

RESPONSE TO SENATE HELP COMMITTEE REPORT ON FEDERAL PROGRAMS FOR PERSONS WITH DISABILITIES

Developed by America's Organizations of and for the Blind

On October 20, 2005 the Chairman of the Senate Committee on Health, Education, Labor and Pensions, Senator Mike Enzi, convened a hearing to review the effectiveness of two of the Nation's oldest employment programs for people with disabilities. The hearing was accompanied by a report entitled "Opportunities Too Few? Oversight of Federal Employment Programs for Persons with Disabilities." The two programs examined are those operating pursuant to the Randolph-Sheppard Act, which provides blind business people a priority to operate food and other service facilities on Federal property, and the Javits-Wagner-O'Day Act, under which nonprofit agencies provide goods and services to the Federal government using people with severe disabilities as direct labor.

The Committee report is seriously flawed in a number of respects, in that it contains many factual and conceptual errors and misstatements. The undersigned organizations of and for the blind attempt herein to set the record straight. We have set forth the assertions in the Committee report and have responded to each of them. We urge the Committee and the Senate to review this response carefully and to examine these programs in greater depth before undertaking any policy development, recommendations, or proposed legislation that would affect either the Randolph-Sheppard Act or the Javits-Wagner-O'Day Act.

Preliminary Statement

If the findings and recommendations of the Committee report were to be accepted at face value, action by the Congress consistent with such findings and recommendations would devastate the Randolph-Sheppard program and the 3,000 blind Americans who rely on it for their livelihoods. The Randolph-Sheppard blind vending facility is for the most part a small, "mom and pop" operation with one or two employees. Often these are family members or trusted neighbors and friends who assist with driving and other duties. Some blind vendors operate cafeterias, or supply vending machines at Interstate highway rest stops. A few manage military dining contracts. Whether the facility is large or small, the blind vendor is required to manage all aspects of the operation, including food preparation, supervision of staff, marketing, accounting, and maintaining records to comply with Federal and state tax and regulatory requirements.

The cost of employees is borne by the blind vendor; he or she receives no funding for this purpose. The funds used to hire staff come from the sale of products and not from a public source. The Randolph-Sheppard program is structured to grant entrepreneurship to people who are blind, offering them the freedom to run a business as they individually deem necessary to earn a living. It may be argued that the program should extend its employment opportunities beyond the management level, and to people with other disabilities. Congress has never implicitly or explicitly expressed such a policy, however. Condemning the program for failure to meet these additional objectives is disingenuous. Moreover, to impose such a mandate on the

program would place a burden on the blind vendor that is not required of any other business. Combining the Randolph-Sheppard and Javits-Wagner-O'Day programs would destroy jobs, not increase them.

Response to the Committee Report

The remainder of this response generally follows the main points set forth in the report. We recite a number of the assertions of the Committee and comment on them, point by point.

- **Point:** “Only a select few licensed blind vendors are able to capture the financial windfalls that are available from the program by offering successful bids for pending contracts.”
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Response: Large military troop dining contracts are cited as examples of excessive compensation for blind vendors. Yet the size of a military troop dining contract does not reflect the income of the individual blind vendor. The Committee report implies that blind vendors receive the “lion’s share” of \$1.203 billion in military dining contracts. Not only do the combined totals of the contracts reflect five years of awards, but all costs of food, food preparation, distribution, equipment, maintenance, and staffing are contained in the total contract amount. Some blind vendors operating military troop dining facilities have good incomes, but their incomes are in no way disproportionate to the compensation of people without disabilities performing the same work.

The compensation for all managers of military troop dining facilities, including blind vendors, is tightly controlled by the Federal contracting officer. All branches of the military require all bidders, including State licensing agencies under the Randolph-Sheppard Act, to submit detailed proposals under a competitive bid process. The Randolph-Sheppard program is not entitled to exercise the priority unless its bid falls within the competitive range of all bids submitted, and unless it would provide food of comparable cost and quality to others in the competitive range. The dollar amount of the contract is comparable to the amount the military would pay to any successful bidder. These contracts are often large, and extend over five year periods. The average income of a blind contract manager in a military dining facility is about \$125,000, a very comfortable income but certainly not an excessive “financial windfall.” If a blind vendor did not operate military dining contracts, a professional food services operator would be awarded the contract and no blind vendor or any disabled employee would likely be employed at that location.

