).

A number of benefits would result from adopting such an incentive system. First, unlike the current system, states would not receive any incentive money until they have improved their performance -- eliminating the perversity in current law that rewards even the most badly functioning states. This is important if incentive payments are to truly motivate

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[1] The money for incentive payments is taken from the federal share of child support collected from noncustodial parents of children who are receiving or have received AFDC.

[2] While there is no limit on the dollar amount states can earn in incentive payments based on the percentage of AFDC collections, there is a cap on the dollar amount states can earn in incentive payments based on the percentage of non-AFDC collections.

states to improve performance. Second, unlike the current system in which states are rewarded only for increases in collections -- an incentive to emphasize collections over other child support agency responsibilities -- states would be rewarded for increases in the number of paternities and support orders established as well. Third, since the incentive percentage would be added to the base FFP, states would have to put up state money to draw down federal incentive payments. This would mean states would have to use the additional federal matching funds for their IV-D programs. Although some states currently reinvest their incentive payments in the IV-D program or use this money for other needs-based programs that help families, other states simply put the money into the general treasury where it can be used to pay for anything -- including repaving roads. Fourth, since total federal expenditures would be capped at 90 percent, no state would be able to earn over 100 percent and effectively make money from the child support program. It would also be harder to reach 90 percent under this system than under current law since states would not receive a minimum incentive payment, and they would have to show real improvement in their performance in order to receive incentive funds.

II. CAREFUL MONITORING AT THE NATIONAL LEVEL IS NECESSARY TO ENSURE THAT THE REFORMS OF 1996 ARE PROPERLY IMPLEMENTED

While state child support programs must be funded adequately, federal funding cannot be a blank check. States must implement and carry out the requirements of the new law, and do so in a timely and cost-efficient manner. Given the detailed requirements of the new statute, close and careful monitoring of, and technical assistance to, the states by the federal government is crucial to ensure the new law's success. Three areas in particular are important to watch closely: the new automation requirements; the establishment of centralized collection and disbursement units; and the new distribution scheme for child support arrears for families formerly receiving public assistance.

Automation Requirements: Case Registries and New Hire Directories

The new law strives to increase the amount of child support information collected as well as the ease with which information can be accessed, recognizing that federal and state governments need to develop more advanced and more comprehensive automation systems to locate noncustodial parents, monitor the payment of awards, and enforce existing child support obligations. The new law requires new data bases to be established and existing data systems to be linked or centralized, and mandates technological improvements that will make these comprehensive data bases useful and manageable. Given that only one state met the October, 1995, deadline for the 1988 Family Support Act automation requirements, states must be monitored extensively to ensure that they are complying with the automation requirements of the new law in a timely and cost-effective manner. To ensure that federal money is well-spent and mistakes of the past avoided, the federal government must provide leadership and coordination as the states strive to meet the new automation requirements.

The new law requires each state to establish a central state case registry of copies of all child support orders established or modified in the state. The new state case registry, which will record in one central location the amount of monthly support owed and collected, will include basic identifying information about both parents, including names, Social Security numbers, dates of birth, and case identification numbers for all IV-D child support orders and all other child support orders established or modified in the state on or after October 1, 1998. The registry will be used not only to keep a record of all child support orders, but also to match child support orders against other state records that contain information about the location and assets of parents. To ensure that child support orders are successfully matched up with these records, Social Security numbers must be listed on applications for professional, occupational, commercial driver's and marriage licenses; divorce decrees; paternity determinations and acknowledgments; and death certificates. The central state registry created by the new law will be important in tracking and enforcing orders against obligors residing or doing business in the state, and for providing current information to the Federal Parent Locator Service, which is required under the new law to create a national case registry, for the use in interstate cases.

The new law also requires each state to establish a State Directory of New Hires. Under this provision, each employer in a state will be required to send to a State Directory of New Hires the name, address, and Social Security number of every new employee and the employer's name, address and identification number within 20 days of hire or bimonthly in the case of electronic reports. Failure to comply with this provision can subject employers to a nominal fine, if the state opts to impose it. Employers with employees working in different states will be permitted to designate to the Secretary of HHS one state to which they will send all information. Within five days of receipt, the State Directory of New Hires must enter the information into the data base. Within three business days after the information is entered into the data base, the State Directory of New Hires must furnish the information collected to the National Directory of New Hires created under the new law and housed within the Federal Parent Locator Service.

The information contained in new-hire records will be matched against various data bases at the state and federal levels to identify the employment status, location, and assets of individuals who owe child support. In addition, state agencies operating employment security, workers' compensation, welfare, Medicaid, unemployment compensation and food stamp programs will have access to this new-hire information to administer their programs. The states that have already established new-hire registries have found that they greatly enhance the ability to locate child support obligors, even those who frequently change jobs.

Not only are the automation requirements of the new law more extensive than those in the 1988 Family Support Act, but the success of almost all the child support reforms made in the new statute depends on the successful installation of the new computer systems. It is vital that these computer systems be set up correctly and cost-efficiently. Accordingly, the federal government must help states avoid the roadblocks of the past.

The reasons for the failure of the states to successfully implement the requirements of the Family Support Act are complex and varied. First, in 1988 there was a noted lack of technological expertise -- in both the public and private sector -- in setting up and running complex child support computer systems. Improvements in computer technology and eight years of "hit-and-miss" experience have provided a wealth of knowledge that states can use in setting up their new systems. The federal government should be the receptacle of this information and provide technical assistance to educate states about successful models. Money set aside in the new statute for training should be used to educate and train state and federal workers about the intricacies of using the new state automated systems and the ways in which these systems interact with the federal systems.

Second, states did not always have a broad vision of how their child support programs should operate and how their automated systems should be integrated into their overall program; only with the "big picture" in mind, can states effectively design their computer systems to work with their overall child support program. For example, in states with locally administered programs, if local, county and state players all have different visions of the child support program, creating a computer system that satisfies everyone's vision is almost impossible. To ensure that state computer systems are integrated into state child support programs, the federal government should help states conceptualize strategic plans about the direction of their programs, creating a detailed plan about how their computer systems will work within the overall system.

Third, in trying to implement the 1988 requirements, many states have run into contract problems with private vendors in setting up the systems. Some states have complained that vendors set up the systems but then did not follow through with appropriate technical assistance. With the power of hindsight, states should rethink how they contract with vendors, and the federal government should give them guidance on writing and negotiating such contracts.

Other reasons given for the problems in implementing the Family Support Act requirements have largely been addressed in the bill; for example, a more realistic phase-in

period for the establishment of the computer systems and extensions for the states if HHS is late in producing regulations should ensure a smoother process this time around.

Centralized Collection and Disbursement

An important part of the new law is the establishment of centralized state units for the collection and disbursement of child support payments, including payments made by income withholding.

Under current law, all parents who owe child support who receive a paycheck from an employer must participate in income withholding unless both parents "opt out" of such withholding. The state must administer the withholding through a public entity or an entity accountable to the state -- regardless of the parents' IV-D status. This public entity does not have to be housed in one location; in fact, in some states, withholding is funneled through individual clerks of the courts or other such non-central locations. States must give an obligor advance notice that income withholding is about to begin and about the procedures available for contesting the withholding if there has been a factual mistake; if an obligor contests the withholding, states have 45 days to resolve the dispute. In addition, states have the option to have non-income withholding IV-D cases administered through the public entity at the request of either parent, for a small fee.

The new law requires each state to establish and operate a central state disbursement unit to collect and disburse child support payments. Child support withheld from income in both IV-D and non-IV-D cases must be administered through this central disbursement unit. Child support paid directly by the parent (rather than through income withholding) must be administered through this central disbursement unit in all IV-D cases. States are required to distribute the child support paid within two working days of receipt to the custodial parent or, if the custodial parent has assigned his or her right to child support to the state agency to qualify for public assistance, to the state agency. A system that links local collection and distribution units is only permissible if it does not cost more or take longer to establish or operate than a single, centralized system, and if it provides one location to which employers must send withheld income.[3]

For income withholding cases going through this centralized disbursement unit, the new law contains provisions to ensure that child support withheld from income gets to the custodial family as quickly as possible. First, the new law requires the state to send the employer a notice to commence income withholding within two days of entering the new-hire information into the data bank, to ensure that income withholding begins promptly in each case. Second, the new law requires the employer to submit income withholding collections to the central registry within seven days of its pay day so that money owed to custodial families is paid promptly rather than sitting in the employer's bank account. Third, as stated above, the state must distribute the child support within two working days of receipt. These provisions are crucial to ensure that families who are living paycheck to paycheck receive their support in a timely fashion. In carrying out income withholding, states must meet state due process standards, as well as inform obligors that withholding has commenced and of the procedures for contesting income withholding if there has been a factual mistake.

The centralized collection and disbursement requirement is one of the hallmarks of the new law, and the federal government must make sure that this requirement is not weakened in any way. If the centralized collection provision is weakened, families will be hurt as payments take longer to reach them, accounting errors result in discrepancies in payments, and enforcement efforts are not initiated promptly.

Having payments go through one centralized location rather than locations scattered throughout the state is crucial for a variety of reasons. First, because of economies of scale, states can afford to construct centralized collection systems that utilize higher technology and

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[3] States that currently administer child support payments through local courts can continue to do so through September 30, 1999.

more complex computer systems than could be constructed at a local level. These complex systems are able to collect and disburse money quickly and efficiently -- often without ever using paper. The less paper involved (envelopes to open, hand-written records to keep, paper files to maintain), the faster the system, and the faster the system, the quicker families get their much-needed child support payments. Second, with one central location, it is clear who is accountable for payments (and missed payments), and families have a clear idea of who can be held accountable. Third, by having all money collected and disbursed by the same entity, errors are less likely to occur. Fourth, in states with centralized enforcement systems, information on missed payments will be available immediately, triggering prompt enforcement actions. Indeed, a centralized collection system may prompt more states to centralize enforcement as well, because of the speed and efficiencies involved.

Nevertheless, if a state can prove to the Secretary of HHS that it can collect and disburse child support to families as quickly and cost-efficiently by linking local registries as it could with one centralized system, then under the new law it is able to do so. However, it is crucial that the federal government review carefully the claim of a state that it can operate a local system as effectively as a centralized system and not deviate from the criteria for approving a localized system that are set out so clearly in the new law. For example, while a state that has just expended funds on a localized system may argue that these recent expenditures should be considered in determining whether it can maintain its local system, past investment in a system is not one of the criteria established by Congress. Only if the Secretary of HHS agrees that the state can establish and operate its system as cheaply and as quickly as a centralized system, that its local disbursement units are linked electronically, and that employers in the state have one location to which they can send withholding, can the state deviate from the centralized collection unit requirement under the new law. If the federal government weakens this requirement by deviating from these very clear criteria, families will be hurt as disbursement takes longer, enforcement is less efficient, and accounting errors slow down the process.

Distribution of Arrears to Families Formerly Receiving Assistance

The new law includes an important provision to help ensure that families who formerly received Temporary Assistance for Needy Families (TANF) under the block grant get more of the past-due child support collected on their behalf that was previously kept by the states to reimburse themselves for AFDC outlays. The federal government must monitor the implementation of this provision by the states to ensure that states continue to emphasize the collection of arrears, even though states will now be able to keep less of the money. Due to an exception made in the new law for arrears collected by intercepting federal tax refunds, however, the new law may actually create a perverse incentive for states to rely soley on the federal government to collect child support arrears instead of working these cases themselves. A legislative change is necessary to fix this glitch.

Under current law, when a family applies for Aid to Families with Dependent Children (AFDC) benefits it assigns its right to child support collected on its behalf to the state, including any past-due support that accrued before the family received AFDC, in order to reimburse the state for AFDC paid to the family. Therefore, even when a family has left the AFDC system, the state is entitled to keep any past-due support collected that accrued before the family applied for AFDC as well as any that accrued while the family received AFDC, until the state has reimbursed itself for the AFDC paid to the family. Since the assignment of child support to the state ends when the family goes off the rolls, arrears that accrued after the family left AFDC belong to the family.

However, a state that collects child support for the family after it goes off the rolls can choose to pay itself the arrears that accrued before and during AFDC receipt before it pays the family arrears that accrue after the family leaves AFDC. Almost two-thirds of the states choose to pay themselves back for AFDC outlays before paying the family; the effect of this choice is that, unless all past-due support is collected, the family may receive little, if any, of the arrears that accrue after the family leaves the rolls. The new law changes these

distribution rules for former welfare recipients.

The new law requires a state, after a period of gradual implementation, to pay a family that formerly received TANF any child support arrears that accrued when the family was not receiving TANF, and requires the state to pay this money to the family first before reimbursing itself for its TANF outlays. Specifically, the new law changes the distribution rules as follows: (1) beginning October 1, 1997, child support received for arrearages that accumulate after the family leaves TANF are paid to the family before the state can use that money to reimburse itself for assistance paid to the family and (2) beginning October 1, 2000, child support received for arrearages that accumulated before the family received TANF are also paid to the family before the state can use that money to reimburse itself, unless Congress determines, based on a study by HHS, that providing this money to the family first has not actually succeeded in moving and keeping people off welfare.

In essence, the new law changes the distribution rules for former welfare recipients to ensure that families actually receive some or all of past-due child support collected on their behalf. First, past-due child support that accrued before the family went on welfare will belong to the family, while past-due support that accrued while the family was on welfare will continue to belong to the state. Second, the state will have to pay the family any past-due child support that accrued before the family went on welfare, and any such support that accrued after the family left welfare, before the state can reimburse itself for any welfare outlays. In other words, only when a family had been paid any past-due child support that accrued pre- and post-welfare, can the state keep past-due support owed to it from arrears that accrued while the family was on welfare. The new law's changes increase the likelihood of a family's success in leaving welfare by ensuring that the family receives more of the child support collected on its behalf.

It is important to note that this change in policy will not cost the states any more money than they now spend under the current distribution policy. The new law ensures this by providing that if the change in distribution policy results in state expenditures that exceed the amount saved by a state due to the elimination of the required $50 pass-through, the federal government will make up the difference.

In overseeing the states' implementation of this provision, HHS must ensure that states do not ease up on trying to collect arrears simply because they are now able to keep less of this money -- this change is very important for families, and states must not be allowed to become lax in their efforts to collect arrears simply because they do not benefit economically as they did in the past. HHS should provide states with technical assistance that will help them increase the collection of arrears as well as calculate and distribute arrears in a comprehensible manner. In addition, HHS should assure that its own required study of this change in the distribution policy accurately evaluates the role that the new policy plays in enabling families to move and stay off welfare.

Congress, too, must ensure that the goals of the new distribution scheme are fully realized by repealing the statutory exception to the new distribution scheme for arrearages collected through the tax refund intercept program. Under this exception, child support arrears collected through the intercept program are paid to a state to reimburse it for welfare outlays before any payments are made to the family. This provision effectively allows a state to keep arrears when it has does none of the work to collect them; in contrast (as discussed above), when a state collects arrears on its own, some of the money must be passed on to the family. This discrepancy creates an incentive for a state to try to collect arrears only through the tax intercept program. To correct this discrepancy, Congress should impose the same distribution scheme on arrears collected through the tax intercept as it does on arrears collected by the states directly. With this change, families would truly benefit from past-due support collected on their behalf.

III. THE FEDERAL GOVERNMENT MUST ENSURE, THROUGH ITS AUDIT PROCESS, THAT STATES ARE MEETING THEIR IV-D OBLIGATIONS

Thorough, consistent and uniform audits are necessary to adequately measure state compliance with the new law and evaluate the success of state programs. Accordingly, we are pleased with the new law's requirement that states improve the method of reporting information to the Secretary of HHS about their programs, and the requirement that HHS improve the method by which it measures the success of state efforts.

While current law requires states to report information about their accomplishments to HHS as part of the audit process, the new law makes this process more performance-oriented, automated and uniform. First, states must emphasize actual numbers in reporting on their performance-based achievements. Second, states must base their reports on data extracted from the automated data processing system required under the new law. Third, states must use uniform definitions established by the Secretary for the reporting of information, curing a problem in the current system of inconsistent reporting among the states (and sometimes within states) of similar information. These changes should help ensure that states report accurate data and that their performance in establishing paternity, establishing child support orders, and collecting support is adequately measured.

For these changes to succeed, HHS must establish uniform definitions that are user-friendly for the states. HHS must also provide technical assistance to the states to help them incorporate these new definitions into their record-keeping. When audit data identify weaknesses in state programs, HHS must work with states to construct remedies for the deficiencies in their programs. Finally, when a state fails an audit and does not submit an adequate corrective action plan, HHS must be prepared to cut funding. States must know that the federal government is serious about enforcing the requirements of the new law.

IV. CONCLUSION

The child support provisions of the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" have provided states with many of the tools necessary to improve a program that has thus far not served families effectively. It is critical that states use these new tools to effectively change their past performance, and that HHS help states implement the new law's requirements and hold states to them. Talk about getting tough on child support has been rampant for the past two years. Now is the time to turn that talk into action and help custodial parents and their children receive the child support to which they are entitled and which they so desperately need.

Chairman SHAW. Thank you.
Ms. Smith.

STATEMENT OF MARILYN RAY SMITH, ASSOCIATE DEPUTY COMMISSIONER AND CHIEF LEGAL COUNSEL, CHILD SUPPORT ENFORCEMENT DIVISION, MASSACHUSETTS DEPARTMENT OF REVENUE, CAMBRIDGE, MASSACHUSETTS

Ms. SMITH. Good morning, Mr. Chairman, Members of the Subcommittee. My name is Marilyn Ray Smith. I am the chief legal counsel of the Child Support Enforcement Division in Massachusetts where child support has been a priority for Governor Bill Weld. I am also the past president of the National Child Support Enforcement Association.

I first would like to thank you for your leadership in securing passage of the most comprehensive child support legislation in the history of the program. The Personal Responsibility and Work Opportunity Reconciliation Act contains all the effective tools for collecting child support. But passing legislation is just the beginning. Implementation is where we have to make sure this act lives up to its promise.

The greatest danger will be the tendency to view this act as a long—and some would say, onerous—laundry list of individual requirements rather than as a comprehensive rational scheme that will move the child support program into the 21st century in the age of information technology.

This act does more than require States to pass a series of laws. It pushes States to consolidate information, streamline processes, and centralize decisionmaking authority. It calls for building a network of information and automated data matches that is virtually unprecedented in government.

To get the act's full benefit, States will have to reengineer child support operations to shift from what I call "retail," to "wholesale," to go from individualized case-by-case processing to a standardized computerized system that automatically takes action on thousands of cases at a time.

Achieving such a transformation means more than adding computer technology. It also means realigning decisional power and organizational functions among the multiple State and local agencies that may be involved in child support in a particular State.

