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Senate

(Legislative day of Monday, September 25, 1995)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Let us pray:

Lord of history, God of Abraham and Israel, we praise You for answered prayer for peace in the Middle East manifested in the historic peace treaty signed yesterday between the Palestinian Liberation Organization and Israel. We press on to the work of this day in the assurance that You are in control and seek to accomplish Your plans through us if we will trust You.

Oh God, together we salute You as Lord of our lives, the One to whom we all must report, the only One we ultimately need to please, and the One who is the final judge of our leadership, we pray that our shared loyalty to You as our Sovereign Lord will draw us closer to one another in the bond of service to our Nation. It is in fellowship with You that we find one another. Whenever we are divided in our differences over secondary matters, remind us of our oneness on essential issues; our accountability to You, our commitment to Your Commandments, our dedication to Your justice and mercy, our patriotism for our Nation, and our shared prayer that through our efforts You will provide Your best for our Nation. There's something else, Lord: We all admit our total dependence on Your presence to give us strength and courage. So with one mind and a shared commitment, we humbly fall on the knees of our hearts and ask that You bless us and keep us, make Your face shine upon us, lift up Your countenance before us, and grant us Your peace. In the name of Jesus. Amen.

DEPARTMENT OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1996

The PRESIDENT pro tempore. The clerk will report the pending bill.

The assistant legislative clerk read as follows:

A bill (H.R. 2076) making appropriations for the Department of Commerce, Justice, and State, the Judiciary and related agencies for the fiscal year ending September 30, 1996, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Biden amendment No. 2815, to restore funding for grants to combat violence against women.

McCain-Dorgan amendment No. 2816, to ensure competitive bidding for DBS spectrum.

Kerrey amendment No. 2817, to decrease the amount of funding for Federal Bureau of Investigation construction and increase the amount of funding for the National Information Infrastructure.

Biden-Bryan amendment No. 2818, to restore funding for residential substance abuse treatment for State prisoners, rural drug enforcement assistance, the Public Safety Partnership and Community Policing Act of 1994, drug courts, grants or contracts to the Boys and Girls Clubs of America to establish Boys and Girls Clubs in public housing, and law enforcement family support programs, to restore the authority of the Office of National Drug Control Policy, to strike the State and Local Law Enforcement Assistance Block Grant Program, and to restore the option of States to use prison block grant funds for boot camps.

Domenici amendment No. 2819 (to committee amendment on page 26, line 18), to improve provisions relating to appropriations for legal assistance.

AMENDMENT NO. 2816

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of the McCain amendment No. 2816 on which there shall be 60 minutes equally divided.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume.

Mr. President, I intend to be brief, and I note the presence of the Senator from North Dakota here on the floor. I know that he needs at least 10 minutes of the 30 minutes for this side.

I just want to recap the situation as I see this amendment. First of all, Mr. President, the choice is clear here what we are talking about. The question is whether we will auction this spectrum off, which, according to experts, the value is between $300 and $700 million, or it will be granted to a very large and very powerful corporation in America for considerably less money. Originally it was going to be about $5 million and up to $45 million, and now I understand it is about $100 million.

I want to briefly describe the chronology of how we got where we are today. I want to repeat before I continue, I have no interest in this issue. There is no company in my State. There is no corporation that I have engaged in the dialog on this issue. I am simply involved in this issue, as is the Senator from North Dakota, because what is at stake here is whether the American taxpayers will be deprived of somewhere between $300 and $700 million.

For the record, Mr. President, I point out that on September 16, 1995, ACC, which was the original holder of the license for this spectrum, entered into an agreement with TCI to sell its spectrum to TCI for $45 million. The ACC costs at that time were estimated to have been $5 million. Such a sale would have meant that ACC would actually have profited from warehousing this spectrum for 10 years.

In August and September of 1995, TCI had a sweetheart deal pending before the FCC as follows: TCI would give up some of the allocated DBS spectrum and in return receive the ACC at a cost of $5 million, which is to pay for costs incurred by ACC. The $5 million would not be paid in cash. Instead, it would

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

be in the form of Primestar stock, which could have a much greater value than the original $45 million.

The spectrum given up by TCI is valued at substantially less value than the ACC spectrum. TCI would give up 11 channels at 119 degrees and spectrum, allowing DBS service be provided to Latin America, the Pacific rim, and China.

No industry expert believes at this time that those markets will be nearly as lucrative as the U.S. market. The week of September 18, 1995, TCI proposes it be given the spectrum at 110 degrees west latitude orbit and gives up DBS spectrum as noted above, which is sold at public auction. Whatever the price such spectrum is sold for is the price TCI pays for the 110 degree west longitude orbit spectrum.

September 25, 1995, it is reported that an alternative plan has been developed allowing Primestar access to DBS channels at prices well above $45 million. TCI expected to pay for advanced communications for channels. Now we hear about a plan where TCI will pay $100 million for the channels.

Mr. President, if TCI says the spectrum is worth $100 million and they are prepared to pay $100 million, then let them bid $100 million. TCI is proposing they pay $100 million for the spectrum and they will give up other spectrum.

Under this auction plan they could keep their current spectrum and win at auction the new spectrum. If all spectrum is equal, it does make good business sense for TCI to have as much spectrum as possible. Of course it does. TCI knows the value of spectrum and knows what it wants to give up is valueless compared to what it wants to receive.

Why would one company change the amount it is willing to pay from $5 to $100 million in a matter of months?

Mr. President, last night—I have not had a chance to talk to my friend from Colorado. He proposed a compromise that the amendment should read that the auction should be conducted within 60 days, and I want to tell my friend from Colorado I am still prepared to accept that amendment.

Mr. President, I reserve the remainder of my time.

Mr. CAMPBELL. Mr. President, there will be much discussion today about estimates of money, but very little about who stands to make it. Of course we are all interested in supporting actions that will aid the National Treasury. However, with regard to this amendment, as the Congressional Budget Office has pointed out, the Federal Communications Commission can hold auctions for the licenses in question, and as I understand it, is already considering a proposal that would raise even more money than we are currently considering in this amendment without any legislative intervention on our part.