The primary mechanism for establishing blind vending facilities is through the issuance of permits by Federal agencies to State licensing agencies. For the most part these are small operations, with two or three employees. The national average income of blind vendors was \$39,880 annually; a decent income, but hardly a windfall.

- **Point:** “These few licensed blind vendors are then able to hire employees or subcontractors to help fulfill the terms of what are often large, lucrative contracts. Thousands of employees are ultimately hired by the vendor or subcontractor but very few of these hires are blind persons.”

Response: In a few instances (currently 42 military dining facilities are operated by blind vendors) the State licensing agency contracts with defense and other agencies to provide cafeteria service. In most cases the State licensing agency and the selected blind vendor award a subcontract to a professional food service operator to train, mentor, and assist the blind vendor in the operation of the facility, with the expectation that the blind vendor will, in time, take over full operation of the contract. The assertion that “thousands” of employees without disabilities are hired in blind vendor managed military dining contracts is irresponsible, and a gross exaggeration.

- **Point:** “[The Randolph-Sheppard program] categorically excludes those who are visually impaired or those who have hearing, mobility, intellectual or other disabilities.”

Response: The report’s conclusion that few blind persons or others with disabilities receive employment under the Randolph-Sheppard program is factually incorrect and misleading. In 2002 the program provided employment at the management level to 2,681 blind vendors. These blind vendors in turn employed an additional 337 blind people and an additional 278 people with other disabilities. The program, therefore, did not employ only five percent disabled persons out of a workforce of nearly ten thousand; rather, it provided employment to people with disabilities at a level of 33.6 percent of the total number of employees in the program.

Percentages aside, several states such as Ohio, Illinois, and Georgia require Randolph-Sheppard vendors to hire a certain number of individuals who are blind, or who have other disabilities. Indeed, the Illinois Committee of Blind Vendors has been honored as “Employer of the Year” by the state’s Department of Human Services. This is a trend that could be (and arguably should be) emulated by other states. However, to be effective, such a requirement would have to be supported by regulation or legislation setting forth applicable definitions of disability and procedures both for establishing the disability of employees and reporting these data to the appropriate agency.

The focus of the Committee report is military dining contracts. These contracts contain standard conditions imposed on every commercial vendor, including nondiscrimination provisions based on race, sex, national origin, age, and disability. Pre-employment inquiries to identify people with disabilities or to condition employment on the basis of disability are prohibited under Federal contracts. No definition, guideline, or process is in place for blind vendors to report the number of their disabled employees, let alone identifying employees who may be considered to have significant disabilities. Thus, the number of people with disabilities working in blind vending facilities may be substantially underreported. The Randolph-Sheppard program should not be judged as a failure for not meeting standards that do not exist.

- **Point:** “[O]nly a relative handful [of blind people] are reaping the benefits and receiving the support this program provides.”

Response: The 1974 Amendments to the Randolph-Sheppard Act, which originated in the predecessor to the HELP Committee, expressed in the findings an expectation that the program (at that time with a total of 3,500 blind vendors) could double in size within five years. Instead,

the program has declined to its current level of 2,600 blind vendors. There are many reasons for the decline, including reductions in Federal and state employment, greater building security, the advent of competing food courts, and continued resistance by Federal agencies to the establishment of blind vending facilities. The Nation's organizations of and for the blind and the State licensing agencies believe there could be many more blind vendors added to the employment rolls if the blind vendor priority were enforced, if Federal agencies (particularly the Department of Defense, the Department of Veterans Affairs, and the U. S. Postal Service) would support that priority, and if Federal agencies provided vending machine income to State blind vending programs as they are mandated by law to do.

Unemployment among blind individuals may be as high as eighty percent nationally, perhaps the highest of any disability. Yet the blind constitute only two percent of people with disabilities. Clearly, the Randolph-Sheppard program and other employment programs should expand and serve more people who are blind. The failure, however, is not in the number of people with disabilities employed by blind vendors; it is in the number of vending facilities available to blind people to operate. We know that in virtually every state in the union there are trained and licensed blind vendors who have yet to obtain an opportunity to operate a facility. Yet the number of available Randolph-Sheppard vending locations continues to diminish. Federal agencies have increasingly failed to recognize the Randolph-Sheppard priority, and there is no incentive for them to do so.