The transition to automation will not be easy. It will require caseworkers to cast aside comfortable ways of doing business. Turf battles may arise between State and county offices, or between courts and the administrative agency. To make it work will require not just child support people figuring out the details, but strong, sustained political leadership at the highest levels of Federal and State government.

In analyzing States that have already improved their programs, you will almost always find a "political angel" in the wings—a Governor, a key legislative leader, an innovative commissioner—who provided the resources and guidance to translate the vision into reality. We need your help to help identify and support that political leadership at the State level.

You can also help by keeping child support visible in the ongoing public debate about welfare reform. You can use hearings like this

one, to get the other necessary players to pay attention to the details.

Historically, child support programs have suffered from fragmentation across many different agencies. In some States, the welfare agency performs intake and case management functions. The district attorney's office is called in when the case needs to be taken to court. The county clerk of court collects the child support payments and sends them to the custodial parent. Each of these entities may report to a different elected official at the State or county level, perhaps in different political parties. Under these circumstances, it is difficult to get coordinated action.

Case functions are also fragmented. In some States, there are dozens or even hundreds of collection points to which employers send wage assignments. Chrysler, for example, reportedly sends 11,000 wage assignments to 350 locations throughout the country. Wage assignments or bank account attachments are completed by hand, one at a time, and by the time the notice reaches its destination—even if it gets there, given the avalanche of unfinished paperwork and unreturned phone calls that plague the average caseworker—the noncustodial parent, or the bank account, has moved on.

This act will change all this. It requires States to consolidate all cases into a central case registry, to send all payments to one location, and to use an impressive arsenal of enforcement remedies, all through automated processes that can handle thousands of cases at a time.

While some may resist these changes, the use of automation to obtain economies of scale does work. States that have already gone this route have achieved impressive results.

In Massachusetts, for example, reengineering meant going from a pool of 200 judges hearing cases any day of the week to a pool of 45 judges hearing only child support cases 1 day a week. It meant going from 144 collection points, using 200 clerks to open envelopes and send out checks by hand, to one lock box where 30 employees use the latest in bar coding equipment. It meant going from 200 employees to process wage assignments one at a time to an automated new-hire reporting system that sent out 150,000 wage assignments by computer needing the oversight management of only 20 people. And along the way, the legislature did not cut our staff; rather it added staff, because it wanted to invest in a successful program.

The result of 5 years of reengineering is that 50 percent more families receive child support. Collections have gone up by 45 percent, and four times as many families leave welfare every year because there is a regular child support check. And there are charts attached to my testimony to illustrate this.

In spite of the pressures on Congress and HHS to back down on some of these bold changes that reengineering requires, it is important to stay the course if you are going to get the results that you expect from your investment in the Nation's child support program.

While child support professionals are among the most dedicated public servants in the country, it is simply not realistic to expect us to have the political clout to make this transition alone. We need Governors to coordinate interagency cooperation. We need

commissioners of diverse agencies to open doors and eliminate bureaucratic barriers in making the linkages for information exchange. We need legislatures to provide adequate funding and laws with real teeth. We need courts to interpret these new laws for the benefit of children.

Even though you have done your part in passing this powerful legislation, you can continue to influence HHS and State and local political leaders by encouraging them to provide the visionary leadership to ensure that the necessary changes take place.

We hope you continue to stay tuned as implementation of this important legislation unfolds.

Thank you very much for this opportunity to testify.

[The prepared statement and attachment follow:]

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HUMAN RESOURCES

HEARING ON CHILD SUPPORT ENFORCEMENT

Statement of

MARILYN RAY SMITH

Chief Legal Counsel
Associate Deputy Commissioner

CHILD SUPPORT ENFORCEMENT DIVISION
MASSACHUSETTS DEPARTMENT OF REVENUE

September 19, 1996

Mr. Chairman, distinguished members of the Subcommittee: Good morning, and thank you for the opportunity to testify on issues relating to implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

My name is Marilyn Ray Smith. I am Chief Legal Counsel and Associate Deputy Commissioner for the Child Support Enforcement Division of the Massachusetts Department of Revenue, where Governor Bill Weld has made child support a priority. I am also past president of the National Child Support Enforcement Association, a national, nonprofit organization of more than 2,500 State and local child support agencies and professionals dedicated to the enforcement of children's rights to financial support from their parents.

I wish to commend Congress for its bold vision -- led by this Committee -- in enacting the most comprehensive child support legislation in the history of the program. With time-limited welfare benefits and mandated work requirements, child support is a critical part of the safety net to keep children from sinking into poverty when their parents separate or never marry. This legislation contains all the effective tools for collecting child support -- central case registries; new hire reporting; automatic liens for every case; license revocation; centralized payment processing; streamlined procedures for handling interstate cases, updating orders, and establishing paternity; access to information from credit reporting bureaus, financial institutions, public utilities, and law enforcement agencies; and much, much more.

But passing bold legislation is just the beginning. This legislation is replete with technical details for reengineering processes, as well as precise requirements for cooperation among Federal, State, and local agencies that are virtually unprecedented in government. We must ensure that the implementation by the States working in conjunction with the Department of Health and Human Services translates the vision into reality, so that this legislation lives up to its promise.

I therefore also wish to commend this Committee for holding hearings so soon after the enactment of this legislation -- to signal your commitment to an effective child support program as an integral part of real welfare reform.

Today, I'd like to suggest to you several areas where Congress should pay particular attention to the implementation of this bill. First, the full power of new hire reporting and automatic liens depends on fitting together a complex puzzle of information exchange that will require an extensive and ongoing cooperative partnership between

many Federal, State and local agencies. Second, the heart of this legislation is the extensive use of automation to collect child support quickly and efficiently. The transition to automation will not be easy, and will require many States to cast aside accepted and comfortable ways of doing business. Third, funding should be redesigned to reward States for collecting money, not for spending money, and incentives should be redesigned to reward States for keeping families off welfare, not for keeping families on welfare, as is the case with current law. Finally, Congress needs to continue to encourage States to take steps to strengthen marriage and reduce the number of out-of-wedlock births, as the surest route out of poverty for children is to live with two parents.

Achieving these objectives will require strong, sustained political leadership at the highest levels of Federal and State government. Child support agencies -- no matter how dedicated -- cannot do it alone. Without strong leadership, the requirements to centralize case information and manage cases through the use of high-volume automated enforcement remedies may be met with resistance or founder on an incomplete vision that fails to carry out the full potential of this powerful legislation. The greatest danger will be the tendency to view this legislation as a long -- and onerous -- laundry list of individual requirements, rather than a comprehensive, rational scheme that will move the child support program into the 21st century and the age of information technology.

The Personal Responsibility and Work Opportunity Reconciliation Act does more than require States to pass a series of laws and follow certain specific procedures. It also requires States to reengineer child support operations, to shift from "retail to wholesale." To get the full benefit of this legislation, States will have to transform what has been a highly individualized, case-by-case process into a standardized, computerized system that automatically makes decisions and takes action on thousands of cases at a time, once certain threshold criteria are met.

Achieving such a transformation means more than adding computer technology. It also means realigning decisional power and organizational functions among the multiple State and local agencies that may be involved in child support enforcement in a particular State. This will be the most difficult part of successful implementation. There will be other barriers, to be sure, but those will be operational details that resourceful child support professionals can resolve.

Achieving the full potential of this legislation will also require State political leadership -- governors as well as key legislative, judicial, and executive branch leaders -- to analyze how child support functions are allocated among various State and local agencies and to initiate any appropriate structural changes. If there is not clear vision and decisive leadership at the highest levels, child support agencies are not likely to have the will, the courage, the energy, or the resources to make the necessary structural changes on their own.

To give you a sense of the magnitude of the changes that confront States, I would like to describe some current practices, suggest some new ways of doing business, and provide a case history of one State's successful reengineering experience.

Starting Point for Implementation of Child Support Reform

Historically, child support programs have suffered from a fragmentation of functions across many agencies within a State, in a complex system where no single authority has control over essential case processing functions. In some States, the welfare agency performs intake and case management functions; the district attorney's office is called in when a case needs to be taken to court to establish paternity and to establish, modify, and enforce a support order; and the clerk of court collects the child support payments from employers or individual obligors and sends them on to the custodial parent or, if the family receives AFDC, to the welfare agency. Each of these entities may report to a different elected official at the State or county level, perhaps from different political parties, who may have little incentive to cooperate toward a common purpose related to child support enforcement.

In some States, there are literally dozens or even hundreds of collection points throughout the State to which employers must send wage assignment checks, based on the local court having the order. (Chrysler reportedly sends 11,000 wage assignments to 350 locations throughout the country.) Until recently when the new automated systems came on line, thousands of caseworkers kept handwritten pay cards, where individual notations were made every time a check arrived in the mail or was hand-delivered by the noncustodial parent. In some instances, the clerk of court and the child support agency still keep separate payment histories, with accounts differing in the amount of arrearages owed, because different points of collection mean that not all payments get credited to both accounts.

Enforcement remedies -- whether sending a wage assignment to an employer or attaching a bank account -- are also completed by hand, one at a time. Information about a new job may land on the desk of an overwhelmed caseworker, where it may get buried for weeks under mounds of paper. Sometimes the only way to find out that the obligor has a worker's compensation claim or is receiving unemployment compensation is if the custodial parent calls a caseworker in a local office, who must then fill out a wage assignment form, and mail it to the local unemployment or worker's compensation office. By then, unemployment checks may be exhausted or the claim settled. If by chance a bank account is located, the worker may have to obtain the court's permission to seize it, resulting in weeks of delay that may mean the money is gone before the lien reaches the bank.

Putting the Pieces Together to Make the Machine Do the Work

The Personal Responsibility and Work Opportunity Reconciliation Act requires States to consolidate the caseload into one central registry, send all payments to one location for entry on a single database, amass a vast array of information about income and assets of noncustodial parents from a wide variety of public and private sources, and assemble an impressive arsenal of enforcement remedies for collecting current and past-due support -- all through maximum use of automated, computerized processes. It requires wage assignments in every case and new hire reporting to make sure wage assignments keep up with job hoppers. So that enforcement remedies can locate shifting income and assets, there are provisions for States to share information by reporting case information to a Federal registry of cases and the National Directory of New Hires. Automatic liens are required in every case owing past-due support. To put teeth into those liens, States must conduct data matches with banks and other financial institutions every quarter to locate bank accounts of delinquent obligors.

In addition, States must build information linkages, including automated access where available, with a wide range of other State and local agencies. This network for information will extend from welfare, Medicaid, and foster care agencies to registries of birth records, motor vehicles, and real property; from state licensing boards to corrections and revenue departments; from financial institutions to insurance companies and worker's compensation agencies; from multinational employers to "mom and pop" shops; from hospitals to public utilities and cable television companies.

Agreements to obtain this information will have to be negotiated on a statewide basis, not county by county or office by office. Banks cannot be expected to negotiate individual reporting arrangements with sixty different counties in a State, nor will unemployment compensation agencies be able to conduct data matches under different agreements with every local child support office.

Moreover, for information on location, income and assets to be useful, it must be used quickly, before it is stale and the obligor or his money moves on. States must be able to take enforcement action as soon as they locate an asset. It does little good to obtain information from an automated data match, and then revert to an individualized case review to decide whether to act on the information, while the case gathers dust in a crowded in-box.

The use of automation working from a centralized data base that contains accurate account information to obtain economies of scale works. It was the recommendation of the Interstate Commission, the Clinton Administrative Working Group on Welfare Reform, and testimony at many Congressional hearings. It has produced results for States that have made the transition, however painful. Full automation -- as opposed to using computers to support individual casework -- is necessary if Congress is going to see the results it expects from its significant investment in computerization of the nation's child support program.

In spite of pressures that may arise to persuade Congress and HHS to back down on some of the bold changes that reengineering requires, it is important to stay the course. It may take longer than anyone wants or expects, but dramatic improvements in the nation's child support program are indeed possible through proper implementation of the provisions in this legislation.

While child support professionals are among the most dedicated and committed public servants in the country, it is simply not realistic to expect child support agencies to have the political clout to do this alone. They need governors to coordinate interagency cooperation, commissioners of diverse agencies to open doors and eliminate bureaucratic barriers, legislatures to provide adequate funding and laws with real teeth, and courts to interpret the new laws for the benefit of children.

Congress as a body and as individual members in their respective States can exert significant informal influence over State and local political leaders to encourage them to take a keen interest in ensuring that the necessary changes happen. And HHS can lead, encourage, cajole, train, and coach State programs, while interceding as appropriate with the governors' offices and legislatures at the critical juncture to maintain forward progress.

Getting Results: The Massachusetts Experience

Many States, such as Iowa, Virginia, California, New York, and others too numerous to mention, are well into the reengineering process that the Personal Responsibility and Work Opportunity Reconciliation Act envisions, and can attest to its success. Massachusetts is unique in that it has implemented virtually all of the requirements of the PRWORA and has documented the dramatic results through charts and graphs. Other States that have adopted these strategies in anticipation of these legislative reforms are getting similar boosts in productivity.

Massachusetts started the reengineering process almost ten years ago, when the State legislature began implementing the Child Support Enforcement Amendments of 1984. Like many States, Massachusetts' child support program suffered from fragmentation of essential functions among several entities, lacking a single agency having clear accountability or control over case management.

The first step in reengineering was transferring the child support program from the Department of Public Welfare to the Department of Revenue (DOR). Then DOR consolidated payment records from 84 local courts and 60 local welfare offices into one central payment processing location. Now every week, some 20,000 checks representing payments from more than 40,000 obligors arrive from employers -- with many sending payments for several employees in one check; the latest in payment processing technology ensures that checks to custodial parents are reissued in 24 to 48 hours. The staff devoted to payment processing went from almost 200 clerks opening envelopes in the courts and local offices to 30 employees at a central lockbox location using the latest in scanning and bar-code technology. Court jurisdiction over child support and paternity cases was changed so that on any given day a pool of some 45 family court judges instead of 200 judges could hear child support cases in special weekly sessions devoted exclusively to child support.

Wage assignments are now required in every case and, based on new hire information from employers, can be transferred by computer to the new employer without going back to court -- and without human intervention. Data matches with the unemployment agency ensure that a wage assignment is in place when the first unemployment check goes out. The new hire reporting program has transferred 150,000 wage assignments by computer. Before the automated wage assignment and new hire program went into effect, enforcing wage assignments required 200 employees and cost $9.2 million annually. These innovations reduced to 20 the number of employees required to manage the process, at an annual cost of $800,000. Costs for this program alone thus decreased by $8.4 million per year while collections increased by $33.2 million.

Taking a page from tax collection strategy, Massachusetts issues administrative liens in every case owing past-due support, with the agency poised to spring into action as soon as income or assets are discovered, again without a court or administrative order -- and all without human intervention. Since 1992, 150,000 liens have been issued against delinquent child support obligors, and more than $20 million has been collected from their assets. As a result of the first data match with the worker's compensation agency, virtually overnight, 8,000 liens were filed on workers' compensation claims, a process that previously took 20 staff working for a month to locate each worker's comp case for an obligor owing past due support. Now these matches take place monthly and DOR's lien is there -- sent by computer, not by a caseworker -- whenever a case involving a delinquent child support obligor is settled. Legislation requiring banks and other financial institutions to provide, at first, annual -- and then, in 1994, quarterly -- information enabled DOR to use data matches with bank account information to further boost collections by $17 million over the last three and a half years. Going from an annual to a quarterly bank match nearly tripled the collections from this powerful enforcement remedy. Parents of more than 70% of children born out of wedlock sign voluntary acknowledgments in the hospital or shortly thereafter in a program that has established legal fatherhood for 25,000 Massachusetts babies in just two years.

The caseworkers' job has changed in this process. Less of their time is spent looking for income and assets or dealing directly with custodial and noncustodial parents to gather case information. Instead, caseworkers resolve account disputes and handle customer inquiries. As a result of computerization, their time is being freed up to tackle the tough cases where the machine cannot find assets or income; or they work through the backlog of cases needing paternity, new orders or modifications. Contempt proceedings now focus on obligors where no income or assets can be located, making more effective use of scarce and costly attorney and judicial resources. Reductions in staff for particular programs did not mean layoffs; in fact, the legislature, at the Governor's request, added **more** staff because it was willing to invest in a successful program.

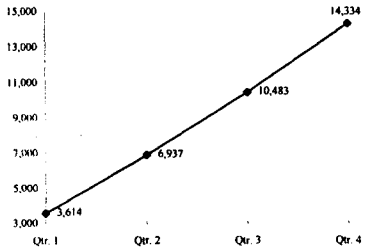
There was plenty of chaos and deflated morale along the way to this new style of doing business. Caseworkers were not always enthusiastic about changes in their job descriptions or the consolidation of local offices into regional centers. The telephones literally burned off the hook when the lien notices first went out and bank accounts were seized. There was many a naysaying, doubting Thomas, as well as complaints to the Governor's office or the press about missing checks or inadequate service. But at the end of this five-year process, the number of cases receiving child support has increased by 50% -- from 37,200 in July of 1991, to almost 56,000 in June of 1996. Child support collections also increased from $177 million in 1991 to $256 million in fiscal year 1996, growing by more than 45 percent. There has been a similar increase in the number of families where child support collections have helped them move from welfare to self-sufficiency -- growing from 3,000 in 1991 to 11,700 in 1996. In the process, child support has saved the taxpayer millions of dollars in welfare costs not expended. And in the end, staff have grown in sophistication and have developed a thoughtful pride in the accomplishments of the program.

Other States will no doubt adopt different organizational strategies and will show different results, depending on where they already are in the reengineering process and

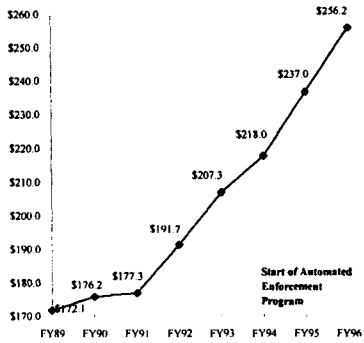
what works best for their particular size, demographics and history. HHS can help by sharing success stories, and by coming up with **simple** solutions to the vexing operational details that plague this complex program.

FY96 Performance Overview

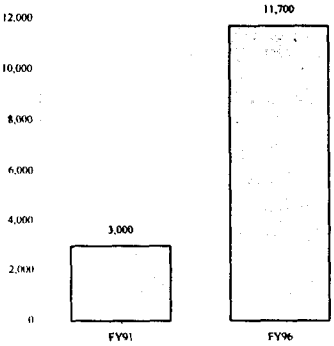
We're establishing more child support orders...