However, it should be noted in this debate that one of the supporting groups will definitely gain from the passage of this amendment. The National Rural Telecommunications Cooperative, the NRTC, which has loudly supported this amendment, has very good reason to do so. The NRTC has an exclusive contract in many rural areas to market the DBS service of General Motors' direct TV. So any delay in introducing significant high-power DBS competition will benefit the NRTC's exclusive sales deal.

I do not criticize the NRTC for having such a deal, but I think it is important to know as we discuss this amendment and note who is supporting it, that the NRTC is far from a disinterested party. In fact, the delays that this amendment will create in the ability of any major competitor to challenge the dominance of direct TV works directly in favor of those such as the NRTC who retain monopoly sales rights in rural America.

This is a far more complex subject than we are even aware. The implications of what this amendment would do are unknown. There have been no hearings. The expert agency is already considering the issues involved. It already has the authority to both do what is right and assure maximum benefit for the value of the licenses. It is bad public policy for this body to step in and interfere with the adjudicatory process of an agency when we don't even know who the parties are in the dispute.

That is why the bipartisan leadership of the Commerce Committee opposes this amendment and why my colleagues should also oppose it. The modification of this amendment as offered by the Senator from Arizona [Mr. MCCAIN], seems to resolve our disagreement and heartily support this compromise.

Mr. BROWN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CAMPBELL). Without objection, it is so ordered.

COMMITTEE AMENDMENT ON PAGE 79, LINES 1 THROUGH 6

Mr. HOLLINGS. Mr. President, on last evening there was a managers' amendment. A mistake in the actual drafting was made. This has been cleared on both sides. Mr. President, I ask unanimous consent the committee amendment on page 79, lines 1 through 6, be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the committee amendment on page 79, lines 1 through 6, was withdrawn.

Mr. HOLLINGS. I thank the Chair and the staff who caught this for us. I am glad it is corrected.

AMENDMENT NO. 2816

Mr. HOLLINGS. Just one word about the McCain-Dorgan amendment. Once again, this, of course, is the Congress injecting itself into the functions and responsibilities of the Federal Communications Commission. There is no question at this very moment the FCC can auction the so-called spectrum that is now in dispute. I emphasize ''dispute'' because it is a legal case that has been in the courts, now, for over a year. It is on appeal.

There has been a vote, so to speak, informally, at least, by way of reports. Lawyers call from both sides of this case. I understand, now, the vote is 2 to 2 at the FCC: Two members of the FCC disposed toward an auction, two disposed toward what they characterize as the recommendation of the staff—the staff that studied this case and handled the testimony and otherwise. There is one indecisive member.

So we come with an amendment, without any hearings, without really knowing what we are talking about and doing, and we say we know how to grant licenses and everything of that kind, so hereby is the way to do it.

The fact is, this Senator is very anxious, like all Senators, to find money. In fact, at this stage of the Congress, it is like tying two cats by the tails and throwing them over the clothesline and letting them claw each other. No Senator can put up an amendment that he does not take away money from some other Senator or some other function.

So I cosponsored, with the distinguished Senator from Alaska, the auction process that has already reaped some $9 billion. I went along, of course, with another $8.3 billion offset in the telecom bill by way of auction.

So I am very much for auctions, and I am very much for the money being reaped by the Government itself. That is what we are here for, to look out for all the people.

Having said that, I see the parties on the floor here, and they have been discussing it.

So I reserve the remainder of our time.

Mr. DORGAN. Mr. President, under the time agreement, I yield myself such time as I may use from the time allocated to Senator MCCAIN and myself.

The PRESIDING OFFICER. The Senator from North Dakota [Mr. DORGAN] is recognized.

Mr. DORGAN. Mr. President, I would like to discuss this issue generally and begin by saying that I join Senator MCCAIN, the Senator from Arizona, in offering an amendment. I do not have any special interest in this issue. I state, as Senator MCCAIN did, that I do not have company headquarters or company interests in North Dakota dealing with this issue. I do not have any great concern or interest in who ends up with these licenses. That is not my interest. My interest today is with the taxpayer. The issue here is an issue of anywhere from $300 to $700 million. Senator MCCAIN, I think, has well described the history. But let me just thumbnail it again.

Ten years ago, the Federal Communications Commission awarded special national licenses for the launching of direct broadcast satellite systems in three orbital locations. They are the only three orbital locations that are available that will provide DBS services nationally across the country. So 10 years ago, they awarded licenses for these slots would provide direct broadcast satellite services that would reach all across the country. Two of those licensees have performed, and have moved ahead. Another will launch soon. But one of the original licensees did not perform. It did not perform what is called due diligence. It had the license, but in 10 years did not perform due diligence and, therefore, the FCC said, ''Since you are not going to perform, we will take the license back.''

The original licenses were awarded free of charge in exchange for them going ahead and developing these systems. They got the licenses, which had enormous value, free of charge. When one of the licensees did not perform, the FCC took it back.

What value does it have? If the FCC were to auction it off, were to find a company now to run it, or who wants to participate in this DBS system, it is estimated that at an auction it would raise from $300 to $700 million. It has very substantial value. That is the value to the taxpayers. The taxpayers own this spectrum.

What has happened is when the FCC pulled the license back and said, ''If you are not going to perform, we will take the license back,'' and did, the company that was not performing began talking with other companies, especially large cable companies, and they began to try to make a deal for this in order to accomplish a handoff. That is the process that is now under discussion at the FCC.

The amendment offered by the Senator from Arizona and myself is an amendment that says we think that this simply should go to auction. Let us just have an auction for the third slot. Let us have the taxpayers, the American public, benefit from the $300 to $700 million that will be raised.

I do not care who wins the auction. I have no interest in any of these companies. It just ought to be auctioned, and the money raised go to the public Treasury, reduce the Federal deficit, or do other things. But in any event, the taxpayers ought to get full value for this spectrum.