- **Point:** “Combine Randolph-Sheppard and Javits-Wagner-O’Day into a single program. Streamlining and placing both programs into one line of command and oversight may help increase the efficiency and effectiveness of both programs and increase the opportunities for those living with disabilities.”

Response: The Committee report offers no rationale for combining the programs, and no data to suggest that joining the programs would have merit. The concept is both simplistic and unworkable. The two programs have totally different structures and different objectives. The Randolph-Sheppard program is administered through State licensing agencies, half of which are located in blind service delivery agencies. Programs in each state operate under a carefully structured and time-tested system of licensure, permits and contracts. The blind vendor is a business person, and in many states is considered an independent contractor. The JWOD program is administered through the Committee for Purchase from People Who Are Blind or Otherwise Disabled, and two Central Nonprofit Agencies—NISH for services, and National Industries for the Blind (NIB) for commodities and services provided through Federal procurement contracts. Community Rehabilitation Programs (CRPs), formerly known as sheltered workshops, provide direct labor through individuals who are by law considered to be too severely disabled to enter competitive employment. CRP agencies are staffed by managers who by and large are not themselves disabled. Federal agencies procuring services or commodities pay a surcharge on contracts, which funds the central nonprofit agencies’ operations. The two programs are dissimilar in purpose and in operation, and could not be combined without causing chaos and total disruption in services. The mere combination of the two programs would not likely result in a single new job for people with disabilities.

Efficiency and effectiveness are desirable in any program, and the Randolph-Sheppard and Javits-Wagner-O'Day programs are no exceptions. However, simply combining them into one program will not improve either efficiency or effectiveness; on the contrary, to do so would seriously degrade both. We concur that both programs must be held accountable for demonstrably benefiting people who are blind or otherwise disabled. The blind vending facility program has suffered from years of neglect at the Federal level. Even before the closing of the Rehabilitation Services Administration's regional offices and the elimination of nearly half of the agency's employees, commitment of staff to support the Randolph-Sheppard program has eroded steadily in recent years. This lack of commitment to the program is mirrored at the state level when rehabilitation services for the blind are subsumed under large, cross-disability programs. Lack of specialization leads to a lack of emphasis on categorical programs and services. This lack of attention will increase as more and more programs for the blind are consolidated into large umbrella labor or social service organizations where programs serving low incidence disability groups are essentially ignored. Congress should reaffirm the provisions of the Randolph-Sheppard Act by requiring adequate staffing levels in the Federal government, and by vesting in the Federal agency responsible for the operation of the Act the authority to hold other Federal agencies accountable for complying with its provisions.

Opportunities under the Randolph-Sheppard program will continue to diminish until all Federal agencies take their responsibilities under the Act seriously. The U. S. Postal Service, the Defense Department, and the Department of Veterans Affairs are examples of a growing tendency among Federal agencies to refuse to recognize the Randolph-Sheppard Act's priority. There are virtually no consequences for these agencies' failure to comply with the Act's priority. If Congress wants the program to benefit increasing numbers of blind people, it should consider ways in which Federal departments, agencies, and instrumentalities can be held accountable.

- **Point:** "Include all persons living with disabilities into the combined program. Options and resources should be based on individual needs instead of disability categories and generalizations."

Response: As suggested in the prior response, lumping together in a single program all people with disabilities regardless of physical, intellectual, or emotional characteristics would not resolve the principal problem posed by the HELP Committee report—providing more jobs for people with disabilities. The Rehabilitation Act of 1973, as amended, was designed to provide individual services to people with disabilities through evaluation, training, and job placement, resulting in employment. People with the most severe disabilities are to be served first under an order of selection if states are unable to provide services to all people with disabilities seeking the services. This program exists in every state, and has been the primary source of employment for people with disabilities. The vocational rehabilitation program should be the central focus of the Committee's attention, and not a proposal that cobbles together an unworkable combination of two completely different programs.