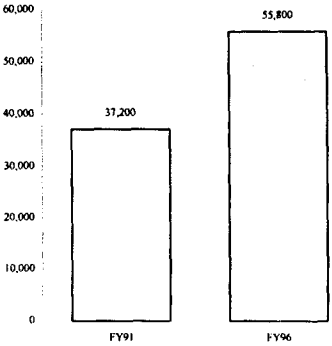
Collections are rising...



AFDC Net Case Closings...



And best of all, 18,600 **More Families Are Receiving Support**



Funding to Achieve Desired Results

Funding is a powerful tool to drive child support programs to achieve the results desired under this legislation, and one that has been deferred for further analysis. The Personal Responsibility and Work Opportunity Reconciliation Act requires the Secretary of Health and Human Services, in consultation with State child support directors, to develop a new incentive system and report back to Congress by March 1, 1997. This presents a unique opportunity to design funding incentives to achieve the mission of the child support program: to collect child support so that families will not be forced to turn to public assistance for economic survival. There are a few general principles that may assist Congress in reviewing these proposals.

The current Federal matching rate focuses on how much money **States spend,** not on how much money **States collect**. A more productive approach would tie performance measures to desired program outcomes that push States toward more efficiency and higher productivity.

Similarly, the current incentives structure is derived from AFDC collections. Rather than measuring a program's success at getting families **off welfare**, Congress in effect rewards States for keeping families **on welfare**. Cost avoidance -- money saved because child support enabled families to leave welfare, or to avoid public assistance in the first instance -- is not taken into account.

States which focus on closing AFDC cases actually reduce their potential income from the program. In Massachusetts, for example, in 1994, approximately $25.7 million was collected from 11,000 former AFDC cases, for an estimated savings of $38.5 million for AFDC, Medicaid, and Food Stamps expenditures that would have otherwise been made. Had those collections been counted as AFDC collections for calculating the incentive payments, Massachusetts would have received an additional $4.5 million. This is particularly important for the Massachusetts child support agency, as all incentive payments are funneled directly back into the program and provide the critical margin for creative innovations to collect support. The chart at the end of this testimony illustrates how AFDC collections have remained relatively constant, even as overall collections rose, as more and more families receiving child support have moved into the non-AFDC caseload.

In re-thinking the funding structure, Congress should reward cost avoidance by redefining the incentives to include collections in former AFDC, foster care, and Medicaid-only cases, along with AFDC collections, as part of the formula for calculating incentives. These families are a priority, as they are demonstrably the most at risk of turning, or returning, to public assistance. In addition, Congress should require that all incentives be reinvested in the child support program, not used to build roads or bridges, or other programs not related to children.

Reducing the Number of Children Needing Child Support Services

As a result of the welfare reform debate, Congress in a short amount of time has raised the public's awareness of the long-term harmful consequences on children of growing up in a single-parent family. With a third of children born out of wedlock and half of marriages ending in divorce, more than half of the children of this generation will spend at least part of their childhood in a single-parent household. Of these, an estimated 73% will experience periods of poverty during their minority, as compared to only 20% of children raised with two parents in the home. Perhaps worse than periodic economic deprivation are the increased risks of other social disadvantages. As McLanahan and Sandefur have documented, children growing up with only one parent -- usually the mother -- are three times more likely to have a child out of wedlock, 2.5 times more likely to become teen mothers, twice as likely to drop out of school, and 1.4 times as likely to be idle -- out of school and out of work. These risk factors cut across race, sex, parents' education, and place of residence. Although most single mothers struggle

valiantly against staggering odds with insufficient resources to raise children alone, -- and are not to be blamed for these outcomes -- a caring, involved, responsible father is clearly a powerful and necessary role model for both boys and girls in their journey to responsible adulthood.

While Congress does not, nor should it, legislate morality, it can support parent education programs that strengthen marriage and discourage out-of-wedlock births. Today the cultural norms that militate against marriage -- as reflected in television, movies and just everyday life -- seem well-entrenched. But not too long ago, the same might have been said about drunk driving and smoking tobacco. Well-conceived and well-executed campaigns to educate the public can work. And child support agencies, as the frontline professionals who deal with the fallout of divorce and unmarried parentage, are particularly well positioned to assist in this endeavor.

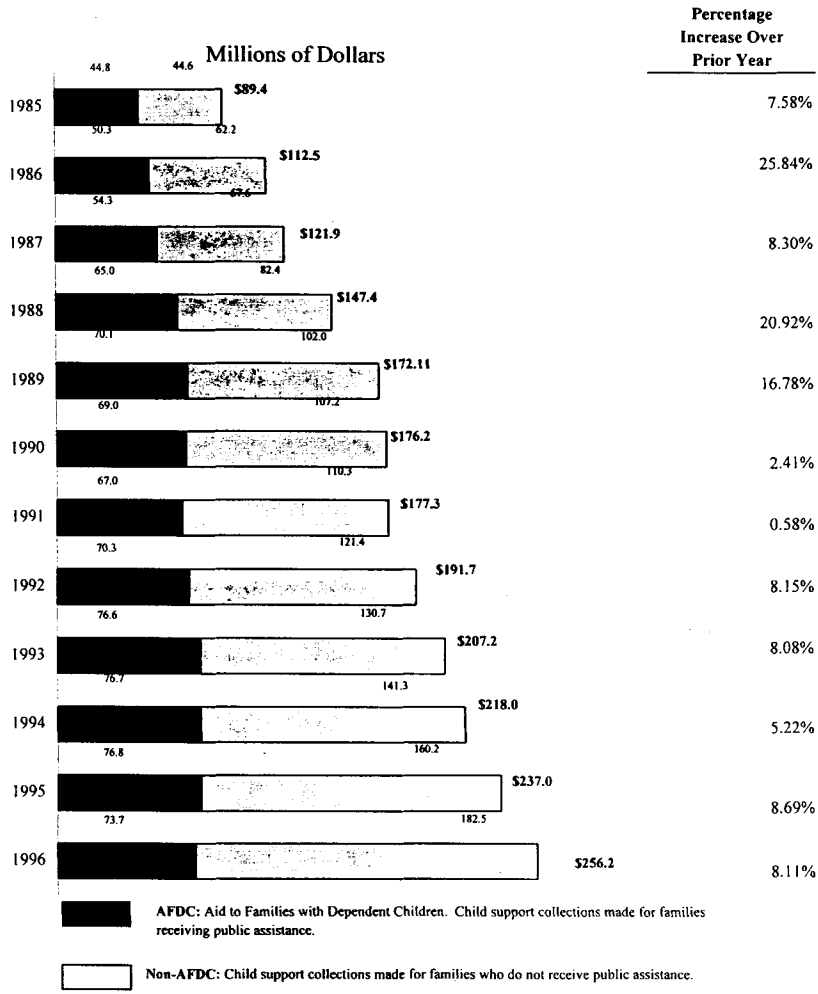
Conclusion

Mr. Chairman, while we have laid a strong and ambitious foundation for change in the Personal Responsibility and Work Opportunity Reconciliation Act, the real work of revolutionizing child support has just begun. We who work in child support understand that the road to successful implementation of this powerful legislation will not be smooth. We will undoubtedly have moments of frustration; we'll also need technical adjustments to fine-tune these comprehensive provisions. But we also know that the goal -- ensuring that families which rely on child support payments for economic self-sufficiency can count on receiving what is due, on time and in full -- is well worth the effort.

Once again, we thank you for your leadership and vision in bringing this legislation forward. We hope that Congress continues to stay interested as the implementation of this legislation unfolds.

Thank you also for your gracious attention.

Total Collections, 1985 - 1996
(Fiscal Year, July through June)



AFDC: Aid to Families with Dependent Children. Child support collections made for families receiving public assistance.

Non-AFDC: Child support collections made for families who do not receive public assistance.

85_96GR.XLS 85 - 96 9/17/96

Chairman SHAW. Thank you very much.

Mr. McCrery.

Mr. MCCRERY. Thank you, Mr. Chairman. I do not have many questions, but I do think that today's panel is an excellent example of the kind of oversight that we are going to have to do with respect to the new welfare reform bill that we passed. The testimony we have heard today I think points up the need to look very closely at the tools that are in the law now that we hope will dovetail with the new welfare reform bill, and maybe, just maybe, the tools that are in current law need some refining.

So I am very pleased with the testimony we have had today, and I want to tell all the witnesses your testimony has been excellent; very informative and to the point, concise. That is very helpful to us.

Actually, the Chairman brought this question up on our way over to vote, but I am curious to hear the answer, so I am going to go ahead and ask it, Mr. Chairman. If you just will listen, I will steal your question.

To Mr. Doss, we were both impressed with the increases in filings that you have been able to accomplish, but we were curious as to the impact that it had on your court system, and how you are handling that.

Mr. DOSS. It has had a tremendous impact on the court system. In Los Angeles County, when our current district attorney, Mr. Garcetti, assumed office, we had two dedicated courts handling the child support enforcement caseload in Los Angeles County. We had to make appearances around the county in various courthouses because we also appeared in existing family law action. Within 1 year of his becoming district attorney, we added a third. We will be adding a fourth, I am sure, before very long; and quite frankly, I do not see how we will do without more than five or six, because it is simply that large an impact in terms of the caseload that we are bringing into the courts.

We have been able to work very cooperatively with the courts, the availability of Federal funding has helped to some degree to do that. But they understand this is a priority that we have. It is a priority they are going to have to deal with, and it is putting some strains on our ability to get our work done. It has been a limiter up until now, in fact, in some of what we have tried to accomplish.

Mr. MCCRERY. But you are optimistic the State and the county are going to recognize the importance of it and cooperate in terms of expanding access?

Mr. DOSS. We just passed legislation in California that Mrs. Frye can talk about that will authorize additional courts around the State to handle specifically the child support enforcement caseloads of the district attorneys in California. And it does fund those courts separately. It does give them a priority within the county court structure. It is a very, very, positive move. We need it, and we will be using them very quickly.

Mr. MCCRERY. Ms. Frye, do you want to expand on that?

Ms. FRYE. Yes, I was just going to add that as we prepared for automation, both in Los Angeles County and statewide, we saw this workload coming as we became more efficient in locating and serving, preparing those filings for enforcement and establishment

of support. We did pass this year landmark legislation that was sponsored by Governor Wilson and carried in our State legislature which will simplify the process, make it more understandable for the families who are going through it, and it will streamline the rules of court and many other features so we can have the resources we need to process these orders through the court system. It was something developed in cooperation with the judiciary, and all of the players, and it is something that I think we are really proud of, and it is going to enable us to meet this challenge

Mr. McCrery. Ms. Smith, do you have any similar experience in Massachusetts?

Ms. Smith. Well, we went quite a different route. We organized our program as much as possible to keep things out of the court. Almost all of our enforcement remedies are done through the administrative agency, through bank match, and administrative license revocation, and transferring wage assignments. We use the contempt process only when we cannot locate any income or assets through any other mechanism or use any other mechanism for seizing them.

With respect to establishing orders, we have had enormously successful in-hospital paternity programs. We are establishing paternity in almost 70 percent of the cases of children born out of wedlock, either in the hospital or shortly after they leave the hospital. This is just after 2 years of work, and we still have not completed all our outreach mechanisms.

We do use the courts. We do not have administrative or quasi-judicial process. We do use judges, but we focus on cases where judges set orders in the first instance as well as the modification process, and we do have legislation to make that process even more non-court-oriented, if possible, in the next round of reform.

But our strategy has been to keep the judges to do the difficult cases that you cannot resolve in any other way, and use them as a last resort. That has made an enormous difference. We would never be able to bring 20,000 lien actions back to court. It is all done through the administrative agency. And this legislation, I believe, will move all States to go in that direction, because many of these enforcement procedures will happen by operation of law. The State has the ability to go forward without getting individual approval of a court, and then the court can be there in the event that there is some contest or dispute over the amount of the arrearages, or so on.

Mr. McCrery. Thank you. Good question, Mr. Chairman.

Chairman Shaw. Just as a followup, you said establishing 70 percent of paternity in the hospital. I assume you are talking about single moms?

Ms. Smith. Oh, yes. We are not talking about married parents. No, no, we are talking about unmarried parents.

Chairman Shaw. I just wanted to be very clear on that

Ms. Smith. Right.

Chairman Shaw. Ms. Kennelly.

Mrs. Kennelly. Thank you Mr. Shaw. I have been working on this subject, child support enforcement, for 12 years now on this Subcommittee. I remember in 1984 when we began the amendments on child support, there was a debate, and as even as we

began, we did not address non-IV–D cases or nonwelfare cases. And then of course, we realized we had to do it, because one of the ways you are going to keep people off welfare is by making sure that their child support orders are paid.

In this last round, this Subcommittee looked at a number of suggestions by the U.S. Commission on Interstate Child Support, of which I was a member. One of the suggestions that I thought was most important, of course, was that we—and obviously the Chairman and the Subcommittee did—that we establish a Federal registry for child support orders.

What I would like you to address, starting with Ms. Donahue, is when we have a national registry, and the States put all their cases on file, is it important to put both IV–D cases and the non-IV–D cases on the national registry? My understanding is that is what we did, and I want to make sure that we did it, but also, I would like to ask you how important you think it is to have all orders on the national registry?

Ms. DONAHUE. The way I read the legislation is the way you did. So I am glad that you think that is what you did, too.

Mrs. KENNELLY. I am positive that is what we did, but I understand there is some question about it now.

Ms. DONAHUE. Yes. I mean, I think it is vital that both IV–D and non-IV–D cases be sent up to the Federal registry for a number of reasons.

One-third to one-half of all the child support cases in this country are not IV–D cases. So, if we really want to move toward a system where we can identify and enforce all child support orders, and I am not saying that the IV–D agencies at the State level would have to enforce those orders, but at least know where people are, and what information we have on them, it is really important that the national registry house both the IV–D and the non-IV–D orders.

And of course, this national case registry is comparing these orders to a national new-hire registry, so to really get a full picture of where everybody is and who owes child support, we really need to include all orders.

Also, the requirements of the Uniform Interstate Family Support Act and the new full faith and credit law really require that you have information about all cases, not just IV–D cases.

I think it is crucial, and I think the legislative language is pretty clear as well.

Mrs. KENNELLY. The only caveat you had there is that the States put into the computer all the cases, and then they would not have to follow up, but at least let the Federal Government and the national registry have that information?

Ms. DONAHUE. Right. I think the legislation is pretty clear that while the States have to keep a record of all new and modified orders that are not IV–D orders in their case registry, they do not have to work those orders. They do not have to work them unless the case becomes a IV–D case. One of the things that is important about having information on both cases is that cases go in and out of the system, and a case may not start out as a IV–D case, but it may become one pretty quickly. So you want to not have lost the

opportunity to have that information simply because it was not IV–D from the outset.

Mrs. KENNELLY. Thank you very much.

Would anybody else like to comment?

Mr. LEVY. May I just mention that despite our best efforts on child support since 1984, we have not reduced poverty or welfare even 1 percent, and it is apparently because when parents are poor, breaking them into dysfunctional single parent units makes them even poorer. But if we can have some of the family formation and family preservation measures called for by this excellent welfare reform legislation, we may be able to do more in helping families form and stay together. I refer to the ideas I previously outlined like kinship care, explaining the benefits of marriage at the intake for child support and welfare, schools teaching parenting skills, parenting education, mediation, conflict resolution skills, counseling, shared parenting, waiting periods for separation, "leaning a little" to parents who want to preserve the marriage. If the States do some of those things which are very low cost, and some of them no cost, they may find that their incentive payments after several years go up, because they have helped with family formation, and family preservation. And really, a family together, a married family, is the best child support in the country.

Mrs. KENNELLY. Thank you. I would just like to quickly make one more comment, Mr. Chairman.

Ms. Smith, you called upon us to stay vigilant in overseeing this legislation. I want to ask all of you to stay vigilant, because in my experience, I have found this is such a complicated subject, that if I did not have you, the experts, I could not address it. So I hope you will stay with us as we work with you.

Chairman SHAW. Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman. I just wanted to compliment this panel on their comments. As I listen to you, I hear echoes of a lot of statements that were made during the discussions when we were going through this process last year, and I just want to say thank you. I hope that those noncustodial parents that have not fulfilled their duties in the past, and those of the future will understand that we are intent on collecting the funds that they owe, and maybe that will be a deterrent in the future so they will not be lax in their payment. And we will be able to gain a lot from this system—it will just work out for the benefit of families that need this assistance. Thanks for your help. Thanks for your comments.

Thank you, Mr. Chairman.

Chairman SHAW. Mr. Ensign.

Mr. Levy, I was listening to your testimony, I was reminded that when I was a very young lawyer starting out in practice, when you take almost any case that would walk in the door, and the few divorce cases that I handled back then, when you start to write down the assets, and the wages, and income of the family, the first thing you would understand is that there is no way they could make it by splitting it in half. I spent half my time trying to talk them out of going to court and telling them they would not owe me anything if they walked out the door, because it is really pitiful when you see what does happen.

But of course, we know that poverty sometimes breeds abuse, and abuse is sometimes worse in a family than a single parent, and it is a terrible cycle.

But I certainly agree with you that marriage is the best way to avoid the problems of poverty.

I would like to get some information from both the folks from California, and you, Ms. Smith from Massachusetts, and both you, obviously, are way ahead of the curve as far as child support collection. Pennsylvania possibly might come into this, too.

What experience have these three jurisdictions had—and I include you in this, Mr. Weaver—with the private sector being involved in the collection of child support? Or have you had any experience with that?

Mr. DOSS. I will begin to address that. We have had some limited experience in Los Angeles County with private sector collections. It is been a difficult task at best, because when we deal with private collectors, they generally want to ask of us the cases that are easiest to collect and leave with us the problems that are hardest and most unmanageable.

So we have not successfully entered into a collection contract to date with the private sector.

We have had some good success in the public sector. We did a pilot in Los Angeles County along with five other counties that brought in our State revenue agency, the franchise tax board, to act as a collector for us, and to use the same kinds of authority that they use to collect taxes, to collect back child support. We only pay them for what they collect, and that has been very successful not only in Los Angeles County, but it is now moving statewide. But our success with the private sector has been limited.

Ms. SMITH. The same has been true in Massachusetts. Our system is organized so that we have access to tax information through the Department of Revenue. We have access to new-hire reporting information for all employers. We have access to bank account information that banks report to us quarterly. We have access to license revocation, and by the time we have exhausted all our remedies and databases, we have picked up the money that is relatively easy to get. We do have a couple of contracts with private collection agencies, and they are working on the difficult cases. And so not surprisingly, those cases are not as lucrative as they might be if all these other programs were not in place. And I think if States go toward automation, and automatic seizures of assets and income and so on, that they may be able to move more effectively than collection agencies. Collection agencies may be particularly useful in interstate cases where it is very difficult to track somebody down, where you really do need the kind of "gum shoe" private investigator type of work, and if there is big money at stake. So I think there may very well be a role. But it is probably not in the automation domain.