That is the point of the amendment. I might say that I think the DBS systems are breathtaking and wonderful achievements. They will provide spectacular new technology and competition in the rural areas of America and all over our country. The Presiding Officer is from Colorado, and Colorado has rural regions and small towns far away from many major locations, just as my State of North Dakota.

I have often wondered how we, in small communities, are going to be able to take advantage of this communications breakthrough. This is part of the answer: Direct broadcast satellite systems that reach all parts of this country.

These are wonderful things for our future. It is going to enhance communications and provide entertainment and information to everyone in this country. It represents competition, as well, competition to the wired cable systems in our country.

So I am excited about all of this. I want all three systems to be up and operating.

The point that we make in this amendment is not a point directed at any company, to favor any company or to penalize any company. God bless them all. Let them go at it and provide this breathtaking new technology. Our point is a point that we make on behalf of the taxpayers. We want this spectrum, which has significant value, to provide its value to the American taxpayer. This is a $300 to $700 million question. And the question ought to be answered, in our judgment, in favor of the American taxpayer.

That is why we bring this amendment to the floor. We want the FCC to auction that third license. That is what our amendment provides.

Mr. President, I reserve the remainder of our time.

AMENDMENT NO. 2816, AS MODIFIED

Mr. MCCAIN. Mr. President, I ask unanimous consent to modify my amendment. The modification is at the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 2816), as modified, is as follows:

At the end of the pending committee amendment, insert the following new section:

''SEC. . COMPETITIVE BIDDING FOR ASSIGNMENT OF DBS LICENSES.

No funds provided in this or any other Act shall be expended to take any action regarding the applications that bear Federal Communications Commission File Numbers DBS–94–11EXT, DBS–94–15ACP, and DBS–94–16MP; Provided further, that funds shall be made available for any action taken by the Federal Communications Commission to use the competitive bidding process prescribed in Section 309(j) of the Communications Act of 1934 (47 U.S.C. section 309(j)) regarding the disposition of the 27 channels at 110 degrees W.L. orbital location; *Provided further*, That the provisions of this section apply unless the Federal Communications Commission determines that an alternative adjudication would yield more money for the U.S. Treasury.''

Mr. MCCAIN. Mr. President, the modification at the desk is very simple language. It adds one sentence that I have discussed with Senator DORGAN and with Senator BROWN. At the end of the amendment, it adds the following language:

Provided further, that the provisions of this section apply unless the Federal Communications Commission determines that an alternative adjudication would yield more money for the U.S. Treasury.

After discussion with Senator BROWN and Senator DORGAN, Mr. President, that is the whole logic of what we are trying to do here. We find it not only acceptable, but a definition of what we are trying to achieve.

I thank Senator BROWN for agreeing to this modification.

I reserve the remainder of my time. I would like to yield 1 minute to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, the modification that has been offered by Senator MCCAIN is one that, as I understand it, would suggest that, if there is an alternative approach that would yield as much or more to the U.S. Treasury and the taxpayer, that would be acceptable. That presumes that approach meets the test of fairness, and meets all the other tests of fairness required under an FCC process.

Again, it is not our intention on the floor of the Senate to be talking about who should be involved in this. I have no interest in that at all—none. The question is, What cost does the American taxpayer, who owns this spectrum, get for this process under these circumstances where one licensee did not perform and the license has been taken back by the FCC?

We want full value for that spectrum. That is what our amendment asks for, and the modification does not change that request. I am pleased to accept the modification, as well.

Mr. BROWN. Mr. President, I want to add my voice of support for the modification.

We are all very wary of having Congress intervene in the middle of the adjudicatory action by the FCC. I think all Members are aware that there is a great deal of money available in the disposition of this matter. What I like so much about the modification, Mr. President, is simply this: It leaves the FCC free to pick an option that raises the most money for the Treasury. It puts this Congress in a position of not trying to dictate an option that may be less advantageous for the taxpayers. It makes it clear that the FCC retains some power to pick the best option for the taxpayers—one that will bring in the most revenue to the United States.

Frankly, it seems to me that the modification represents the appropriate position both for the FCC and for this Congress. We should not be in the business of precluding the options of the FCC while they are adjudicating a matter.

I commend the Senator from Arizona for his modification. I believe it settles this question in terms of this Chamber and that the measure has unanimous support.

Mr. President, I do not know if the Senator wishes to retain his record vote. Obviously, if he does, that is fine. But my sense is that at this point the Chamber is ready to accept his modified amendment unanimously.

Mr. MCCAIN. Mr. President, I thank again the Senator from Colorado. I do

not know a finer individual in the Senate than Senator BROWN from Colorado. He has always had the interests of the constituents and fairness in mind. It has been a privilege for me to work with him on many, many issues, especially those that are in opposition to procedures around here that sometimes deprive the taxpayers of their hard-earned tax dollars in a way which is unacceptable to the vast majority of them. His agreement to modify this amendment so that it is more clear and achieves the goal which we seek is I think indicative of the individual.

It is worth pointing out that the company which is directly affected by this legislation is located in his State. So I want to thank him for his agreement. I believe that he has strengthened what we are trying to do and that is to provide the taxpayer with the maximum amount of dollars for the property they actually own.

Mr. President, I have a legal document that I think is important to bolster this argument I would like to ask unanimous consent be made a part of the RECORD. It is a series of legal opinions concerning this entire issue. I am pleased to note again that I am not a lawyer, but I do believe that on an issue like this the CONGRESSIONAL RECORD should contain legal documentation to bolster the argument the Senator from North Dakota and I have been making on the urgency and importance and the legality of having an auction of this spectrum to provide the taxpayers with the maximum return on this very valuable resource they own.

Mr. President, I ask unanimous consent that this document be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NO HOLDER OF AN FCC CONSTRUCTION PERMIT HAS ANY RIGHT TO REGULATORY APPROVAL OF FA TRANSFER FOR PRIVATE PROFIT

Federal law does not provide a right to a private company to hoard spectrum and then sell its bare bones construction permit for private gain. Rather, the Federal Communications Commission has a long-standing public policy against any private party ''warehousing'' this scarce public resource. Underlying this policy is the requirement contained in the Communications Act of 1934 that a construction permit will be automatically forfeited if the system in question is not ready for operation within the time specified by the Commission's rules or within such further time as the Commission may allow. 47 U.S.C. §319 (b).