The essence of the Randolph-Sheppard Act is to provide business opportunities to blind individuals who are able to manage businesses. This distinct purpose should continue to be the preeminent goal of the vending facility program. The program can and should be used more

effectively to improve employment opportunities for blind people and those with significant disabilities. But the purpose of the Randolph-Sheppard program should not be obscured by employment standards applicable to the unique circumstances of the Javits-Wagner-O'Day program and not applied to small businesses generally. An expectation that blind vendors could employ persons with disabilities for 75 percent of the direct labor hours in the business (the JWOD standard) would be as unworkable for blind vendors as it would be for any other small business in America.

If the Congress wishes the Randolph-Sheppard program to employ people with significant disabilities in positions other than those of managers of facilities, this expansion of the program would require training and support in order to be successful. The cost impact of such a training initiative would have to be assessed, especially given the fact that blind entrepreneurs are not rehabilitation teachers or vocational instructors. They are blind people, trained to operate a competitive food service business. Recruiting, training, and supervising a workforce of people with other significant disabilities are beyond their training and experience. If Congress believes blind vendors should be required to hire a certain number or percentage of employees from among those with disabilities, Congress should impose the same requirement on employers generally. Otherwise, the result most certainly would be to place blind vendors at a disadvantage as they work in an increasingly competitive business environment.

While the Randolph-Sheppard and JWOD programs have disparate missions, there are ways in which they can and do work together. On at least two military installations the blind contract manager has directly hired people with significant disabilities to perform DFA (dining facility attendant) services, or has retained the services of a NISH affiliated agency for direct labor requirements.

- **Point:** “The Department of Education does not know, with respect to any Randolph-Sheppard contract [any details about the contract].”

Response: The Nation’s organizations of and for the blind agree that the Department of Education has traditionally given little support to the Randolph-Sheppard program. The 1974 amendments to the Act required the addition of ten personnel in the Office for the Blind and Visually Impaired to manage the vending facility program. Currently there are just two professionals in the Department assigned full time to Randolph-Sheppard work. The regional offices of the Rehabilitation Services Administration (RSA), which have been shut down in an effort to “economize,” once had some limited oversight capability in Randolph-Sheppard, but that has disappeared. State licensing agencies are required to report details of their vending programs to RSA, and statistics from these submissions are compiled and reported annually in a document known as the RS-15. In focusing on contracts, the HELP report presumably is addressing the 42 military dining contracts held by State licensing agencies. No details on these contracts are submitted by the State licensing agencies to RSA, but the States are in possession of most of the information referred to in the report. Some of the information sought by the Committee is proprietary and confidential, however, and if made public would put blind vendors at a competitive disadvantage in retaining such contracts.

- **Point:** “Licensed blind vendors defend their right . . . to become rich.”

Response: The very nature of the Randolph-Sheppard program is to offer people with a severe disability—blindness—an opportunity to capture the American dream by maximizing their vocational potential and operate their own businesses. The Committee report’s implication seems to be that blind people are somehow less entitled to become rich than are Bill Gates or Warren Buffett, or Oprah Winfrey. If that rare blind business person is able through talent, perseverance, and hard work to reach the pinnacle of success, that fact should not be considered a negative, but a demonstration that blind people sometimes are as able to reach that American dream as those who are not disabled.

- **Point:** “After taking full advantage of federal contracting priorities and state licensing agencies (SLAs) benefits, licensed blind vendors then ‘triple-dip’ to maximize their revenue from the government.”

Response: This section of the report is yet another example of slanting the facts to decry the “wealth” of blind vendors. First, those blind vendors who are on SSDI are entitled to the benefits they receive. The report acknowledges that so-called “triple-dipping” is neither illegal nor fraudulent. It then asserts that this practice “underscores the extent to which licensed blind vendors depend on government.” If dependency on government is to be reviled, the Committee should look into the vast array of government subsidies accruing to those who are really rich, like agribusiness, professional baseball and football franchises, and congressional employees whose salaries are paid by the taxpayer, and who receive pension funds beyond their salaries, and Members of Congress whose postage, employees, travel, retirement, and housing are to one degree or another subsidized by the American people.

Conclusion

The organizations listed below have worked together to develop a comprehensive legislative plan to increase employment among blind people, and to enable people with significant disabilities to be employed in substantial jobs. We are united in our position, and we are prepared to participate in a dialog that will bring meaningful improvement to the lives of many more people with significant disabilities.

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American Council of the Blind
National Association of Blind Merchants
National Council of State Agencies for the Blind
National Federation of the Blind
Randolph-Sheppard Vendors of America