Chairman SHAW. "Gum shoe." Boy, that is a name out of the past.

Mr. Weaver.

Mr. WEAVER. I think the experience in Pennsylvania has been predominantly at the county level in terms of privatization, and it has not really been that prevalent. But where there has been pri-

vatization efforts, it has been predominantly similar to what Marilyn has mentioned, which is in taking cases where there has been difficulty in collections, or has not been a collection for an extended period of time, and contracting that out with a collection agency, or quasi-collection agency.

Ms. FRYE. I would like to just add one thing.

Chairman SHAW. Yes, ma'am.

Ms. FRYE. The actual collection or entering into a partnership with a collection agency, is the one way that privatization has affected child support programs. This is not to say that we do not partner with the private sector for service of process, for genetic testing, for development of automation and so on and so on. So that is just one aspect of it, is the actual collection.

Mr. LEVY. Mr. Shaw, Mr. Chairman, thank you for your insights and experience into poverty and breaking up the family assets. Regarding an earlier comment about paternity establishment, our Children's Rights Council favors 100 percent paternity establishment. In Vermont, they are getting higher compliance by Con Hogan, the director of family social services, who has instituted parentage forms—not just paternity forms—for unwed parents so that moms and dads both acknowledge mutual rights and responsibilities in support, custody, and access. The forms do not say what level of support, custody, or access you will have, only that there are mutual rights and responsibilities.

Parents, if they know they are going to be involved in their child's life more than just providing a Social Security number for support collections, are going to be much more responsive.

And in Texas, they do something like that, they establish custody visitation, support, all in one hearing.

In other States like Illinois, you sign a paternity form, they establish a support order, they do not even address custody or access. That is not going to induce family formation, family preservation, or family connections. The incentives can help a lot.

Thank you, Mr. Chairman.

Chairman SHAW. Would you like to comment on that, Mr. Melia? That seems to be getting into your area a little bit on the private sector.

Mr. MELIA. Yes. And I used to run the child support program in Massachusetts as well. So I have been on both sides of the fence. And I know what Wayne and Marilyn said is generally true across the country.

When States farm out unsuccessful cases, they tend to be the most difficult ones to pursue, and the more organized and better a State is at collecting, of course, the worst the remaining cases are, and the more difficult they are to collect. I do not know of anyone who has really had good results with that type of contracting.

The other, and probably more significant way the private sector gets involved, is that some States elect to take a particular city or county, and turn the program over pretty much lock, stock, and barrel, to a private company, where the private company hires all the employees, and performs all of the child support functions for that jurisdiction. And the——

Chairman SHAW. What is an example of that?

Mr. MELIA. Well, Tennessee has probably gone the furthest. They probably have 4 or 5 of their 30 judicial districts run privately. The State of Georgia does it for Atlanta where my company runs a contract. Omaha, Nebraska, is another large one.

The main advantage of a private company is its flexibility, especially in the overhead areas. It just is much easier to make personnel decisions and to move people around and to hire and fire. It is easier to buy equipment. It is easier to replace it as it should be replaced. It is quicker and easier to rent space than to go through the State government agencies. So you can take a fair amount of cost out of the program. I think we would probably have a 10- to 15-percent cost advantage, even assuming that we pay employees pretty much the same wage and benefit package, which tends to be the case.

Chairman SHAW. Are you given the same access to bank information and things of that nature as the other——

Mr. MELIA. For the most part, yes. It can vary according to the precise contract. But generally, States recognize that they cannot hire somebody and expect them to do a good job without access to the critical information. The other area that seems to be of value is the ability to pay incentives. We pay people a base salary, but on top of that, every employee has a chance to earn a bonus, and it is all tied directly to the basic performance measures, paternity establishments, and collections. And that definitely helps.

So to the extent that you can incorporate those lessons that—incentives work better than mandates—into the overall funding system, I think you can generate some more widespread improvements in the program.

Chairman SHAW. With the new legislation, we on the Federal level, are paying for a great expansion of the electronic process in which all this is set up. Are you finding that there is an adequate number of talented people to put these programs together? I mean, I am speaking as a guy that cannot even turn on a computer.

Mr. MELIA. No, there clearly is not. One of the major reasons why so many of these systems are delayed is the legislation essentially drove all 50 States into the marketplace at the same time. What has happened is the same thing that happens when the four-lane highway becomes a two-lane road.

When I was directing the Massachusetts program, and I was on the phone constantly with Wayne, and he with me, because we hired the same company to do it, and we were constantly arguing over, you know, is this guy going to be in Los Angeles next week, or is he going to be in Boston. There just are not enough folks out there who are both expert in technology, and expert in the program areas.

Mr. DOSS. I would like to reiterate that point. That is absolutely the experience, and it is certainly the case when we started. It is better today than it was in the early nineties, when these systems were getting off the ground and the States were scrambling to get contracts in place. But we saw a real increase in costs of systems. The systems particularly that came along later, because vendors did not have the available resources to do the job. They were already committed elsewhere.

Chairman SHAW. Do not the vendors see this as an opportunity so they should be scrambling to become more competitive with each other to get the business?

Mr. DOSS. I do not think there was any lack of effort on the part of the vendor community to try to find resources. In fact, one of the reasons Mr. Melia, for example, is no longer in Massachusetts is because of the efforts of the vendor community to do that.

Chairman SHAW. Oh, he is the one-lane highway, now.

Mr. DOSS. What I was going to suggest to you is that in all those conversations about whether our vendor would work in Los Angeles or Massachusetts, I won, and that is why he is no longer there. But I am not sure that is true. No, the situation is better, but it is still not where it needs to be. The problem is, there has not been enough child support expertise in the community to support the computer experts in doing what they do. They have to know what to do in order to program the computer. And they did not have the strong base of knowledge of child support, child support regulations, and law, that was needed to do this job in the beginning. It is getting better, but it has not reached the point it needs to.

Mr. MELIA. Mr. Chairman, there is probably one other point that is worth mentioning here, and that is, a significant part of the complexity of these systems and a significant reason for cost overruns and delays is the fact that a good portion of these computer programs are devoted not simply to collecting child support, but also to producing the necessary documentation so that States can show OCSE that they are in fact meeting all the many rules and regulations.

Chairman SHAW. Do you think that the timeline that we have produced in the legislation is reasonable?

Mr. MELIA. I know the new time line is October 1997, and then——

Chairman SHAW. For the old——

Mr. MELIA. For the old one——

Chairman SHAW. We extended that one.

Mr. MELIA. And another one——

Chairman SHAW. We had to because I think——

Mr. MELIA. I think that what we will see is history repeat itself in that many of these changes will prove to be—the new law will cause many States to go back and rethink their fundamental organization structure.

When the computer systems are finished here, one of the things you need to understand is the job of improving efficiency is not over, it has just begun. I was up in Minnesota a couple of days ago, they just implemented their new-hire reporting system. And the front end works like a charm. The employer's reports get keyed into their computer system right away. They match it to their database of all their child support people. So all well and good.

But then what happens? What happens is their computer turns this into a printout. Minnesota is organized on a county basis, and you heard some of the members of the panel here talk about the problems. And the computer prints out this big printout every week, organized by Minnesota's 88 counties. And I met this woman who said she takes this printout, she puts it in the trunk of her car, she goes home, and while she watches television at night, she

rips the pages apart, and organizes them by the 88 counties on her living room floor. She puts them into manila envelopes and writes the address on them to which they should go. She brings them back into work, she mails them out.

All right. So they go to the county mailrooms. They eventually surface in the local child support programs, and somebody rips them open, and caseworkers figure out, "OK, this guy has gone to 3M, maybe I should send a wage assignment out here."

And that is because they are still operating fundamentally as they already have when all caseworkers had to make even the most routine decisions on all cases.

We have to get out of that mentality and start to say, "We do not need to do any of this."

Once 3M notifies us through a new-hire report that they have hired Bob Melia, then the system knows that Melia ought to be paying $100 a week in child support, the machine should simply print out a wage assignment in the middle of the night and mail a letter to 3M saying, "Take $100 out of this guy's pay."

There is a lot of work changing those organization structures, and we went through it in Massachusetts, and as Marilyn gave you the headlines, it took several years of effort. And other States are going to have to go through the same effort.

Ms. FRYE. I would just like to concur with that, and I would say also that different States took different approaches. Some went farther along the lines that Bob described; others just barely got started. But in addition, in terms of whether your timeframes are realistic, I want to point out that there is a substantial amount of automation development that is going to be required of the Federal partner in this program. And to some degree, there is a problem with the interplay of what OCSE is expected to do, what HHS is expected to do, by a certain date. That is, build a national registry, and a national new-hire reporting, and what it is that the States are expected to do. And I think we need to look at those dates.

In one instance, HHS is required to tell us what the data elements are for one of the registries by 1998, which appears to be the same date by which we are supposed to have our State level registries developed.

So I think there is some confusion, or some lack of clarity. And I am concerned about whether the Federal Government—well, I think they will face the same kinds of procurement and resource issues that States have been facing for the last 5 years.

Mr. LEVY. We might also consider reporting terminations and fires as well as new hires so that the employment information will be complete and accurate.

Chairman SHAW. Well, I have just been handed a note by staff that the 1988 requirements are now October 1, 1997, and the new requirements are October 1, 2000. I do not want to get ourselves in a situation where we find we get down to the deadline as we did under the 1988 law and find out that because a lot of folks were asleep at the switch that these were not done.

So I would hope that this Subcommittee and the—our partners in the administration would watch this very, very, closely, and perhaps we need to do some oversight on this Subcommittee with the private sector to find out what is out there, what are they doing,

how are they gearing up to meet the requirements of the States. Because this is so important. And we have got to be sure. Now, we have got a whole new thing to worry about.

Mr. MCCRERY. Mr. Chairman.

Chairman SHAW. Yes, sir.

Mr. MCCRERY. I am just curious, based on the comments of Mr. Melia, is there any effort ongoing, say with the National Governor's Association, or council of State legislatures, or Child Support Enforcement Association that is going to have workshops or seminars, on solving some of these problems outlining how to consolidate your effort, and use computers and data?

Ms. SMITH. Yes.

Mr. MELIA. Yes. Marilyn can tell you.

Ms. SMITH. We are working right now to put together a program right after the first of the year on reengineering child support to talk about some of these issues so that people do not use the computer to take manual processes and computerize them, but instead they do what the private sector has done. That is what reengineering is all about, it is a real paradigm shift. You look at things in a very, very, different way, and not just do business the old way. That is where I think States are going to have the most difficulty, because local folks may find it hard to make those changes. That is why I stress the importance of political leadership at the highest levels to put the pressure on people to make it happen, because it is not easy.

We went through a lot of internal turmoil for several years in Massachusetts while we went through that process, and we had Bob Melia here telling us to "jump off the cliff no matter what, you have to do it," and people did it.

And we are going to have to try to be in touch with States to learn from each other, and hopefully, people will testify in other State legislatures, and work with other State Governors' offices, and so on, so that people will be moving in the right direction. But that absolutely is the greatest concern, that the will and the leadership will not have the energy to take it through to the end.

Mr. MCCRERY. So I think I heard you say that after the first of the year, we are going——

Ms. SMITH. Oh, the National Child Support Enforcement Association, which is composed of all the professionals who work in the child support community; it includes prosecutors, local and State administrators, judges, private sector; it is virtually everyone who is involved in child support.

Mr. MCCRERY. And those folks will have to go back to their States and talk to their Governors or their State legislatures or whatever about implementing some of the suggestions they learn at this meeting.

Ms. SMITH. That is right. Now, OSCE is also putting together work groups and people are sharing model legislation, and people are bringing up different kinds of detailed questions about what direction to go in, but we do not have very much time to put this together. Most States will have to have their laws passed by January 1, 1998. So that means 1 year to figure out what the laws ought to say, and get the language integrated into each State's system. It is going to be quite a challenge.

Ms. FRYE. I would like to say also that OCSE was provided technical assistance funds in the new bill to help States achieve what they need to do in order to meet the requirements.

Chairman SHAW. Yes, we have got $400 million in the bill——

Mr. MCCRERY. Yes, but if they do not know what to do, they can spend that money in a heartbeat and accomplish very little.

Ms. FRYE. Right. This is in addition to that. It is technical assistance funds, and it is for the purpose of helping States reengineer their business processes——

Chairman SHAW. CBO told us that $400 million would do it. I know there is probably some question about that. Maybe there is some difference of opinion on this panel as to whether that is going to be adequate when it is split up among the 50 States, and other agencies that are involved with it.

Mr. MCCRERY. Mr. Chairman, it might be helpful for us to contact the National Governors' Association, for example, and just try to get them to cooperate with this other organization, and mesh their efforts, so that all parts of the dog know what is happening.

Chairman SHAW. Well, we will be watching it, and I am going to ask for regular reports from HHS as to the expenditure of those funds to see what is happening, and I think that is an excellent suggestion to get the NGA as well as other agencies involved in that in reporting to the Congress so we do not let this thing slip up on us again as we did under the 1988 law.

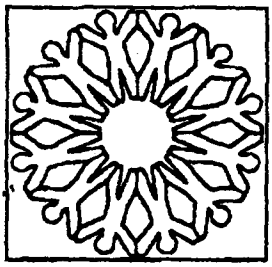
I would like to thank all of you for being here. It has been very helpful. I think you have certainly shown that we are on the right track, but we are going to have to be careful and watch it very carefully as to the direction we are going, and how we are going to get there, because this is one thing that everybody agrees on that we have got to do, we have got to make fathers of these kids responsible and quit walking away from particularly these poor moms. I know it works the other way occasionally, but the big problem is with the single moms, and we need to be sure that they do not have to live a life of poverty simply because their partner is not taking seriously his responsibility.

Thank you very much.

The hearing is adjourned.

[Whereupon, at 12:11 p.m., the hearing was adjourned.]

[Submissions for the record follow:]



TESTIMONY OF
DR. RODGER G. LUM, DIRECTOR
ALAMEDA COUNTY SOCIAL SERVICES AGENCY

REGARDING IMPLEMENTATION OF WELFARE REFORM
P.L. 104-193

U.S. HOUSE COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON HUMAN RESOURCES
SEPTEMBER 26, 1996

401 Broadway, Oakland, CA 94607

My name is Dr. Rodger G. Lum and I am the Director of Alameda County Social Services Agency. My Agency is responsible for the delivery of AFDC and Child Care services (Title IV-A), Child Welfare services and Foster Care (Title IV-B and Title IV-E), JOBS (Title IV-F), Food Stamp services, Medicaid eligibility (Title XIX), local General Assistance, Adult and Aging Services, and Job Training Partnership Act Services in Alameda County, California. Over 170,000 low income and vulnerable children and adults are served each month. It is an honor to provide testimony to the House Committee on Ways and Means, Subcommittee on Human Resources regarding the implementation issues which I anticipate as welfare director in California's seventh largest county.

With a population of 1,356,100 people, Alameda County is larger than many states. It is also one of the most ethnically diverse in the State with 18% African Americans, 15% Hispanics, and 14% Asian Americans. Members of our community who will be impacted by welfare reform include:

- 99,460 children and adults who currently receive Aid to Families with Dependent Children (AFDC) plus Food Stamps and Medicaid - 12,000 of these individuals are legal immigrants;
- 47,650 aged, blind and disabled people who currently receive Supplemental Security Income (SSI) plus Medicaid through the Social Security Administration - 13,185 of these people are legal immigrants;
- 70,350 individuals who receive Medically Needy Only Medi-Cal benefits - 6,760 of these individuals are legal immigrants (Medically Needy recipients overlap with Food Stamp recipients, but not AFDC recipients); and,
- 44,700 people who currently receive Food Stamps in conjunction with General Assistance and Medi-Cal (this does not include individuals who receive Food Stamps as a result of AFDC eligibility) - 1,800 of these people are immigrants and as many as 6,000 are unemployed able-bodied adults without children.

Over 16% of Alameda County's residents will experience change in the safety net they rely on for health care, nutrition assistance, cash aid, employment assistance, child care and social supports. The pending changes, regardless of how they manifest themselves in State regulations, will result in fewer benefits to recipients and more expectations of them.

The challenge of welfare reform will be extremely difficult as our community may lose up to $126 million annually in Federal support if the Governor and State Legislature in California decide not to benefit legal immigrants currently receiving public assistance. The Federal welfare benefits which will be lost are paid to low-income and disabled

individuals who spend their benefits in local retail stores and in health care services. When fully implemented, lost Federal funds in Alameda County include:

- SSI - phase out of benefits to 13,185 elderly and disabled immigrants amounting to approximately $63 million in Federal funds;
- Food Stamps - phase out of benefits to 12,000 low income immigrants amounting to approximately $10 million in Federal funds;
- Food Stamps - time limited assistance (3 months in any 3 year period) for 6,000 unemployed, able-bodied adults between 18-50 years without children amounting to more than $6.9 million in Federal funds; and,
- Medicaid - phase out of benefits to 38,000 low-income and disabled immigrants amounting to approximately $34 million in Federal funds.

If the State of California decides to cut costs and does not reinvest the funds which had been used to match Federal funds, then the numbers are even larger. Our analysis is that this would result in the loss of another $37 million in SSI State Supplemental Program funds and $34 million in Medicaid State matching funds.

County costs could be as high as $35 million if the newly disqualified legal immigrants receiving SSI all apply for General Assistance (GA). Additionally, if the State does not opt to provide current recipients with TANF benefits, there could be another $30 million impact on our County's General Assistance program. This could mean $65 million in increased GA costs to the county when fully implemented. The cost to the health system if all these individuals were served through the County's medically indigent program would be even higher.

Mandated work requirements make implementation of welfare reform even more difficult. Currently, we estimate that we have 27,000 persons in Alameda County who could be included in the "employable" pool of recipients under the new welfare reform rules. Since our computer systems do not track persons in all categories of "work activities" counted as work participation in the new program, we must estimate the number of families who currently "work". Using these estimates, we conclude the following:

	"Employable" pool	Recipients currently employed over 20 hours per week		Working recipients needed to meet requirements		New jobs needed in FFY 96-97
One-parent families	20,654	4,075	19.7%	5,164	25%	1,089
Two-parent families	6,605	1,282	19.4%	4,954	75%	3,672

Even with aggressive efforts toward quick employment, it will be difficult for Alameda County to meet work participation targets. The employment challenge under welfare reform is massive. To meet the 25% and 75% work participation rates, the number of jobs in our community must expand by approximately 4,800 to accommodate welfare recipients who are expected to enter the workforce. The job market will also have to expand to meet the needs of up to 17,500 immigrants who had been receiving Federal benefits, but are now being disqualified. One must also keep in mind that Alameda County is in the midst of three major military base closures with employment needs for workers who displaced.