The rules for the various services for which the Commission issues licenses specifically address construction permit requirements and the public policy objectives behind these requirements. The Commission routinely revokes construction permits or fails to grant time extensions to permit holders who fail to construct a system on a timely basis as required in each service.

For example:

Direct Broadcast Satellite (DBS) Service.—When the Commission adopted in 1982 the licensing condition rules for DBS service, it determined that these rules were necessary to ''assure that those applicants that are granted construction permits go forward expeditiously,'' *Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites.* Report and Order, 90 FCC Rcd. 676, 719 (1982). The rules provide that a construction permittee must complete construction of a satellite of complete contracting for construction of a satellite within one year of the grant of the permit *and* be in operation within six years of the construction permit grant, unless the Commission grants an extension upon a proper showing in a particular case. Transfer of control of the permit will not be considered to justify an extension. See 47 U.S.C. §100.19(b).

In the ACC case, ACC entered into a contract with TCI for reportedly $45 million in TCI stock contingent upon a second extension of ACC's construction permit. ACC and TCI assumed a business risk when it entered this contingent contract because both companies were fully aware that ACC had been ''hoarding'' spectrum as shown by the record developed at the FCC. Any reliance these companies may have had on FCC approval in this case would have been totally unreasonable and unjustified under the FCC's current DBS rules. As the International Bureau noted in its decision revoking ACC's DBS construction permit.

Advanced has had over ten years, including one four-year extension, in which to construct and launch its DBS system. It has failed to do so. It has thereby failed to meet the Commission's due diligence rules—imposed a decade ago—to ensure that the public received prompt DBS service. In the meantime, the channels and orbital positions assigned to Advanced have gone unused. Other DBS licensees have already begun operation. Only by enforcing the progress requirements of the Commission's rules can we ensure that allocated resources will be efficiently and expeditiously put into productive use.

Advanced Communications Corp. Memorandum Opinion and Order (Released April 27, 1995).

Personal Communications Service (PCS).—Most recently, when the Commission adopted rules for the new PCS service, it specifically included construction requirements. Although the Commission expressed the belief that the use of competitive bidding (or auctions) would provide the winners with economic incentives to construct, and conversely, disincentives to warehouse the spectrum, nevertheless the Commission said ''we continue to believe that minimum construction requirements are necessary to ensure that PCS service is made available to as many communities as possible and that the spectrum is used effectively.'' *Amendment of the Commission's Rules to Establish New Personnel Communications Services,* Memorandum Opinion and Order (Released June 13, 1994). PCS licensees are required to serve at least one-third of the population in their licensed area within 5 years of being licensed and at least two-thirds of the population in this area within 10 years. The rules specifically provide: ''failure by any licensee to meet these requirements will result in forfeiture or non-renewal of the license and the licensee will be ineligible to regain it.'' 47 C.F.R. §24.203(a).

Although the first PCS licensees were only awarded three months ago, PCS licensees are already on notice that if they do not build these systems in a timely fashion, the Commission will revoke these licenses even though the licensee may have paid millions of dollars for the privilege.

Multipoint Distribution Service and Multichannel Multipoint Distribution Service (AKA ''Wireless Cable'').—When the Commission revised its rules with regard to fixed radio services, the Commission noted that carriers who fail promptly to construct facilities preclude other applicants who are willing, ready, and able of delaying, or even denying, service to the public. *Revision of Part 21 of the Commission's rules*, 2 FCC Rcd. 5713 (1987). The Commission's rules for these services provide that a license shall be forfeited automatically when the period permitted under the construction permit expires. 47 C.F.R. §21.44. See also *Cable TV Services*, 8 FCC Rcd. 3204 (1993) (wireless cable construction permit revoked for failure to construct); *Miami MDS Company*, 7 FCC Rcd. 4347 (1992) (construction permit not renewed because of failure to construct within allotted time period).

Television and Radio Broadcasting.—The Mass Media Bureau routinely revokes construction permits or denies renewals for unbuilt broadcast stations under delegated authority from the Commission. These procedures are so commonplace that they are oftentimes handled by letter from the Bureau rather than by reported decision. See attached letter to New Orleans Channel 20 in which the Mass Media Bureau denies an extension of a construction permit and denies transfer (sale) of the construction permit. The construction permit rules for broadcast stations are contained in 47 C.F.R. §73.3534.

SUBPART A—GENERAL INFORMATION

§100.1 Basis and purpose.

(a) The rules following in this part are promulgated pursuant to the provisions of Title III of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmissions and to issue licenses for radio stations.

(b) The purpose of this part is to prescribe the manner in which parts of the radio frequency spectrum may be made available for the development of interim direct broadcast satellite service. Interim direct broadcast satellite systems shall be granted licenses pursuant to these interim rules during the period prior to the adoption of permanent rules. The Direct Broadcast Satellite Service shall operate in the frequency band 12.2–12.7 GHz.

§100.3 Definitions.

Direct Broadcast Satellite Service. A radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public. In the Direct Broadcast Satellite Service the term *direct reception* shall encompass both individual reception and community reception.

SUBPART B—ADMINISTRATIVE PROCEDURES

§100.11 Eligibility.

An authorization for operation of a station in the Direct Broadcast Satellite Service shall not be granted to or held by:

(a) Any alien or the representative of any alien;

(b) Any foreign government or the representative thereof;

(c) Any corporation organized under the laws of any foreign government;

(d) Any corporation of which any officer or director is an alien;

(e) Any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;

(f) Any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, if the Commission finds that the public interest will be served by the refusal or revocation of such license; or

(g) Any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or

representatives thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

§100.13 Application requirements.

(a) Each application for an interim direct broadcast satellite system shall include a showing describing the type of service that will be provided, the technology that will be employed, and all other pertinent information. The application may be presented in narrative format.

(b) Applicants may request specific frequencies and orbital positions. However, frequencies and orbital positions shall not be assigned until completion of the 1983 Region 2 Administrative Radio Conference for the Broadcasting-Satellite Service. The Commission shall generally consider all frequencies and orbital positions to be of equal value, and conflicting requests for frequencies and orbital positions will not necessarily give rise to comparative hearing rights as long as unassigned frequencies and orbital slots remain.

§100.15 Licensing procedures

(a) Each application for an interim direct broadcast satellite system shall be placed on public notice for 45 days, during which time interested parties may file comments and petitions related to the application.

(b) A 45 day cut-off period shall also be established for the filing of applications to be considered in conjunction with the original application. Additional applications filed before the cutoff date shall be considered to have equal priority with the original application and shall be considered together in the assignment of frequencies and orbital positions. If applications have included requests for particular requencies or orbital positions, the cutoff date shall be considered in establishing the priority of such requests.

(c) Each application for an interim direct broadcast satellite system, after the public comment period and staff review shall be acted upon by the Commission to determine if authorization of the proposed system is in the public interest.

§100.17 License term.

All authorizations for interim direct broadcast satellite systems shall be granted for a period of five years.

§100.19 License conditions.

(a) All authorizations for interim direct broadcast satellite systems shall be subject to the policies set forth in the *Report and Order* in General Docket 80–603 and with any policies and rules the Commission may adopt at a later date. It is the intention of the Commission, however, that in most circumstances the regulatory policies in force at the time of authorization to construct a satellite shall remain in force for that satellite throughout its operating lifetime.

(b) Parties granted authorizations shall proceed with diligence in constructing interim direct broadcast satellite systems. Permittees of interim direct broadcast satellite systems shall be required to begin construction or complete contracting for construction of the satellite station within one year of the grant of the construction permit. The satellite station shall also be required to be in operation within six years of the construction permit grant, unless otherwise determined by the Commission upon proper showing in any particular case. Transfer of control of the construction permit shall not be considered to justify extension of these deadlines.

SUBPART C—TECHNICAL REQUIREMENTS

§100.21 technical requirements

Prior to the 1983 Regional Administrative Radio Conference for the Broadcasting—Satellite Service, interim direct broadcast satellite systems shall be operated in accordance with the sharing criteria and technical characteristics contained in Annexes 8 and 9 of the Final Acts of the World Administrative Radio Conference for the Planning of the Broadcasting-Satellite Service in Frequency Bands 11.7–12.2 GHz (in Regions 2 and 3) and 11.7–12.5 GHz (in Region 1), Geneva, 1977; *Provided, however*, That upon adequate showing systems may be implemented that use values for the technical characteristics different from those specified in the Final Acts if such action does not result in interference to other operational or planned systems in excess of that determined in accordance with Annex 9 of the Final Acts.

SUBPART D—OPERATING REQUIREMENTS

§100.51 Equal employment opportunities

(a) *General policy*. Equal opportunity in employment shall be afforded all licensees or permittees of direct broadcast satellite stations licensed as broadcasters to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, national origin, or sex.

(b) *Equal employment opportunity program*. Each station shall establish, maintain, and carry out a positive continuing program of specific practices designed to assure equal opportunity in every aspect of station employment policy and practice. Under the terms of its program, a station shall:

[DA 95–944]

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, DC 20554

In the Matter of Advanced Communications Corporation, application for extension of time to construct, launch and operate a direct broadcast satellite system, application for consent to assign direct broadcast satellite construction permit from Advanced Communications Corp. to Tempo DBS, Inc., application for modification of direct broadcast satellite service construction permit; File Nos. DBS–94–11EXT, DBS–94–15ACP, DBS–94–16MP.

MEMORANDUM OPINION AND ORDER

Adopted: April 26, 1995.

By the Chief, International Bureau.

Released: April 27, 1995.

I. Introduction

1. For more than a decade, Advanced Communications Corporation (''Advanced'') has had leave to provide the public with Direct Broadcast Satellite (DBS) service. It has had allocated to it scarce public resources—orbital positions and channels—so that it could provide that service. Advanced paid nothing for these resources. It was obligated only to proceed with due diligence to provide the service it promised. After more than a decade, Advanced has not provided—and is not close to providing—DBS service to the public. It has failed to meet its due diligence obligation. Advanced must now return the public resources it holds to the public so that these resources can be put to use by others.

2. Advanced has filed an application for a second four-year extension of time in which to construct, launch, and initiate service from its DBS system. Advanced has also filed an application for consent to assign its construction permit to Tempo DBS, Inc. (Tempo DBS). Finally, Advanced has applied for authority to modify its construction permit to allow it to substitute satellites now being constructed for Tempo Satellite, Inc.[1] Dominion Video Satellite, Inc. (DVS), EchoStar Satellite Corporation (EchoStar), DIRECTV, Inc. (DirecTV), and Directsat Corporation filed objections to Advanced's applications; Tempo Satellite and Nevada Direct Broadcasting System (Nevada) filed supporting comments. Advanced filed replies to the objections.[2]

3. Advanced has had over ten years, including one four-year extension, in which to construct and launch its DBS system. It has failed to do so. It has thereby failed to meet the Commission's due diligence rules—imposed a decade ago—to ensure that the public receives prompt DBS service. In the meantime, the channels and orbital positions assigned to Advanced have gone unused. Other DBS licenses have already begun operations.

4. Only by enforcing the progress requirements of the Commission's rules can we ensure that allocated resources will be efficiently and expeditiously put into productive use. In the past, we have given DBS permittees latitude in meeting due diligence deadlines in order to ensure the development of DBS services. As the Commission has previously stated, however, such latitude is not appropriate in an era in which DBS licensees are successfully operating and are competing for subscribers. Accordingly, we deny Advanced's application for an extension of time and declare its construction permit null and void. We dismiss, as moot, the pending assignment and modifications applications.