RECOMMENDATIONS

Please consider the following six recommendations to help local communities improve the delivery of welfare services so as to promote self-sufficiency and improve outcomes for families.

1) LOCAL INITIATIVES. I ask, Mr. Chairman, that you give consideration to County-level or regional block grants in large states with county-run welfare systems. In light of the potentially severe consequences of welfare reform, my County is extremely concerned with the preparation of California's State Plan. California's 58 counties each have unique capacities for service delivery, population demographics and economies. The diversity of California's counties will make it difficult for a single State Plan to meet local needs. Welfare Reform will demand that government be responsive to the needs of the economy and the assets of vulnerable constituents. This responsiveness is only practical at the local or regional level. One only needs to look at the recent confusion in California around discontinuing legal immigrants from Food Stamps to see that the State bureaucracy is too unwieldy to allow for rapid communication and planning between communities needing assistance and bureaucracies which must maintain accountability.

   Over the past nine months Alameda County has been planning for welfare reform. A community-based Welfare Reform Design Team consisting of County officials, community/faith based organizations, interested individuals and welfare recipients has been meeting since January 1996 to develop a vision of welfare which can best meet the needs of our community. This vision, still under consideration by our Board of Supervisors, is what we call a "single welfare system" that would allow us to blend services and funding across categorical lines (AFDC and GA) and reduce fragmentation in serving poor families and communities. Anticipated in this plan are simplified eligibility rules and the removal of artificial categories between populations. Savings from streamlining administration could then be reinvested in employment programs or supportive services. Savings in cash assistance payments resulting from successful efforts to transition welfare recipients to self-sufficiency could also be spent on supportive services.

   Perhaps there is another reason why Congress should support regional or local initiatives. One basic theory behind the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) is that recipients will change behaviors due to the combination of time-limited assistance, work requirements, tougher sanctions for noncompliance, etc., If we believe time-limited assistance is one of the most important variables in motivating job-seeking behaviors, among those who are able to work, how would we know that other approaches (with or without time-limits) might not also work as effectively? How effective might integrated welfare systems or regional administration and service delivery be in improving outcomes? If Congress is serious about evaluating and improving on the new welfare paradigm, then it must allow for substantive variations in that paradigm.

2) LEGAL IMMIGRANTS. The negative impact on the local economy and to immigrant members of our community can be mitigated by passing legislation allowing aid to immigrants who legally entered the United States prior to passage of PL 104-193 (they can still be subject to alien sponsor deeming until citizenship). At a minimum, a grandfather clause continuing aid to legal immigrant recipients who have begun their naturalization process is needed. Implementing welfare reform demands an expanding local economy for success. The loss of Federal funds in our community as a result of discontinuing assistance to legal immigrants is likely to stunt our local economic growth.

3) FOOD STAMPS. It is not realistic to expect members of our community and our workforce who are paid minimum wage, are unskilled and employed on an "as-needed" basis, to experience a maximum of six-months of Food Stamps in a three year period. One way to reduce harm is to extend time limits for adults without children.

4) WORK REQUIREMENTS. The Federal government should allow states and counties to experiment with alternative work requirement standards. We propose that each county (and the state as an aggregate) establish a performance "window" built on baseline data on work participation plus a uniform, negotiated add-on percentage, and for succeeding years incremental percentages be added. For example, the work participation rate for one county might be 28% in the first year (23% baseline rate for work participation, plus 5% add-on negotiated for the entire state), whereas in another county with high rates of unemployment it might be 15% (10% work participation + 5% add-on). This approach acknowledges state and county uniqueness in labor market conditions, unemployment rates, and socio-demographic variables and establishes more realistic and reasonable standards.

The desired outcome of federal welfare reform is to encourage recipients to move from welfare to work, and to provide States with the necessary tools and flexibility to succeed in their efforts. Rigid work participation rates that are not based on baseline performance histories for states and counties will either result in state sanctions or efforts by states to meet performance requirements by adopting measures even harsher and more stringent than intended by Congress.

Should the Federal government not authorize such variances or waivers, then mandated work participation rates and sanctions for not meeting targets must be waived for FFY 97. To meet work requirements, Alameda County will have to place 4,800 welfare recipients in work activities for FFY 97. This is not realistic and is not likely to happen since California does not yet have a State plan, and funds are allocated to Counties in the categorical programs which were in effect prior to P.L. 104-193.

Redirecting funds from AFDC assistance payments to job search, job training and community service projects is necessary to create work opportunities for welfare recipients. If TANF funds are reduced as a result of sanctions, the necessary redirection of funds will be difficult, further compounding difficulties by states and counties in meeting even higher expectations in the following year.

5) ADMINISTRATIVE EFFICIENCIES. Achieving administrative efficiencies and breaking down categorical barriers to serving communities is essential to implementing real welfare reform. P.L. 104-193, however, establishes new categorical barriers to serving families and continues many existing cumbersome eligibility processes. Examples of new categorical barriers to service delivery include prohibitions against serving the following populations with Federal funds:

- most legal immigrants;
- families with an adult who has received cash aid for 60 months;
- parents not working after receiving 24 months of cash aid;
- adults convicted of felony drug possession, use or distribution; and,
- unmarried parents under 18 who do not live with an adult.

Monitoring the population to ensure that they do not fit the prohibited profile will take funds desperately needed for community support. Clarifying that the social re-engineering goals of P.L. 104-193 do not have to be met through an eligibility process tied to individual people served through the TANF program is essential.

6) AUTOMATION. Sanctions for not having all the required data to meet mandated reporting requirements need to be delayed until such time as California is able to fully implement its Statewide Automated Welfare System (SAWS), which is likely by FY2000. Counties will require funding for the development of automated systems to track welfare recipients, which needs to be in addition to the TANF block grant and funded at an enhanced level. The effort and cost of developing the nationwide database necessary for tracking welfare recipients will be astronomical. The new TANF and Food Stamp legislation requires that nationwide information be stored on all future TANF and Food Stamp aid received so as to be able to track time-limits and work requirements. Any additional funding will also allow the State to incorporate GA as a functional component

Startling new findings from the National Incidence Study of child maltreatment recently reported by the U.S. Department of Health and Human Services clearly establish poverty as a profound risk factor. Key changes brought about by the PRWORA may restore hope for America's poor, but they may also unintentionally increase the risk of child abuse and neglect among the poor who aré unable to find work at a living wage. To reduce such risk, (1) States must have the option of developing county-specific baseline performance standards for work participation with aggregated performance data for State accountability and (2) States must allow counties to experiment with integrated eligibility and services delivery (e.g., job training, community service) that links TANF and GA programs.

In conclusion, let me again thank you for this opportunity to present Alameda County's concerns with implementing welfare reform. Welfare reform offers our community the hope for change and improved public accountability for serving low-income families. However, the loss of Federal funds to our economy and the burdensome administrative requirements of the new legislation will make it difficult to bring that hope to fruition. However, your Committee's action on the recommendations for clean-up legislation will allow our community to better help welfare recipients break out of difficult financial and personal circumstances and achieve long-term self-sufficiency.

STATEMENT OF MARGARET CAMPBELL HAYNES

PRESIDENT
EASTERN REGIONAL INTERSTATE CHILD SUPPORT ASSOCIATION

October 3, 1996

Mr. Chairman and members of the Subcommittee on Human Resources, thank you for the opportunity to submit testimony on issues related to implementation of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

My name is Margaret Campbell Haynes. I am submitting testimony as President of the Eastern Regional Interstate Child Support Association. ERICSA is a non-profit association that represents the child support administrators, case workers, attorneys, decision-makers, private sector individuals and other child support professionals from the 33 states and territories bordering on and east of the Mississippi River, as well as the District of Columbia. ERICSA promotes the development of effective family and child support programs through its annual training conference, material development, and technical assistance.

My own background reflects the diversity of ERICSA members. I am a former child support prosecutor who directed the American Bar Association's Child Support Project for more than nine years. I have conducted interstate training in more than 35 states. I am now a partner with Service Design Associates, a private consulting firm addressing human service issues. I also had the privilege of serving with Congresswomen Kennelly and Roukema as Chair of the U.S. Commission on Interstate Child Support.

The Interstate Commission's report to Congress in 1992 galvanized a national debate on child support. It was a comprehensive report that was visionary, yet also practical. Our Congressional members quickly introduced enacting legislation. Watching this legislation work its way through Congress over the past four years has been frustrating at times. However, the provisions you have passed are stronger for that wait. It provided states like Massachusetts the opportunity to implement various recommendations within the report, and identify needed additional program enhancements.

ERICSA commends you on the bold vision embodied in Title III of the welfare reform legislation. It is appropriate that child support is a major component of welfare reform. Early paternity establishment is the first step toward providing a child with emotional as well as financial support. And regular receipt of child support will help keep single parent households from sinking further into poverty.

The Personal Responsibility Act contains every major recommendation of the Interstate Commission — state and national registries of orders, new hire reporting with state and national registries of new hires, computer interfaces to strengthen and expedite locate and enforcement, an expanded Federal Parent Locator Service, enactment of the official version of the Uniform Interstate Family Support Act (UIFSA) by a date certain, authorization for direct income withholding, streamlined paternity establishment procedures, money allocated to HHS for research, training, and technical assistance for states, and a study of the funding formula for the Title IV-D program. ERICSA strongly supports each of these provisions.

A special focus of ERICSA is to improve cooperation among states and jurisdictions, and to strengthen laws for the interstate establishment and enforcement of child support obligations. Interstate cases represent about 30 % of the child support caseload, but only 10 % of the collections. My testimony will address several issues related to interstate support cases where Congressional oversight of implementation of this bill or further study may be warranted.

I. Federal Case Registry

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires States to establish a registry of support orders by October 1, 1998. This state registry must include all IV-D (child support agency) cases. This means that new and existing IV-D cases, IV-D cases with orders and those without must be maintained on the registry. Also included on the registry are all non-IV-D orders established or modified after October 1, 1998. (According to Census Bureau data, roughly 1/3 to 1/2 of child support cases are non-IV-D.) By October 1, 1998, HHS must expand the Federal Parent Locator Service to include a Federal Case Registry. Pursuant to Section 311 of the Personal Responsibility Act, the federal case registry must include abstracted information from child support cases recorded in the state case registry.

In recommending state and national registries of support orders, the Interstate Commission had two objectives. First, the case registries will greatly help in the location of noncustodial parents in interstate cases. At the federal level, all cases on the federal case registry will be matched against all new hires maintained on the federal directory of new hires. Where there is a match, HHS will notify the state which in turn will immediately send out an income withholding order/notice. Second, it is crucial that there be a database of existing support orders involving the same family in order to more easily apply the jurisdiction rules of UIFSA and the Federal Full Faith and Credit for Child Support Orders Act. Both Acts attempt to eliminate the multiple orders that populate the interstate arena. They contain rules for determining which of several multiple support orders is controlling and must be recognized for prospective support. These same rules govern determination of jurisdiction to modify. One of the greatest accomplishments of UIFSA is to prevent "willy nilly modification. Under URESA, when a custodial parent seeks enforcement of an existing support order, the tribunal typically issues a de novo order in a different amount or may register the order and subsequently modify it. UIFSA limits when a state has jurisdiction to modify an existing

order. Thse same rules are found in the Federal Full Faith and Credit for Child Support Orders Act. In order for a tribunal to properly apply the jurisdiction rules, it is crucial that the tribunal be aware of existing orders between the parties. The national and state registries of orders will be a crucial first step.

In order to improve locate and enforcement, and to facilitate the determination of controlling order and modification jurisdiction, it is crucial that every support order in a state, regardless of IV-D status, be included on the federal case registry. There is some discussion that only IV-D cases should be on the federal case registry. ERICSA urges Congress to reiiterate its intent that both IV-D and non-IV-D orders must be on the federal case registry. To interpret the legislation otherwise is to gut the usefulness of the registry.

There is also some discussion that social security numbers listed on the Federal Registry be limited to those that have been verified. The rationale is that in order to preserve the dignity of the data, only accurate information should be maintained. Again, such an interpretation would seem to limit the usefulness of the registry for locate purposes. If a noncustodial parent cannot be located in an interstate case, the caseworker would benefit from being able to conduct data matches using every social security number he or she knows has been used by the parent.

II. Investment in Human Resources

Far too often, when budgets are tight, training of staff is the first casualty. Yet there is no greater investment that can be made. The best automated system and most comprehensive laws will never replace the need for an adequate number of trained personnel to process child support cases.

The Personal Responsibility Act provides HHS with a 1% set aside for information dissemination and technical assistance to States, training of State and Federal staff, staffing studies, technical assistance related to automated systems, research, demonstration and special a projects of regional or national significance. ERICSA strongly encourages HHS to devote a portion of that money to training on the Uniform Interstate Family Support Act (UIFSA) and the Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA).

Both Acts require enforcement of valid support orders and establish rules for determining the controlling order when there multiple orders involving the same family. Both Acts dramatically change traditional concepts of a court's continuing jurisdiction and limit a tribunal's ability to modify an order. The Personal Responsibility Act requires a state to implement UIFSA by January 1, 1998, as a condition of receiving federal funding. Currently UIFSA has been enacted by 34 states and the District of Columbia. Although the Federal Office of Child Support Enforcement is to be commended for the initiative it has taken in providing UIFSA training, states will continue to need resources and training assistance on implementation of the Act. OCSE should also evaluate the need for judicial and legal training

on the Federal Full Faith and Credit for Child Support Orders Act. This Act became effective in October 1994. However, since it does not require enabling legislation, many private lawyers and judges are unaware of it. In fact, at a recent national judicial conference funded by the State Justice Institute, a source of outstanding judicial training and technical assistance, half of the attending judges had never heard of the FFCCSOA. These were judges and other decision-makers from about 40 states who had been hand-picked by their State Supreme Court Chief Justice to attend the conference because of their expertise in child support. The Personal Responsibility Act of 1996 amends FFCCSOA so that it is now consistent with the jurisdiction rules of UIFSA. Unfortunately, due to a lack of knowledge about FFCCSOA, it is likely that a number of order have been issued since 1994 that modify existing support orders in conflict with FFCCSA's jurisdiction rules. Judicial training on this Act will continue to be paramount for at least the next year.

In addition, OCSE should develop training for state child support directors. States, as a requirement for receipt of federal funding, should include within their state plans a demonstrated commitment to formal training of staff. Agencies should be required to provide training not only for IV-D personnel, but for other individuals and entities under cooperative agreements with the agency, such as prosecutors and quasi-judicial decision-makers. Training is not a luxury. It ensures that problems are better anticipated, customers are better served, resources are more widely used, and appropriate legal remedies are sought.

B. Research

ERICSA commends Congress for including research as a permissible purpose for expenditure of the 1% funds. Welfare reform raises a host of implementation and policy issues that warrant further study. The shift of responsibility for determining cooperation to the IV-D agency is an area that would greatly benefit from research and evaluation. The relationship of domestic violence and support is only beginning to be explored. The impact of early paternity establishment on the creation of father-child relationship, in addition to its impact on financial support, is also information needed to better inform the welfare debate.

C. Field Visits

ERICSA notes that training of federal staff is also a permissible expenditure of funds. ERICSA encourages OCSE to fund such training. ERICSA also supports use of a portion of the funds to enable regional office staff to travel to their appropriate states. Such meetings would promote better relationships between the federal and state government and would encourage problem-solving. Some states report that their regional representative has not visited the state in two years. OCSE may also want to explore internships where central staff spend a short period of time within a state program. Such internships would provide OCSE staff with valuable information about running a local program.

III. IRS and Enforcement

ERICSA supports the broad reform of a state-based child support system embodied by the Personal Responsibility Act. For many reasons, the organization does not support "turning over" enforcement responsibilities from the states to the IRS.

However, ERICSA supports improvements that the Act makes to the IRS' current role in child support enforcement. We recommend two additional legislative changes:

- Strengthen the full IRS collection procedure by replacing subjective determinations by IRS agents regarding the appropriateness of enforcement with objective criteria, and by eliminating the necessity of demonstrating that further enforcement techniques would be ineffective;

- Eliminate disparities between AFDC and non-AFDC IV-D cases regarding the availability of federal income tax refund intercept. The triggering arrearage in both cases should be less than $200, and arrearage should be collected regardless of the child's age.

IV. Funding

Currently states receive 66 % of their funding for administrative costs from the federal government. Certain items such as automated systems and genetic testing are reimbursed at 90 percent. It is open-ended funding which rewards spending, rather than performance. States also receive federal incentives of 6 to 10 % (based on collection efficiency) of the amount collected for both AFDC and non-AFDC IV-D cases. However, federal incentives are capped in non-AFDC cases at 115 percent of the amount collected in AFDC cases. This funding formula works against the goal of Congress to decrease the number of cases receiving cash assistance. Based on this formula, to the extent the assistance caseload is decreased with a resulting decrease in collections, the incentive payment is decreased to States for working nonassistance cases. The formula also results in lower priority given to interstate cases. Since States normally reach the AFDC cap simply by working their intrastate cases, they receive no financial incentive for handling interstate cases. Where states do receive incentives, there is no restriction on the use of incentives other than the state must share incentives earned with any political subdivision which helps pay the administrative cost of the program. In 1990, 32 states had no statute or regulation governing the use of incentive money.

Although everyone agrees that funding should be changed, there is not consensus on the elements of that change. ERICSA supports the legislative mandate that authorizes HHS to conduct a study to examine funding alternatives.

- Any funding scheme should reinforce Congressional commitment that agencies serve

all children who need financial support, not just our country's poorest.

- It should also reward performance, not just reimburse expenditures.
- It should provide incentives for health care support; and
- It should require states to reinvest incentives into the child support program.

V. Uniform State Laws

In public hearings held throughout the country by the Interstate Commission, parents and attorneys alike criticized the lack of uniformity among state laws governing statute of limitations.

The statute of limitations is the length of time that someone has to bring a legal action. States have varying statutes of limitation in child support cases. Some states have no statute of limitations and will enforce arrears as long as they exist. Most states have statutes of limitation that range from three to ten years, precluding the collection of child support arrears that accrued earlier than that time period -- even if the lack of enforcement was due to an inability to locate or serve the delinquent parent. ERICSA recommends that Congress require States to eliminate statutes of limitation regarding the collection of child support arrears. Obligors should not be able to escape payment of support by delay tactics or by hiding until the child has reached majority age.

Another area where the lack of uniformity is wreaking havoc is interest on support arrears. For a long time, support arrears were the only debt that came "interest free." Testimony before the Interstate Commission urged that States charge interest on late payments so that child support would have equal weight with a VISA or Mastercard bill in the eyes of the obligor. Since 1990, a number of states have enacted laws requiring interest on support arrears. These laws vary a great deal. See Attachment A prepared by Georgette Crosa of the Child Support Enforcement Division, Alaska Department of Revenue. The problem arises in interstate enforcement. When State 1 asks State 2 to enforce the State 1 order, whose law regarding interest applies? Is the answer different for arrears that accrued prior to the enforcement request and arrears that accrue after the order has been registered for enforcement in State 2? A further complication is the existence of expensive computer systems that are tailored to a particular state's law. As long as states have different laws regarding interest, the result in interstate cases will either a manual, time-consuming process of calculating interest in addition to current and past-due support (a process that undermines the legislation's push toward automated batch enforcement) or an expensive reprogramming of systems to incorporate various state laws. ERICSA recommends that Congress require States, as a condition of receiving federal funds, to enact a standardized interest rate.

VI. Conclusion

The Personal Responsibility Act has been described as "ending welfare as we know it." Although Title III of the Act has attracted less media attention, it just as dramatically "ends child support practice as we know it." Its implementation requires reengineering child support programs, coordinating creative interfaces between the public and private sectors, and designing child support computer systems beyond what exists in most states. The members of ERICSA gladly accept the challenge offered by the Act. We look forward to working with Congress and the Administration in ensuring that families receive quality child support services and that children receive regular financial support from both parents.

Attachment A

INTEREST ON CHILD SUPPORT CASES BY STATE

State	Authority/Statute	Charging	Percent
Alabama	Yes	Yes	12% per annum
Alaska	Yes	Yes	12% per annum
Arizona	Yes	?	10% per annum
Arkansas	Yes	No	10% per annum
California	Yes	Yes	10% per annum
Connecticut	No	No	N/A
Delaware	No	No	N/A
Georgia	No	No	N/A
Guam	Yes	Yes	12% per annum
Iowa	Yes	No	10% per annum
Idaho	Yes	No	10.875% per annum
Illinois	Yes	No	9% per annum
Indiana	Yes	No	18% per annum
Kentucky	Yes	No	Legal rate
Louisiana	Yes	No	Thru 12/95: 8.75% per annum 1/96 + after: 9.75% per annum
Maine	Yes	No	6%
Maryland	No	No	N/A
Massachusetts	Yes/No*	No	*Have statutes but no regulations
Michigan	Yes*	No	16% per annum *Statutes/regs not available
Minnesota	Yes	No	Current rate plus 2%
Mississippi	Yes	No	8%

State	Authority/Statute	Charging	Percent
Missouri	Yes	No	Thru 9/28/79: 6% per annum Thru 8/31/82: 9% per annum Thereafter: 1% per month
Montana	Yes	No	10% per annum
Nebraska	Yes	Yes	Court determined
New Mexico	Yes	Yes	8.75% per annum
North Carolina	Yes	No	12% per annum
North Dakota	Yes	No	12% per annum
Nevada	Yes	No	8.25 plus 2%
New Hampshire	Yes	No	6% per annum
New York	Yes*	Yes	9% per annum * Must be reduced to judgment
Oregon	Yes	No	9% per annum
Pennsylvania	Yes	No (see letter)	6% per annum
South Carolina	Yes/No*	Yes/No*	14% per annum *Must be reduced to judgment
South Dakota	Yes	No	12% per annum
Tennessee	yes	No/Yes*	12% per annum *Will commence when automated system up (5/96)
Vermont	Yes	No	12% per annum
Virginia	Yes	Yes	9% per annum
Virgin Islands	No	No	N/A
Washington	Yes	No	12% per annum
West Virginia	Yes	Yes	10%
Wisconsin	Yes	Yes/No*	18% per annum *Only counties that have the automated computer ability to charge interest are doing so

Subcommittee on Human Resources

Attn: Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

witness:
Chad Mears
750 Jonive Road
Sebastopol, CA
95472
(707) 874-1510

SUPPLEMENTAL SHEET

*****

Submission for the
Public Hearing & Written Record
On

IMPLEMENTATION CONCERNS
for the
PERSONAL RESPONSIBILITY AND
WORK OPPORTUNITY RECONCILIATION ACT OF 1996
(P.L. 104-193)

*****

SYNOPSIS OF THIS TESTIMONY
FOR THE WRITTEN RECORD:

GOVERNMENTAL DISCRIMINATION AGAINST MEN

In several of the component Titles of this Act, notably 'Title III--CHILD SUPPORT', particular provisions apply specifically to 'custodial' and/or 'noncustodial' parents. Reading the letter of the law, there is a deceptive illusion of complete gender-equity in the Act's impact upon, and treatment of, women and men, mothers and fathers, etc. There is no question though, that most of the Title divisions of this Act, in effect, impact men and women very differently.

There is growing awareness and resentment, among American men, of numerous distortions in public perceptions of gender-equity. Regarding this Act, specifically, it is the contention of many, that its strict and efficient implementation..in all of its policies, provisions and intentions..will affect men, particularly as 'noncustodial parents', more negatively than women.

This statement looks at a few of this Act's provisions --primarily in Title III - CHILD SUPPORT -- which give strong indication of having such a negative, discriminatory impact upon a substantial proportion of the American male population.

In many cases, we believe this impact will be profoundly destructive to men. In some cases, that destruction will be permanent.

In the implementation of this Act, we ask that all legislative, judicial & executive divisions of government --at the local, state & national level-- administer, review and modify this Act, with truly equitable treatment of both genders, that is measurable and verifiable.

Chad Mears

Subcommittee on Human Resources
Committee on Ways and Means witness: Mears, C.B.
Public Hearing: 'Welfare Act' (P.L. 104-193). Concern: Governmental Discrimination Against Men
Note: Witness' commentary in **[bold brackets]**

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(1) TITLE I--BLOCK GRANTS FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

SEC. 101. FINDINGS.

The Congress makes the following findings:

(1) ***Marriage is the foundation of a successful society.***

(2) ***Marriage is an essential institution of a successful society which promotes the interests of children.***

[It is conspicuous irony --thrust before the eyes of the American populace, in this legislative Act-- that a most obvious and logical principle of social cohesion and efficiency.. the institution of marriage..is boldly affirmed in the opening sentences of this tremendously complex and influential act of congress.

Throughout this document, the term 'marriage' appears approximately a dozen times. However, the phrase '*preservation* of marriage' does not appear at all. The irony here should be obvious: Incredible inefficiency, waste, pain and suffering, could be eliminated by re-establishing and recognizing the eminence of marital and family continuity.

The administration, implementation, enforcement, misinterpretation and abuse of this Act, will permanently bequeath an historical record of preposterous governmental and societal inefficiency and deterioration.]

*****

(2) TITLE III--CHILD SUPPORT

SEC. 303. PRIVACY SAFEGUARDS.

(a) STATE PLAN REQUIREMENT- Section 454 (42 U.S.C. 654), as amended by section 301(b) of this Act, is amended--

.....

(3) by adding after paragraph (25) the following new paragraph:

'(26) will have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the ***parties,*** including--

'(A) safeguards against unauthorized use or disclosure of information relating to ***proceedings or actions to establish paternity, or to establish or enforce support;***

'(B) prohibitions against the release of information on the whereabouts of 1 party to another party ***against whom a protective order with respect to the former party has been***

entered; and

'(C) prohibitions against the release of information on the whereabouts of 1 party to another party if the ***State*** has reason to believe that the release of the information may result in physical or ***emotional*** harm ***to the former party.'.***

[The term 'party(ies)' is vague. It is not clear that 'parties' include fathers and children.

It is not clear that paragraphs (A), (B), & (C) will, in fact, provide equal protection for non-custodial fathers. Objective monitoring must be assured to measure : 1) effect on all parties, of these provisions; 2) instances of violation ; and 3)details on punishment of the violators (those who release the information, illegally).

What constitutes 'emotional' harm? Why does not *'emotional harm'* apply to *all* parties?]

*****

(3) TITLE III--CHILD SUPPORT

*SUBTITLE B--**LOCATE AND CASE TRACKING***

[The term 'LOCATE AND CASE TRACKING' , is confusing, grammatically.]

*****

(4) **SEC. 311. STATE CASE REGISTRY.**

Section 454A, as added by section 344(a)(2) of this Act, is amended by adding at the end the following new subsections:

'(e) STATE CASE REGISTRY-

.....

'(2) LINKING OF LOCAL REGISTRIES- ***The State case registry may be established by linking local case registries of support orders through an automated information network,*** subject to this section.

.....

'(4) PAYMENT RECORDS- ***Each case record in the State case registry*** .....shall include ***a record of–***

'(A) the amount of monthly (or other periodic) support owed under the order, and other amounts (including arrearages, interest or late payment penalties, and fees) due or overdue under the order;

'(B) any amount described in subparagraph (A) that has been collected;

'(C) the distribution of such collected amounts;
'(D) the birth date of any child for whom the order requires the provision of support; and
'(E) the amount of any lien imposed with respect to the order pursuant to section 466(a)(4).

'(5) UPDATING AND MONITORING- ***The State agency*** operating the automated system required by this section ***shall promptly establish and update, maintain, and regularly monitor, case records in the State case registry*** with respect to which services are being provided under the State plan approved under this part, ***on the basis of–***

'(A) information on administrative actions and administrative and judicial proceedings and orders relating to paternity and support;
'(B) information obtained from comparison with Federal, State, or local sources of information;
'(C) information on support collections and distributions; and
'(D) any other relevant information.

'(f) INFORMATION COMPARISONS AND OTHER DISCLOSURES OF INFORMATION- ***The State shall use the automated system*** required by this section ***to extract information from,..to share and compare information with, and to receive information from, other databases and information comparison services, in order to obtain (or provide) information*** necessary....to carry out [this Title]. Such information comparison activities shall include the following:

'(1) FEDERAL CASE REGISTRY OF CHILD SUPPORT ORDERS- ***Furnishing to the Federal Case Registry of Child Support Orders*** established under section 453(h) .....the minimum amount of ***information on child support cases recorded in the State case registry*** that is necessary to operate the registry (as specified by the Secretary in regulations).

'(2) FEDERAL PARENT LOCATOR SERVICE- ***Exchanging information with the Federal Parent Locator Service*** for [related] purposes...

.....

'(4) INTRASTATE AND INTERSTATE INFORMATION COMPARISONS- ***Exchanging information with other agencies of the State, agencies of other States, and interstate information networks,***.....to carry out (or assist other States to

carry out) [this Title].'

[In the San Francisco Chronicle (Sept.19th:"*Welfare Law's ID Provision Causes Concern*") **Lucas Guttentag of the National Immigration Project of the American Civil Liberties Union, succinctly encapsulates a number of concerns with the above information system to be created: "*As a practical matter, the welfare bill requires a national computer registry to collect massive amounts of information in a centralized way that does not currently exist, that threatens privacy, and is rife for abuse.*"]**

*****

(5) CONCERNS APPLICABLE TO ALL SECTIONS OF 'TITLE III--CHILD SUPPORT', AS WELL AS OTHER TITLES IN THIS ACT

GOVERNMENTAL DISCRIMINATION AGAINST MEN

[In several of the component Sections of Title III--CHILD SUPPORT, particular provisions apply specifically to 'custodial' and/or 'noncustodial' parents. Reading the letter of the law, there is a deceptive illusion of complete gender-equity in this Title's impact upon (--as well as P.L. 104-193's impact upon..), and treatment of, both genders --male and female. There is no question though, that most of the Sections of this Title, and Title divisions of this Act, in effect, impact men and women very differently.

There is growing awareness and resentment, among American men, of numerous distortions in public perceptions of gender-equity. Regarding Title III and this Act, specifically, it is the contention of many, that its strict and efficient implementation..in all of its policies, provisions and intentions..will affect men, particularly as 'noncustodial parents', more negatively than women.

In many cases, we believe this impact will be profoundly destructive to men. In some cases, that destruction will be permanent.

In the implementation of this Title and this Act, we ask that all legislative, judicial & executive divisions of government --at the local, state & national level-- administer, review and modify this Act, with truly equitable treatment of women and men, mothers and fathers, etc., that is *measurable* and *verifiable*.]

*****

(6) TITLE IX--MISCELLANEOUS

SEC. 912. ABSTINENCE EDUCATION.

Title V of the Social Security Act....is amended by adding... :

'SEPARATE PROGRAM FOR ABSTINENCE EDUCATION

.....

Subcommittee on Human Resources
Committee on Ways and Means witness: Mears, C.B.
Public Hearing: 'Welfare Act' (P.L. 104-193). Concern: Governmental Discrimination Against Men
Note: Witness' commentary in **[bold brackets]**

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'(b)(1) The purpose of an allotment....to a State is....***to provide abstinence education***, and....where appropriate, ***mentoring, counseling, and adult supervision to promote abstinence from sexual activity***, with a focus on those groups which are most likely to bear children out-of-wedlock.

[American social mores --with marriage being discouraged until people have advanced in their education and/or economic stability-- are incongruous with human (particularly male) sexual instinctive behavior, that develops in the early teen years.

Regarding socio-sexual behavior, one of the most serious errors we make as a culture (--and many of the provisions in this legislative Act are testament to those errors), is in not understanding and accommodating, appropriately, natural human sexual behavior.]

'(2) For purposes of this section, the term 'abstinence education' means an educational or motivational program which--

'(A) has as its exclusive purpose, teaching the ***social, psychological, and health gains*** to be realized by abstaining from sexual activity;

[Have the psychological and mental health aspects of abstinence been studied thoroughly enough to predict uniform 'gains' in personality & behavior?]

'(B) teaches abstinence from sexual activity outside marriage as the expected standard ***for all school age children;***

[Does 'school-age children' include university youth? If not, young people will inevitably see through the hypocrisy.]

'(D) teaches that a mutually faithful monogamous relationship in context of marriage is the ***expected standard*** of human sexual activity;

'(E) teaches that sexual activity ***outside of the context of marriage*** is likely to have harmful ***psychological*** and physical effects;

[Some of these "abstinence education" criteria, (A) thru (H), straddle vaguely-defined value, religious, moral and/or sexual-preference mandates of individuals. This criteria should be reviewed for compatibility with individuals' civil rights, notwithstanding the initial objective of improving the wholesomeness of socio-sexual behavior.]

'(G) teaches young people ***how to reject sexual advances*** and how alcohol and drug use increases vulnerability to sexual ***advances;***

Subcommittee on Human Resources
Committee on Ways and Means witness: Mears, C.B.
Public Hearing: 'Welfare Act' (P.L. 104-193). Concern: Governmental Discrimination Against Men
Note: Witness' commentary in **[bold brackets]**

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[Since males are, by nature, more sexually aggressive, caution must be exercised in not censuring one gender more than the other. Again, we err continuously as a culture, when we moralize and blame individuals, without understanding socio-sexual behavior comprehensively.]

'(H) teaches the importance of ***attaining self-sufficiency***
before engaging in sexual activity.

[Has 'self-sufficiency' in this context been defined? The meaning is vague.]

*****

witness:
Chad Mears
750 Jonive Road
Sebastopol, CA
95472
(707) 874-1510

County of Santa Clara
Office of the County Executive

County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110
(408) 299-2424

COUNTY OF SANTA CLARA, CALIFORNIA
COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON HUMAN RESOURCES
IMPLEMENTATION OF WELFARE REFORM
September 17, 1996

The passage of H.R. 3734, the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996, represents a major shift in public policy. The new law shifts government's focus from an "income maintenance" philosophy to a "work first" approach, based on the belief that society is best served by communities containing strong supportive families.

Santa Clara County has long advocated family self-sufficiency through education and employment, and has operated welfare-to-work programs in our Social Services Agency for many years. While the new welfare reform law introduces a familiar philosophy to our community, it also presents many new challenges to our local public assistance system.

Our county has begun the monumental task of carefully analyzing the provisions of the bills and assessing their impact. We have identified a number of provisions which would be extremely costly, difficult, or punitive to implement in their current form. Due to the extreme complexity of the bill, we realize that some of these impacts may be the unintended results of drafting errors. We also recognize that the provisions to which we object may represent fundamental differences in philosophy on the best way to achieve welfare reform.

In either case, we would like to submit our recommendations for revisions to federal welfare reform legislation:

IMMIGRANTS

- Exempt all current resident noncitizen legal immigrants from the SSI/Food Stamp bar and from the option for states to bar current immigrants from TANF and Title XX. These immigrants entered the country legally, most have worked and paid taxes for years, and they have played by the rules. These contributing, law-abiding noncitizen residents should be treated the same as citizens.

- Eliminate the state option to deny Medicaid benefits to noncitizen legal immigrants, including all current and future immigrants. Basic medical care for the poor is cost-effective and a prerequisite to good health for all.

- Allow noncitizen legal immigrants to receive foster care and adoptive parent benefits during their first five years in the country.

- Repeal the requirement that welfare departments report to the INS any "suspected" undocumented immigrant. Eligibility workers should not be required to serve as immigration police. In addition, these requirements will discourage undocumented individuals from seeking necessary medical care which could pose a threat to the health and safety of the community.

WORK PARTICIPATION RATES

- Move back the effective date and reduce the level of the work participation rates. As currently written, these rates are unachievable and will force states to incur fiscal penalties. California will have only months to get thousands of welfare recipients into jobs before participation rates begin. States and counties should be given at least one year to beef up work programs before having their performance measured.

- Reduce the unrealistic two-parent family work participation rates (currently set at 90% by 1999). These rates are simply unattainable. At a minimum, two-parent families should be held to the same rates as single parent families.

- Vocational educational training should be extended to 24 months (from 12 months) as an acceptable work activity, and community college courses should be defined as an allowable vocational activity. Vocational training has proven to be a valid activity for getting welfare recipients on the road to self-sufficiency, but most vocational degrees take longer than one year to complete, particularly the technical programs. These are necessary to be readily employable in a high technology center such as Santa Clara County.

FUNDING FOR JOB TRAINING

- Congress should appropriate new funding or add funding to the block grant for job training services. The work participation goals cannot be met without additional funding to reflect the requirement that at least 50% of TANF recipients are in an allowable work activity. In addition, funding will be required in order to meet the community service requirements expected of all non-exempt TANF recipients after receiving aid for two months. The current level of funding received by Santa Clara County enables us to serve only 25% of eligible recipients. Adequate job training

resources are particularly important in a region like ours which requires a highly skilled workforce.

FUNDING FOR CHILD CARE

- While Congress provided $7 billion in new funding for child care, California anticipates a shortfall of $1.8 billion in child care funding if it wishes to meet the work participation rates established by the new bill.

AUTOMATION

- Congress should provide enhanced funding outside the block grant to fund state efforts to create a data collection/reporting system that is uniform among states.

- Reporting requirements should be delayed until 1999-2000 rather than requiring f ll reporting in 1998.

ADMINISTRATIVE CAP

- Eliminate or increase the 15% administrative cap as unworkable in a capped block grant with mandated levels of service.