II. Background

5. In 1984, Advanced applied for authority to construct and launch a DBS system as part of the second processing round of DBS applications. The Commission granted the application subject to the condition that Advanced ''proceed with the construction of its system with due diligence as defined in Section 100.19(b) of the Commission's rules.'' 47 C.F.R. §100.19(b).[3] The due diligence requirement has two components. First, the DBS permittee must begin or complete contracting for construction of its satellites within one year of the grant of its construction permit. Second, the permittee must begin operation of the satellites within six years of the grant of its construction permit, unless otherwise determined by the Commission. Section 100.19(b) provides that a transfer of control of the permit is not a justification for extension of either of these deadlines. Orbital positions and channels are not assigned to a DBS permittee unless and until it demonstrates that it has fulfilled the first component of the due diligence requirement. *Processing Procedures Regarding the Direct Broadcast Service*, 95 F.C.C. 2d 250, 253 (1983).

6. In October 1986, the Commission found that Advanced had complied with the first component of the due diligence requirement by contracting for the construction of its first two DBS satellites. Advanced was ultimately assigned to the 100° W.L. orbit location (channels 1–23, 25, 27, 29, 31) and 148°

[1] Tempo Satellite, Inc. (''Tempo Satellite'') is a subsidiary of Tele-Communications, Inc. (''TCI''), a cable operator. authorized to construct, launch, and operate 11 DBS channels at orbital slots 166° W.L. and 119° W.L. *See* Tempo Satellite, Inc., 7 F.C.C. Red 2728 (1992). Tempo DBS, the proposed assignee, is an affiliate of TCI.

[2] Several of the pleadings submitted by the parties were not timely filed or were not authorized under the Commission's rules. *See* 47 C.F.R. §1.45. Such pleadings shall only be considered as informal requests for Commission action of informal comments. *See* 47 C.F.R. §1.41. The parties' requests for extension of time are hereby denied.

[3] Satellite Syndicated Systems, Inc., 99 F.C.C. 2d 1369 (1984). Advanced's initial grant authorized it to provide service from two satellites, each to deliver six channels to half of the continental United States. Advanced subsequently applied for, and was granted, authority to increase the number of satellites in its system to five, and was later granted authority to increase the number of channels to 27. *See* Continental Satellite Corporation (''Continental''), 4 F.C.C. Red 6292 (1989).

W.L. (channels 1–17, 19, 21, 23, 25, 27, 29, 31).[4] In February 1990, Advanced applied for a four-year extension of time, until February 1994, in which to construct and operate its DBS system. The Commission granted this request, extending the deadline until December 7, 1994.[5]

7. In August 1994, Advanced applied for another four-year extension of time, until December 1998, in which to construct and operate its system.[6] In September 1994, Advanced filed an application for consent to assign its construction permit to Tempo DBS.[7] In October 1994, Advanced filed an application to modify its construction permit to change the technical design of the Advanced satellites to duplicate the design of satellites then under construction for Tempo Satellite under a separate DBS authorization.[8]

8. Dominion, EchoStar, and Directsat oppose Advanced's extension request. They contend that Advanced has not met the first component of the due diligence requirement because Advanced's contract with Martin Marietta does not meet due diligence requirements, delays in construction were not due to circumstances beyond Advanced's control, and Advanced has ''warehoused'' its authorized frequencies. They argue that Advanced has no valid construction permit and that Advanced's applications for assignment and modification should be declared moot. Directsat and Echostar maintain that Advanced failed to initiate operation due to business decisions within its control, that Commission precedent precludes grant of an extension of time request based on Advanced's failure to attract investors, and that grant of the extension request would prejudice permittees who have significantly passed Advanced in progress toward initiation of DBS service. Dominion argues that under Commission rules, transfer of control of an authorization does not warrant grant of a request for extension of time.[9]

III. Discussion

Extension request

9. In adopting rules and policies for DBS service, we determined that a due diligence requirement would ensure that permittees would go forward expeditiously.[10] Accordingly. Section 100.19(b) of the rules for DBS service. 47 C.F.R. §100.19(b), states that transfer of control of the construction permit will not justify extension of due diligence deadlines. We later noted that ''the rule was intended to ensure the prompt initiation of DBS service for the public, and must be enforced where permittees are allowed to hold spectrum resource for which other applications exist. . . .''[11]

10. During the ''pioneering era'' of DBS technology in the 1980's, the Commission granted numerous extensions of due diligence milestones. The Commission was reluctant to cancel construction permits where permittees failed to initiate DBS service ''in accord with a pre-established timetable set without the benefit of experience.''[12] As technology developed, however, the Commission gave permittees notice that they could not expect additional extensions. We said in 1988, ''[a]s circumstances have evolved and demand for DBS facilities may be increasing beyond the available supply of orbit/channel resource[s], there does now appear [to be] a need for stricter enforcement of the construction progress requirements of the DBS rules.''[13]

11. In ruling on requests for extensions of time, the Commission has stated that ''[t]he totality of circumstances—those efforts made and those not made, the difficulties encountered and those overcome, the rights of all parties, and the ultimate goal of service to the public—must be considered.''[14] In granting Advanced's 1990 extension, the Commission relied on the substantial developments in DBS satellite technology, the Commission's development of its policy regarding channel and orbital assignments, and the Challenger and Ariane launch vehicle failures of the late 1980's.[15] The Commission warned, however, that ''continued reliance on experimentation, technological developments and changed plans will not necessarily justify an extension of a DBS authorization.'' It further warned that it would ''closely scrutinize all requests for extension of time within which permittees must initiate DBS service.''[16]

12. Advanced asserts that a second extension is justified under the Commission's rules (and is consistent with similar extensions previously granted) because it has made ''considerable efforts'' to develop DBS service, it has pursued a joint venture agreement, and any delays have been due to circumstances beyond its control. Advanced also implies that the progress Tempo Satellite has made in constructing its satellites should be attributed to Advanced and that these efforts constitute a ''proper showing'' on which to base an extension.