- Exclude from the definition of administration those staff who deliver client services, such as eligibility workers.

FOOD STAMPS

- The Food Stamps eligibility limitation for single 18-50 year olds of three months is too short and the three year ineligibility period is too long. Many Food Stamp recipients are employed seasonally or are chronically underemployed and periodically need Food Stamps. It is unreasonable to restrict these persons, who are trying hard to work, to only three months of food stamps during a three-year period.

The County of Santa Clara shares Congress's goal of moving people from public assistance to self-sufficiency as quickly as possible. However, deadlines and restrictions must be carefully and realistically balanced with the resources of the public agencies, the workforce demands of the local economy, and the circumstances of the client.

For many years, Santa Clara County has proactively developed innovative programs to assist our public assistance clients. We are committed to developing an effective local program, and we look forward to working with Congress to ensure that federal welfare reform legislation creates a framework for success.

Statement of Rep. Charles Stenholm
House Ways and Means Subcommittee on Human Resources
Concerning Implementation of Welfare Reform Legislation
September 17, 1996

I would like to thank Chairman Shaw for holding this hearing. Although I have at times disagreed with Chairman Shaw on the precise shape that welfare reform legislation should take, I have always had tremendous respect for his commitment to helping America's families and children. I appreciate having this opportunity to present my views regarding the implementation of the welfare reform bill passed by Congress and signed by the President on August 22 of this year.

I would like to address my comments to the treatment of states such as Texas that are operating welfare reform programs under waivers approved by the Department of Health and Human Services in the implementation of the bill. One of the principal reasons that I supported the conference report for H.R. 3734 was the addition of a provision providing additional flexibility in meeting the work requirements for states that are implementing welfare waivers. Specifically the conference report added a provision allowing states implementing plans under federal waivers to continue their experiments, even if they are inconsistent with the mandates in the federal statute. This provision is contained in the new Section 415 of the Social Security Act.

I was concerned that earlier versions of the bill would force states such as Texas that are implementing innovative welfare reform proposals under waivers to change their state plans or face financial penalties for failure to comply with the mandates in the federal statute. President Clinton has approved waivers allowing 41 states to implement innovative programs to move welfare recipients to work. H.R. 3734 as passed by the House would have restricted the reform initiatives being implemented by states across the country under these waivers by imposing work mandates that are less flexible than states are implementing. Over 20 states operating welfare to work programs under waivers would have been required to change their programs to meet the mandates in the bill or face substantial penalties from the federal government. For example, many state plans contain work requirements less than the thirty hours a week that will be required by the statute by 1999

because the state determined that it would not be practical to find jobs of thirty hours a week for a large number of welfare recipients. The bill also restricts the ability of states to count remedial education or vocation education as a work activity, even though several states implementing welfare reform demonstrations have had success in moving welfare recipients off of the rolls through programs that focus on remedial and vocational education. The Texas plan contains a strong remedial education component to deal with the fact that more than half of the adults receiving AFDC cannot read at a fourth grade level. In addition, the time limit on all benefits, including benefits for children, would conflict with the plans of several states, including Texas, to impose short time limits on adults without eliminating benefits for children. There are several other areas in which provisions of welfare reform experiments being conducted by states through waivers would be restricted by the new federal statute.

In order to address this problem, I worked with Chairman Shaw, Representative Jim McCrery, Senator Orrin Hatch and others to add a provision that allows states with waivers to continue to operate their plans, even if the state plan is inconsistent with the federal statute. The waiver provision allows states such as Texas that have just received waivers to actually implement these reforms and Utah, Michigan and other states that have demonstrated success in moving welfare recipients into self-sufficiency to continue their programs.

I have attached a copy of my statement on the House floor during the debate on the conference report which focused on this provision. I am also enclosing statements submitted for the record by John Tanner and Bill Orton citing this provision in explaining their support for the conference report. All of the attached statements, which represent the only statements regarding the waiver provision by supporters of the conference report during the House or Senate debate on the bill, suggest a broad interpretation of this provision. A broad interpretation of this provision is also consistent with the intent expressed by members on both sides of the aisle throughout the welfare reform debate that states be given maximum flexibility to develop their own welfare reform plans.

The clear intent of those of us who advocated this provision was that the provision applied to

the entire state demonstration project, not just the specific list of waivers necessary to implement the demonstration at the time of its approval. If a state chooses to continue a demonstration project approved under a waiver, it should be allowed to implement the entire plan with the same amount of flexibility that was allowed under the waiver. Limiting the application of the grandfather provision to limited portions of the demonstration project will disrupt state plans because the provisions of state demonstration projects are interrelated. Requiring states to change provisions of their demonstrations that did not require waivers under prior law but are inconsistent with the new statute would undermine the intent of the waiver provision and jeopardize the success of the programs by disrupting the balance struck by the states in developing the plan.

It is particularly important that states be allowed to count individuals participating in work programs established under waivers in meeting the participation rates under the bill, even if the definition of work activities is not specifically contained in the waiver. As you know, most of the waivers that have been approved do not directly address the hours of work required or the definition of work activities because they did not conflict with the statute at the time the waiver was submitted. I do not believe that the waiver language can or should be interpreted to exempt states from the work participation rates in the bill. However, the language does give states with waivers flexibility to count all work activities contained in the demonstration project in calculating the participation rates. This is a very significant issue, because states face severe financial penalties if they do not meet the work participation rates set forth in the bill. The Federal government should not impose penalties on Texas or other states with waivers because the work program in the state does not meet the definition in the federal statute.

All of us who have worked on this issue recognize that there are no easy solutions to the problems of welfare dependency. We do not have enough experience with programs designed to move welfare recipients to work to know which approach works best. The strength of the welfare reform bill that we enacted is that it provides states with the flexibility to experiment with different approaches to determine what works best. Allowing states with waivers to continue their

demonstration projects will provide more opportunities to test approaches different from the approach mandated in the statute. Forcing states to change programs that have had success in reducing welfare dependency in order to place welfare recipients into programs that meet federal standards defies common sense.

Congress will monitor the progress of the state plans. The statute requires Congress to conduct a thorough review of the work programs in three years. Instead of holding states to rhetorical standards about being "tough on work", we should hold states accountable for performance in moving welfare recipients into private sector employment. If there is evidence that states are using the waiver provision to circumvent the work requirements in the bill -- which I do not believe any state will do -- Congress can take action through subsequent legislation. On the other hand, if states that continue to operate demonstration projects that are inconsistent with the statute have success in moving welfare recipients to work, Congress may choose to amend the statute so that all states have the opportunity to utilize those approaches.

It is my strong preference that this issue be addressed through the normal regulatory process that provides states with clear guidance about how this provision will be implemented. However, if the legal questions and political objections that have been raised about this provision cannot be resolved in a manner that allows states to continue these experiments without facing penalties, I would like to work with you to clarify this issue legislatively as part of a technical corrections bill. Whether the issue is resolved administratively or legislatively, I am willing to do whatever I can to help develop a policy that receives bipartisan support.

It is critical that all parties involved resist the temptation to engage in partisanship or rhetorical oneupsmanship on this issue. I was troubled by some of the comments I have heard from members on both sides of the aisle using this provision to score political points. States face a tremendous challenge in implementing the welfare reform bill. We should be working together in a bipartisan manner to ensure that they have the tools they need to succeed instead of making them pawns in a political battle to score points in the welfare debate.

I look forward to working with this Committee to ensure that this provision is implemented as we intended when we wrote the conference report so that states that have begun to implement welfare reform initiatives through waivers continue to have the same amount of flexibility they were promised when the waiver was approved, and ultimately so that they can find the best way in each of their states to move the maximum number of people from welfare to work.

UNITED STATES CONGRESS
HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HUMAN RESOURCES

HEARING ON THE CHILD SUPPORT ENFORCEMENT PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (P.L. 104-193)

September 19, 1996

Statement of

DAVID VELA
Title IV-D Director
OFFICE OF THE ATTORNEY GENERAL OF TEXAS

Introduction.

Mr. Chairman and distinguished members of the Committee: thank you for the opportunity to present written testimony about the child support enforcement provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

I am David Vela, the Title IV-D director for the State of Texas. In 1985 the Texas Legislature designated the Office of the Attorney General of Texas the Title IV-D agency for the state, thereby identifying the essential character of the IV-D program as law enforcement, and not merely as a collections agency or an extension of a welfare or social services enterprise. At that time, Texas became the second state in the nation that vested responsibility for its child support enforcement program with an attorney general's office. Today, Texas is still only one of three states in which an attorney general has responsibility for the operation of the Title IV-D program, and the only state in which the IV-D program is administered by an elected official.

The 1985 placement of the IV-D agency in the Office of the Attorney General resulted in the establishment of a centralized, yet statewide, IV-D program, with field offices throughout the state and with its own legal staff, automated system, central case registry and disbursement unit, and court masters to hear only IV-D cases. Since that time the Texas IV-D program has grown to be one of the most successful child support enforcement programs in the country, being twice recognized as the "most improved" IV-D program in the nation - in 1989, by the National Child Support Enforcement Association, and, in 1991, by this Committee. The process of improvement has steadily continued, year after year.

For example, during the state fiscal year 1996 which ended August 31st, the Texas IV-D program established a record 43,891 paternities - an increase of 258% over 1990. This achievement places Texas as 2nd in the nation in the number of paternities established, according to preliminary FY 1995 data released by the federal Office of Child Support Enforcement (OCSE) - up from 12th in the nation in 1990 and 38th in 1988. Moreover, Texas had the highest number of paternity acknowledgments reported in the country for FY 1995 - 38,462.

With respect to child support collections, the Texas program had the third highest percentage increase in the nation between 1994 and 1995 - 22.1% (more than twice the national average of 9.9 percent). By the end of the current federal fiscal year (September 30, 1996) our collections are expected to total almost $600 million - $100 million more than last year. In addition, our paying cases have increased by 209% since 1990, from 59,486 to 183,732 at the end of the 1996 state fiscal year, while the number of support orders established has risen from 1990 to 1995 to place Texas as the 4th ranking in the nation, up from 21st in 1990.

This impressive record of accomplishments reflects the commitment of Texas Attorney General Dan Morales and the dedicated efforts of the staff of his Child Support Division, as well as the effective laws enacted by the Texas Legislature over the years. Because we have all worked

together to make the Texas child support enforcement program the vital and productive enterprise it is today, we are keenly interested in every action of Congress and of the federal government to assist us in our efforts to make the program even stronger and more productive. We welcome, therefore, this opportunity to comment on aspects of the child support enforcement provisions of H.R. 3734.

The Importance of a State Case Registry with Automated Enforcement Processes.

First, together with Attorney General Morales, I want to commend not only this committee, but all members of Congress in focusing public attention, during the course of enacting welfare reform legislation, upon the critical role of child support enforcement in helping millions of American families achieve the financial self-sufficiency they need in order to leave public assistance or to avoid having to turn to it in the first place. We know, as you do, that even the most effective child support enforcement program will not eliminate the need to provide assistance to families struggling to achieve economic independence. We believe, however, as you do, that a fully effective program will provide those families with an opportunity they might not otherwise have to attain that goal, while helping to promote in parents a stronger sense of responsibility for the children they bring into this world.

Second, I want to communicate to you the pleasure of the Texas program that several of the enforcement ideas and techniques which it has advocated and pioneered over the years are reflected in the new federal law. For example, ten years ago Texas established within its Attorney General's Office a truly statewide, integrated child support enforcement system, with a central case registry for IV-D orders, supported by automation. Recognizing the strength of that system and the efforts of the Texas program to integrate the support registry and enforcement activities of counties more fully into its statewide system, the 102nd Congress provided Texas with a statutory waiver from the IV-D requirement of an application for services in non-public assistance cases in order to carry forward a pilot project in one of its most populous counties - Bexar (in which San Antonio is located).

This pilot was, at that time, one of two such county projects in the state - and now seven. These county projects - Automated Monitoring and Referral (AMR) projects - operate under cooperative agreements with the IV-D agency and incorporate the use of a "self-starting" mechanism whereby support orders, including non-AFDC cases, are monitored for compliance from the point they are entered, permitting the use of enforcement action within days after a delinquency occurs and before arrears accumulate and the obligor disappears. In these pilots, however, there is still the need, in compliance with regulations, to require the filing of an application for IV-D services ***before any enforcement action may be pursued***.

In the AMR projects, child support cases are entered into the participating county's automated monitoring program when a court issues a new order or modifies an existing one. The local registry office enters the record of the order into its computer. At this point, the computer automatically sends a letter to both parents, explaining that the system will monitor support payments and initiate rapid enforcement action if any delinquency occurs. The computer monitors each case, ensuring that payments are received on time, and calculates arrears instantaneously as they occur. If there is a delinquency, the system, ***without human intervention***, sends a notice to the obligated parent, asking that payment be made promptly. If there is no response from the obligated parent within a stated period of time, the case is referred to the IV-D agency, which then notifies the custodial parent of the referral and offers the parent an opportunity to fill out an application for IV-D enforcement services. If the custodial parent returns a signed application, the agency proceeds with enforcement actions.

Although having to stop the enforcement process in order to obtain a written application from the custodial parent may seem a small impediment, the fact is that ***over one-half of the applications sent out to custodial parents are never returned and the ones that are returned take an average of 32 days before the completed form is received by the AMR office***. The value of the self-starting enforcement process is, thereby, dramatically undercut. The cases in which the

custodial parent does not return a signed application go without any enforcement response to delinquency. As a result, arrearages accumulate, and the family suffers. In time, the family may turn to the IV-D agency for help, but by then the arrearage is more difficult to collect, if, indeed, the obligor can be found. Or, for lack of financial security, the family may have to turn to the IV-A agency for assistance, only to be referred to the IV-D agency for belated enforcement actions. Either way, more administrative time and more state and federal financial resources will need to be spent on cases which, in the first place, could have been speedily brought back into compliance if an application didn't need to be solicited from the custodial parent.

The waiver granted by the 102nd Congress was to enable the Texas program in the Bexar County pilot project to make support orders, in non-AFDC cases, IV-D cases at the time they are issued and ***without the requirement of a written application*** - although custodial parents were to be allowed to opt out of the IV-D services. The essential aspect of the pilot was that, instead of waiting for the custodial parent to make a complaint and file an application for IV-D services, the case could be monitored for compliance from the outset so that an effective response to non-compliance could be made immediately.

Perhaps the greatest limitation to fully effective child support enforcement is that the IV-D agency can act to enforce support obligations only in those cases referred to it, either by the IV-A agency (in AFDC cases) or by a custodial parent (in non-AFDC cases). This means, often enough, that by the time the AFDC or non-AFDC case comes to the attention of the agency the court order for support may be years old, the arrearage on support payments may have mounted to uncollectible sums, and the obligor may have long since disappeared--and, of course, children may have had to "go without." The original, legislative intent of the Title IV-D program to deter welfare dependency and to avoid increased welfare costs is clearly defeated by this process of delayed referral. A good number of cases might never become welfare-needy if court orders for child support were monitored for compliance and enforcement action from the time they were entered. To place the initiation of enforcement activities so far down the path from the entry of orders or from the first occurrence of delinquency is to make enforcement unnecessarily difficult and welfare, too often, a virtual certainty.

Unfortunately, because of the complexity of project evaluation requirements imposed by the Office of Child Support Enforcement, we could not implement the congressional waiver. Still, without the benefit of the exemption from the application requirement, the pilot projects have demonstrated that the "self-starting" enforcement mechanism yields higher levels of compliance with support obligations.

Initial studies indicate that at least one regular child support payment is received in 93.7% of the cases referred from the county registry to the IV-D program within 60 days of referral. This percentage of payment is in sharp contrast with payment in cases in our normal complaint-driven IV-D system where only 26.7% of the cases receive a regular payment within 60 days of being opened. The success rate in the pilot projects indicates the speed with which compliance can be obtained. In addition, once paying, the non-AFDC cases in the AMR projects remain in full compliance at a rate of 73%, contrasted with 49% on our regular IV-D system and only 20% in county, non-IV-D caseloads.

We believe that the sort of "delinquency monitoring" installed in our county projects can revolutionize the collection of child support, and we have regarded the projects as a first step in the building of a new kind of central state registry for child support enforcement in which county registries are fully integrated into the IV-D agency's automated system and in which ***all*** new or modified orders become subject to IV-D agency monitoring and enforcement actions ***at the point they are issued***. We are very grateful that Secretary Shalala has granted Texas a waiver from the requirement of a written application for services (but with an "opt-out" allowance for custodial parents) in non-public assistance cases so that we can move forward with the establishment of such a statewide "Integrated Child Support Registry" in which, eventually, all counties will participate and all new or modified orders issued in the state will automatically receive IV-D enforcement actions if delinquencies in compliance occur.

We were pleased, therefore, that, first, the Clinton Administration and, then, the 104th Congress endorsed the kind of case registry and automated monitoring and enforcement processes we have presented in published policy papers over the past several years and which we recommended to the U.S. Commission on Interstate Child Support, established under the Family Support Act of 1988. We only regret that H.R. 3734 did not fully embrace - as did other bills filed by members of both parties - the principle of a "self-starting," instead of a complaint-driven, enforcement system, by giving states the option of making all cases in the state central case registry IV-D cases, subject to immediate enforcement actions.

In addition to the concepts of the central case registry and "delinquency monitoring" which Texas has pioneered, we applaud the inclusion in H.R. 3734 of provisions for the kind of administrative processes for income withholding Texas has had since 1985 and which we have found to be one of the most effective enforcement tools available to us. As members of this Committee may know, the income withholding provisions in the Family Support Act of 1988 were modeled after the universal, mandatory income withholding procedures established in Texas.

The legislation also contains proposals for a new incentive structure and for new kinds of state program reviews and audits of the sort advocated by the Texas program in published papers six years ago and recommended to the U.S. Commission on Interstate Child Support. I want to return to these matters presently, but I did want to mention at this point that we welcome the bold move of the Congress to deal with the deficiencies of the incentive system and the audit process which have negatively impacted the operation of state IV-D programs for years.

Some Problems in H.R. 3734.

H.R. 3734 is not without its flaws. A "technical corrections" bill needs to deal with problems in the time frames attached to certain requirements and with what may be drafting errors. For example, section 344(b) of H.R. 3734 provides enhanced federal funds at the rate of 80% for expenditures by states in meeting the automation requirements laid out in the Act. This enhanced rate, however, is available for five fiscal years beginning FY 1996, while the legislation was not enacted until nearly the beginning of FY 1997 and final rules for the Act's automation requirements are not due until nearly the beginning of FY 1999. Another example is the requirement under section 313 that by May 1, 1998 a designated agency execute data matches of information in the State Directory of New Hires with case records in the State Case Registry, when the case registry is not required to be operational until October 1, 1998. There is also, of course, the glaring conflict in the dates for the repeal of the $50 "disregard" under Title IV-A and for the discontinuation of the $50 "pass-through" under Title IV-D.

While there may be other problems like these, overall the effective dates for the many, and sometimes massive, state plan and state law changes required under the Act should be delayed by at least one calendar year. Most of these dates, as currently laid out in the Act, are not realistic with respect to the ability of state agencies and legislatures to make needed changes. Moreover, the Secretary will not be able to provide states with regulatory guidance in sufficient time for the mandated state law and state plan amendments to reflect the interpretation of statutes provided by the Secretary.

In that regard, it is imperative that regulations be prepared as quickly as possible, given the number and complexity of the changes in federal law. We urge, however, that - without disrupting the processes for rule making required under the federal Administrative Procedures Act - state IV-D agencies be consulted about the ways in which these changes may be most effectively implemented ***even before proposed rules are developed and published.*** We have already suggested this to the Administration for Children and Families because we believe that those actually doing the day-to-day work of child support enforcement may have a clearer sense of what does or does not work than those formulating the rules. Too often in the past federal regulations have not meshed with the practical realities of enforcement and have not served to enhance enforcement efforts but have, instead, impeded those efforts.

As for possible drafting errors in H.R. 3734, there is, for example, the requirement under section 325 of the legislation that the state IV-D agency have the authority to order genetic testing in, presumably, any contested paternity case. Under section 331, however, genetic testing may not be required unless it is requested by one of the parties (the mother and a putative father, but, obviously not the state) but only "if the request is supported by a sworn statement by the party" that the requisite sexual contact has, or has not, taken place. Also, while the caption of section 373 refers to "enforcement of orders against paternal or maternal grandparents in cases of minor parents," the text of the provision identifies only the "parents of the noncustodial parent" - that is, the paternal grandparents. Finally, while section 381 extends the definition of a medical child support order in ERISA to include orders issued by administrative process, the legislation leaves unaddressed the real problem with current ERISA provisions which allow employers to refuse to honor a medical support obligation because a court or administrative order incorporating such an obligation is not in the style of a "qualified medical child support order," as specified in ERISA. The language in section 514(b)(7) of the ERISA [29 U.S.C. 1144(b)(7)] which limits enforcement of medical support obligations to orders having all of the particulars of an ERISA "qualified medical child support order" needs to be amended, as well.

Although not really a drafting error, there is a lack of clarity about some key funding issues. We have been assured by the Administration for Children and Families that federal financial participation will be available for any activity relating to a state plan amendment - including the establishment and operation of the required State Case Registry, State Directory of New Hires, and the State Central Disbursement Unit. It is not clear, however, whether or not enhanced federal funding at the rate of 80% will be available for **all** of the new automation requirements in the H.R. 3734, or just for those specifically related to sections 454(16) and 454A of the Social Security Act, as amended by H.R. 3734. This would encompass the case registry but perhaps not all the functions of the new hire directory and the disbursement unit. Also, it is not clear from section 331 of the legislation the extent to which federal funds will be available for the establishment and operation of a paternity registry in a state's vital statistics agency or for the offering of paternity acknowledgment services by such agency and other agencies designated by the Secretary. We are sure that Congress did not intend to impose any unfunded mandates upon the states in the child support enforcement provisions of H.R. 3734, but it is very important that there be statutory language clarifying the overall funding of the new state plan and state law requirements in the legislation.

The Need for Flexibility in Federal Title IV-D Laws and Regulations.

Perhaps our greatest concern about the child support enforcement provisions of the legislation is that they appear to reflect the notion that "one size fits all" - viz., that there are no differences among states with respect to their legal cultures and traditions and that what "works" in one state, must work just as well in any other state. For example, quarterly data matches with financial institutions may be a useful activity for one state IV-D agency while for another it may prove to be an enormous waste of valuable resources which ought to directed to other kinds of enforcement efforts. Indeed, as recent annual reports of the Secretary to Congress on the nationwide IV-D programs show, Texas has been more productive in establishing paternities and collecting child support than some states which already use certain of the procedures mandated under H.R. 3734. It is doubtful that every procedure mandated in H.R. 3734 will add to the productivity of the Texas program in establishing paternity and collecting support. Some may, instead, divert staff energies and time and state and federal funds from more fruitful enforcement activities.

What states have learned over the past 20 years is that if a particular enforcement activity is, indeed, a "best practice", it will find its way into use by other states. The fact is that states - not the federal government - have originated the effective enforcement "tools"currently used within the nationwide IV-D system. States teach one another, and they adapt practices to their particular legal environment. It really is not necessary for the federal government to micro-manage state laws and legal procedures. Indeed, to do so is inimical to the original intent of the federal legislation which established the state-federal partnership under Title IV-D of the Social

Security Act. That intent was - and should continue to be - that the federal government would provide oversight and technical assistance and share administrative costs, while the states would be responsible for administering their child support enforcement programs. What was envisioned 20 years ago was a child support enforcement program which, although nationwide in structure and operation, would look to the states for the exercise not only of full diligence in pursuing the goals of the program but also of imagination and creative energies in designing effective strategies. This kind of partnership recognized that domestic relations law is properly, as it has been historically, the domain of the states, not the federal government.

Thus, the intent of Congress in creating Title IV-D was that states should enjoy a good amount of flexibility in how they constructed and operated their programs. The theme of ***flexibility*** has been voiced throughout the legislative history of the IV-D program. One of the clearest and strongest statements concerning the need by state IV-D program for flexibility in their operations--allowing them ample room for creativity and innovation--was made by the, then, Secretary of Health and Human Services, Margaret M. Heckler, in testimony on January 24, 1984 before the Senate Finance Committee. Speaking in opposition to a House bill which would have imposed burdensome performance requirements upon the state IV-D programs, leaving no room for needed flexibility, Secretary Heckler said:

> [T]he prescription of so many techniques [for support enforcement] imposes a laundry list of approaches on the states when what we really want, to achieve our goal, is simply to have effective techniques and allow the states the ***flexibility*** to add to what we consider the most important approaches available. I think ***giving the states flexibility is important because the states differ***. What we want as the bottom line is to see the children receive the child support payments, ***not impose a whole series of new changes on the states***. Even though those changes might be desirable, are they really essential? ***We feel if they are not essential, that the states should have flexibility.*** [S. Hrg. 98-673, pp. 49-50. Emphasis added.]

We regret that, at a time when Congress has recognized the importance of giving states flexibility in administering their public assistance programs by relieving them of the onerous burden of excessive federal regulation, it should have reversed directions with the Title IV-D program. What that program needs is not more regulations, not more federal mandates, but the opportunity to employ fully the creative energies of the states which, more than the federal government, know how to use their legal processes to attack the problem of non-support.

It is unfortunate that the legislation did not provide more generously for state options, but we hope that the federal government will make waivers available to states from some of the less useful requirements in H.R. 3734 so that states can continue to use and perfect their own more productive laws and procedures. What those who advocate a "lock-step" approach to child support enforcement, with a proliferation of federal mandates, seem not to understand is that there are distinct differences among states with respect to their legal cultures and traditions and that already state IV-D programs are having to invest so much of their finite resources - including both state and federal funds - not in establishing paternity and collecting support, but in meeting the minutiae of dozens and dozens of federal requirements. To add to this regulatory structure will not improve enforcement, but only diminish it.

The IV-D Incentive Structure and Audit Process

As I mentioned earlier, the Texas program is very pleased that the reform of the federal incentive structure and audit process which it has been advocating for many years in policy papers, national associations, and testimony before Congress may now be realized through provisions in H.R. 3734. What we have repeatedly urged is an incentive system which rewards, and an audit process which evaluates, the real accomplishments of the state IV-D programs. The current incentive system is based upon only one area of productivity - support collections - and upon fundamentally meaningless measures of "cost-effectiveness" which do not take into account all the areas of program productivity or expenditures. Moreover, by limiting the amount of

collections in non-public assistance cases which may be credited for incentive purposes, the current system actually rewards states to the extent that they do not remove families from welfare. Nor does the current system reward states for the savings in public assistance, food stamps, and Medicaid realized by their success in helping families become financially independent.

We believe - as the Congress evidently does - that the incentive structure needs to be reworked so that it acknowledges and rewards states for their accomplishments in ***all*** areas of child support enforcement, and not just in the collection of support. We also believe very strongly that the reworking of the incentive structure must be tied to a complete overhaul of the federal audit system. The two are really inseparable.

As the Committee knows, a fundamental component of the federal role in the state-federal IV-D partnership has been the assessment of the effectiveness of state programs through periodic audits. Over the years new legislation and regulations have expanded the scope of the program and strengthened its activities and have introduced a great measure of uniformity in state laws and legal processes. With these developments, however, the audit process has become increasingly complex. What was at first a fairly simple review of a few selected aspects of state program operations has grown to an undertaking of nearly unmanageable proportions, imposing an onerous burden upon both the states and the federal Office of Child Support Enforcement (OCSE). As OCSE itself has acknowledged, "a more efficient and more expeditious approach to the audit of State IV-D programs is necessary." [Federal Register, Vol.54, No. 19, Jan. 31, 1989, 4841] OCSE is clearly concerned about this unacceptable situation, just as the states are dissatisfied not only with the length of time and expenditure of resources the audit process demands but also with the measures by which their programs are currently evaluated.

The flaws in the current federal audit process are many. The fundamental deficiency in the process is that it relies on a mechanical, quantitative standard for measuring, not productivity, but compliance with process rules. Applied as a template for measuring program effectiveness, the quantitative standard ignores important and distinctive differences among categories of enforcement activity, including degrees of difficulty and the varying allocations of time and resources required. The express purpose of the quantitative measurement is to determine the extent to which actions are taken on cases, not the extent to which the actions taken have been productive or the ones not taken have had a negative impact on the program's effectiveness.

This checklist approach to "effectiveness" requires only that something be done, whether or not doing it really matters to the outcome of a case. The concern once more is with process, not product - with quantity of action, not quality of effect. The application of this measure presupposes that there are no differences among state programs in types of caseload and in program structure and operation, that every case of a type (e.g., paternity establishment) requires not only the same actions, but also all of those actions in a particular sequence, with no variation. It assumes that if all cases of a type are worked using the same techniques, identical results will follow, regardless of degrees of difficulty, differences in circumstances, available data or staff, or any one of numerous variables. Mechanistic inflexibility is the mode of measurement.

Unfortunately, in the current OCSE audit, state IV-D programs are judged, not by their actual productivity and growth over a triennial period, but by their ability to jump through procedural hoops, regardless of whether or not all the time and resources spent on meeting the dozens of audit criteria really pays off in increased productivity and program effectiveness. The curious notion informing the use of the current audit seems to be that if a state program performs all the prescribed procedural steps and adheres rigorously to all the many details of a uniform process, success is sure to follow. More than that, the notion is that if **all** state programs faithfully follow **all** the prescribed procedures, **all** will enjoy equal success, ***no matter the distinctive differences among the programs***. But inasmuch as success in terms of real growth and real productivity is never measured in the audit, it cannot be known whether or not the rigidly applied procedural requirements lead anywhere or are merely ends in themselves - a process which produces nothing but itself. **The only success the current audit measures is success in passing the audit.**

The enactment of H.R. 3734 offers the Secretary the opportunity to work with the states in creating an audit system which evaluates product, not process, and which is integrated with a new incentive system which rewards all areas of program productivity. The audit process has become the victim of regulatory technology, and in its cumbersome complexity it does not serve the IV-D program by providing the kind of thoughtful monitoring and correcting direction needed for the program's continuing growth. Reforming the process means, at the least, establishing performance standards which truly measure product, not process, applying those standards equitably, and judging substantial compliance by how fully those standards are met. Procedural deficiencies, when identified, ought not to be the basis for assessing penalties but, instead, be used as opportunities for improving processes for the purpose of achieving optimal program functioning and productivity.

Texas' Proposal for Reforming the Audit Process and Incentive System.

The Texas program proposes that there be a new product-oriented audit process tied to a new product-driven incentive system.

First of all, the kind of audit process we have in mind would do away altogether with the current audit criteria and quantitative "performance" standards. Each state would set production goals for itself to be met over a triennium. These goals, covering all of the essential service areas - locate, paternity establishment, obligation establishment and enforcement, collections, interstate enforcement, and medical support - would result from a conference with the regional IV-D representative and would be "certified" by the OCSE director. The goals would reflect realistic assessments of potential for growth and productivity, analyses of areas needing particular attention and improvement, and factors peculiar to the state (e.g., economic and demographic features, structural organization of the state's IV-D program, and matters of state statute and legislative process) influencing performance. The federal office would certify that the stated goals were acceptable - that is, were not too low or at too great a deviation from national norms and/or trends.

Once agreed upon by the state IV-D agency, the regional office, and the federal office, the state would be held accountable for realizing the performance goals over the period of the triennium. As prescribed under section 344 of H.R. 3734, each state would use its automated system to maintain performance data and calculate performance indicators, and, as section 342 requires, on an annual basis each state would report to the Secretary the "data and calculations concerning the levels of accomplishment (and rates of improvement) with respect to applicable performance indicators" . . . These annual reports would be the basis of awarding each state an appropriate incentive payment, but the reports - their data and calculations - would directly relate to a state's performance goals, as set forth in its strategic plan certified by the federal director.

At the end of the three-year period, a review and assessment would be undertaken by the state agency and the regional office together. OCSE auditors would assess program data (including, as section 343 requires, "the completeness, reliability, and security of the data and the accuracy of the reporting systems used in calculating performance indicators") and confer with state auditors. Regional IV-D staff would confer with state agency staff and together visit selected sites. The outcome of the review would be a report to the federal office in which an assessment of accomplishment would be made, with any divergences in the assessment between the regional office and the state agency identified and justified.

The federal office would then have responsibility to determine on the basis of the report the degree to which the state program had met or exceeded its goals and, correspondingly, the amount of any financial penalty to be levied. The penalty, however, would be imposed upon the amount of "federal financial participation" (FFP) already paid to the state for the triennium just reviewed, not upon the amount of federal funds to be paid the state for the IV-A (TANF) program. Moreover, the penalty would be flexibly applied, taking into consideration not just failure to meet a particular goal, but also success in meeting other goals. Any disallowance would be suspended until a follow-up review one year later showed whether or not improved productivity

and efficiency were of sufficient magnitude to "correct" the earlier deficiencies. The state agency would have the opportunity both after the triennial review and after the follow-up review to appeal any adverse judgments to the Department Grants Appeal Board.

The advantages of such a scheme of program funding and evaluation would be these:

1. There would be on-going strategic planning for the IV-D program at the state, regional, and federal levels, with the state and federal programs in a partnership relationship identifying goals and assessing results. This sort of cyclical planning and assessment should enable state programs to make sounder judgments about the deployment of resources in meeting specific targets over the long-term, as well as provide a sharper, historical focus on the areas of strength and need in the continuing development of the programs.

2. State programs would be evaluated **against their own respective historical performances**, although their individual and collective experiences in striving to meet the purposes of the IV-D program would inform and help shape program development and policy at the federal level, including the creation of new laws and regulations.

3. Provision for a disallowance of FFP upon an unjustified failure to meet three-year goals would ensure that state programs did not simply spend federal funds without being accountable for the results of those expenditures. This would counter the sort of situation, often cited by the federal government as an instance of states' making a "profit" on the program, where a state runs an inefficient, unproductive program and still collects the full measure of FFP and at least the minimum percentage for incentive payments. This scheme introduces a higher level of accountability and a greater sense of stewardship of federal funds.

4. This scheme of program planning and assessment of performance moves state-federal government interaction from a nearly adversarial relationship in which state IV-D agencies feel the "feds" are out to get them and the federal government feels that state agencies are out to cheat it, to one of shared responsibility for the overall success of the IV-D program. Instead of the current audit which functions as a system of negative sanctions to motivate positive behavior and as a punishment for imputed laziness and negative intentions, there would be cooperative planning and assessment of program activities by state agencies and the federal government. Currently state programs divert time and resources from planning for productivity to planning for passing an audit which addresses only procedures and not product. It is a three-year long effort to avoid losing funding, rather than a three-year long effort to realize productive goals, mutually agreed to by state agency and federal government.

5. A periodic technical review would enable state agencies to identify particular procedural problems and enable OCSE to offer assistance in resolving these problems, without disrupting the on-going work of the state program, as the current audit does, and without imposing crippling wholesale penalties, as the current audit does, for procedural deficiencies which do not affect the overall performance of the state IV-D program and its true "substantial compliance" with the fundamental purposes of Title IV-D.

Looking to the Future.

The creation of the IV-D program represented one of the most significant experiments in "cooperative federalism" this country has known. The 1975 law establishing the program envisioned Title IV-D as a kind of marriage of state family law and federal public policy in addressing the difficult and worsening problem of non-support and welfare-dependency. In this

new venture of "co-operative federalism," Congress assigned to the states, out of deference to their traditional claim to preeminence in domestic relations, the primary responsibility for child support and paternity establishment, while leaving to the federal government the responsibility for providing the funding and general oversight necessary to achieve a coherent, nationwide program. The Child Support Amendments of 1984 significantly changed this assignment of responsibilities. The dramatic changes in the IV-D program which the 1984 Amendments brought, represented not merely improvements in an existing system of support enforcement, but a conceptual reworking of that system, moving towards the federalization of state domestic relations law. That process of reconceptualization was advanced further by, first, the Family Support Act of 1988 and, now, the Personal Responsibility and Work Reconciliation Act of 1996. Perhaps the final chapters of the process have yet to be written in the halls of Congress.

Over the 20 years of its existence, the program has grown into a major force for the well-being of the nation's children, and it needs to continue to develop in order to serve more fully the high-minded purposes for which it was established. Continuing development, however, presupposes flexibility of operation for state programs and their freedom from regulatory impediments and the punitive effects of an audit which measures procedural performance instead of program productivity.

Everyone with an interest in the growing crisis of child support in this country wants the IV-D child support enforcement program to succeed. But the success that everyone seeks for the program - the federal government, Congress, the states, and advocacy groups - will not be achieved by piling on more mandates, more regulations, more constraints on flexibility and creativity among the states in how they pursue the fundamental purposes of the IV-D program. Just as states must continue to apply themselves with diligence and imagination to increase the productivity of their child support enforcement programs, so the federal Administration must work to liberate the IV-D program from the regulatory impediments which limit the program's possibilities, waste its resources, and burden its progress. For its part, Congress must be disposed to revisit the laws it has passed in order to determine whether or not the "one size fits all" approach is the soundest way to move the program forward. It must also be prepared to make available the financial resources required to assist states in their efforts to ensure that the families of the nation receive the child support they are due. Child support enforcement is an endeavor in which all participants are - and **must be** - active partners.

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