13. Advanced first argues that an extension is warranted in light of its efforts to reach a joint venture agreement over a nearly three-year period beginning in 1992, even though these negotiations ultimately failed.[17] The Commission has previously found that ongoing negotiations do not justify an extension of due diligence milestones.[8] Failed negotiations surely should fare no better. In denying an extension to another DBS permittee, we held that failure to attract investors, an uncertain business situation, or an unfavorable business climate in general have never been adequate excuses for failure [to] meet a construction timetable in other satellite services.[19]

14. Advanced also asserts that construction was delayed because it needed to modify its system design. In granting Advanced's first extension request. however, the Commission advised Advanced that its decision to modify it technical proposal was a business decision wholly within its control that would not generally excuse its failure to meet the due diligence requirements, To conclude otherwise would allow permittees to ''extend indefinitely their nonperformance by repeated modifications of their proposals.''[20] DBS technology has evolved to the point where permittees can made design decisions and proceed with construction with relative assurance that their system will be technologically competitive when it is launched. In fact, two permittees have launched DBS systems, which are both already providing service.[21] Advanced has not explained why it did not make similar design decisions for its system, or why such decisions were not wholly within its control. Accordingly, we do not find that continued modifications to Advanced's system warrant an extension of time.

15. Advanced contends that an extension is justified because the company has expended considered funds and ''countless hours'' to implement its system. Advanced asserts that the Commission has granted extension under similar circumstances, citing *United States Satellite Broadcasting Company, Inc.*[22] In that case, the Video Services Division of the Mass Media Bureau, in considering the ''totality of the circumstances,'' found that the permittee, USSB, (1) has expended $23 million, including a substantial payment towards spacecraft construction; (2) had demonstrated that the remaining financing for the completion and launch of the satellite had been arranged; and (3) had executed launch and various supplier contracts. Advanced, in contrast, has not specified how much money it has spent.[23] has not arranged financing, and has not procured a launch contract. Advanced has failed to show its progress constitutes sufficient justification for a further extension of time. To the contrary, it appears that Advanced wants to abandon its business to Tempo DBS.

16. Advanced further states that it should be granted an extension because it has ''remained in due diligence'' sine we found it had met the first component of the due diligence requirement by executing a construction contract. The facts belie this conclusory assertion. The due diligence requirement consists of two components. The fact that Advanced continues to have a binding construction contract, or that it has made all payments required by this contract does not excuse its failure to meet the second part of its due diligence requirement: operation of its direct broadcast satellite system.[24] Meeting the first due diligence requirement does not justify failing to fulfill the second.

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[4] Tempo Enterprises, Inc. (''Tempo''), 1 F.C.C. Red 20 (1986).

[5] Advanced Communications Corp. (''Advanced''), 6 F.C.C. Red 2269 (1991).

[6] Request for Additional Time to Construct and Launch Direct Broadcast Satellites, DBS–84–01/94–11EXT (August 8, 1994).

[7] Request for Consent to Assign DBS Authorizations, DBS–94–15ACP (September 28, 1994).

[8] Application for Modification of Construction Permit, DBS–94–16MP (October 14, 1994). In November 1994, Advanced filed an amendment to this modification request. Amendment of Application for Modification of Construction Permit, DBS–94–16MP (November 16, 1994).

[9] 47 C.F.R. §100.19(b) states that ''[t]ransfer of control of the construction permit shall not be considered to justify extension of the[ ] deadline[ ].''

[10] Inquiry into the development of regulatory policy in regard to Direct Broadcast Satellites for the period following the 1983 Regional Administrative Radio Conference, 90 F.C.C. 2d 676 (1982).

[11] CBS, Inc., 99 F.C.C. 2d 565, 572 (1984).

[12] United States Satellite Broadcasting Company, Inc. (''USSB I''). 3 F.C.C. Rcd 6858, 6860 (1988).

[13] *Id*. at 6861.

[14] *Id*.

[15] *Id*. at 6860.

[16] *Id*.

[17] In progress reports to the Commission, Advanced said, in April 1992, that it expected negotiations to be completed in ''the next month or two.'' In August 1992, Advanced reported it has signed a letter of intent that called for execution of an agreement within sixty days. In October 1992, Advanced explained that negotiations were continuing, and in April 1993, stated it expected to reach an agreement within the next month. In May 1993, it reported it was still in ''complex negotiations,'' and in October 1993, it claimed that negotiations were continuing. However, on December 30, 1994, Advanced indicated that negotiations had failed.

[18] USSB I, 3 F.C.C. Rcd at 6859. *See also* Report and Order in CC Docket No. 81–704, 54 R.R. 2d 577, 597 n. 62 (1983).

[19] *id*.

[20] Tempo, 1 F.C.C. Rcd at 20.

[21] *See, e.g.*, Semi—Annual DBS Progress Report filed by Hughes Communications Galaxy, Inc., DBS–84–02/81–07/93–03MP (January 24, 1995).

[22] United States Satellite Broadcasting Company, Inc. (''USSB II''), 7 F.C.C. Rcd 7247, 7250 (1992).

[23] Advanced acknowledges that its expenditures on the construction contract with Martin Marietta Astrospace are less than one percent. Semi-Annual Status Report, DBS 84–01–88–05 MP and 84–01/88–05 Ext. (May 10, 1993). Subsequent reports do not include payment amounts or percentages. *See* Semi-Annual Status Reports, DBS 84–01–88–05 MP and 84–01/88–05 Ext. (October 6, 1993 and April 24, 1994).

[24] USSB II at 7250. To the extent Advanced relies on its contract with Tempo Satellite and TCI (pursuant to Advanced's application to assign its construction permit) in arguing that it is still in due diligence, we point out that this contract underscores Advanced's lack of commitment to establish its direct broadcast satellite system. The assignment application indicates that Tempo Satellite has arranged financing, executed contracts for satellite launch and construction and for DBS receiving equipment, and has spent $246 million on satellite construction. Advanced's sole contribution to Tempo Satellite's system appears to be its construction permit. For these reasons and the reasons stated at paragraph 18, *infra*, we find that Advanced's latest contract does not demonstrate a capability and commitment on its part to operate a DBS system.

17. Advanced also asserts that the Commission's formulation of its channel assignment policy[25] and the delay in granting previous modification requests constitute circumstances beyond its control and warrants an extension of time. However, the channel assignment policy was clarified in 1989.[26] Advanced's proposed modifications to its orbit locations and channel assignments were granted in 1991.[27] Advanced has not cited any circumstances that impeded its ability to construct its system over the last four years. Advanced has failed to show that delay in meeting the second component of due diligence is due to circumstances beyond its control.

18. Finally, Advanced asserts that an extension of its construction permit would be in the public interest, since it is on the threshold of an advanced DBS system which will benefit the public, and because doing so will promote the efforts of those who have worked to create the DBS industry. To do otherwise, Advanced argues, would discourage innovators in all new technological industries.

19. A further extension would not serve the public interest. Advanced has made little progress in construction, launch, and initiation of a DBS system in the past decade. During the same period, two DBS satellites have been launched and construction of others is underway.[28] There is no benefit to the public in allowing Advanced to continue to waste orbital locations and channels while two permittees have already initiated DBS service.

20. Advanced's current authorization required it to begin operation of a satellite by December 7, 1994.[29] If failed to do so. The ''totality of the circumstances'' presented by Advanced in its extension request does not justify granting additional time in which to begin operation. Accordingly, we deny Advanced's request for an extension of time to construct, launch, and operate a direct broadcast satellite system. Because Advanced has failed to satisfy this express condition of its construction permit, the permit is null and void by its own terms.

B. Other applications

21. Inasmuch as we have concluded that Advanced's permit is null and void, its pending applications for assignment of that permit to Tempo DBS and related modification application are moot and are accordingly dismissed.[30] To the extent Advanced suggests that construction progress on Tempo Satellite's DBS satellites should be considered favorably in evaluating Advanced's extension request, we disagree.[31] The Commission has based previous extensions of time on a finding that the efforts made by the permittee ''reveal[] no lack of capability or commitment'' to establish its DBS system.[32] Tempo Satellite's construction progress is irrelevant in determining whether Advanced should be granted an extension of time in which to construct and operate Advanced's satellites.[33] Moreover, we believe it would contravene the public interest to consider Tempo Satellite's construction-progress in assessing Advanced's extension request. To do so would reward permittees' inaction or failure to comply with implementation milestones. Such warehousing precludes the use of channel and orbital assignments by other service providers, and will ultimately result in delays in service to the public.

22. In its opposition to Advanced's petition for extension of time, DBSC requests that some of Advanced's cancelled channels be assigned to DBSC. DBSC's request was not made within any designated filing period for modification applications, and is hereby rejected. We will soon issue a notice regarding the reallocation of cancelled channels and available orbital positions.

V. Ordering Clauses

23. Accordingly, it is ordered, pursuant to Section 0.261 of the Communications Act of 1934, as amended, 47 U.S.C. §0.261, that the Application File No. DBS–94–11–EXT IS DENIED and the construction permit issued to Advanced Communications Corporation in *Satellite Syndicated Systems*, 99 F.C.C. 2d 1369 (1984) is declared null and void.

24. It is further ordered, that Application File Nos. DBS–94–15ACP and DBS–94–16MP are dismissed as moot.

SCOTT BLAKE HARRIS,
Chief, International Bureau.

[FCC 82–285]

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, DC 20554

In the Matter of Inquiry into the development of regulatory policy in regard to direct broadcast satellites for the period following the 1983 Regional Administrative Radio Conference; Gen. Docket No. 80–603.

REPORT AND ORDER

Adopted: June 23, 1982; Released: July 14, 1982.

By the Commission: Commissioners Fowler, Chairman; Fogarty and Rivera issuing separate statements; Commissioner Quello concurring and issuing a statement.

I. Introduction

1. On June 1, 1981, the Commission issued a Notice of Proposed Policy Statement and Rulemaking (Notice), 86 FCC 2d 719, to consider proposed policies and rules to govern the authorization of direct broadcast satellite (DBS) service.

* * * * *

However, we believe that the provision of HDTV service should not exclude conventional television service. We note that only one of the DBS applicants, CBS, proposes to broadcast HDTV exclusively. We believe that any transition to HDTV would deprive the public of the use of the band for conventional television transmission. Moreover, HDTV presently requires considerably more bandwidth than conventional television signals, and therefore it reduces the number of channels that can be provided within a given amount of spectrum. Our present proposal would permit the band to be used either/for HDTV or for conventional television signals, as spectrum allocation permits and the market dictates. We believe this approach serves the public interest better than reserving the band exclusively for either service.

Licensing and Procedural Requirements

111. The licensing and procedural policies and requirements we are adopting are, with few exceptions, those that were set forth in the *Notice*. In particular, applicants will be required to conform to the technical guidelines specified in the WARC–77 Final Acts. Furthermore, all interim authorizations will be subject to modification, as the Commission deems necessary, in order to comport with determinations made at RARC–83 and any other policies and rules which the Commission may hereafter conclude are necessary or appropriate in the public interest. Deviations from the guidelines of the WARC–77 or from the outcome of RARC–83 may be permitted with Commission approval provided they do not cause interference to operational or Commission approval provided they do not cause interference to operational or planned systems of other administrations in excess of that specified in the Final Acts of the WARC–77 or RARC–83.

112. Applicants may request specific frequencies and orbital positions. However, frequencies and orbital positions will not be assigned until completion of the 1983 RARC. We note that the number of frequencies, the orbital locations, and the size of the service areas specified in the applications we have received to date have varied considerably. While we intend to take each applicant's request fully into account, the Commission may, in acting on a particular application, restrict the number of channels assigned to any applicant, limit or modify the area to be served, or impose any other conditions it deems necessary.

113. The Commission will continue to accept applications for DBS systems. In addition, the Commission intends in the very near future to establish a second cut-off list for applications.[99] In view of the number of applications that have been accepted to date and the number of potential applications that may be filed, future applicants are requested to indicate whether or not they would be willing to operate their systems for non-eclipse-protected orbital positions.

114. In lieu of stringent financial showings and subsequent Commission analysis, we will require that parties granted authorizations proceed with diligence in constructing interim DBS systems. Interim DBS systems will be required to begin construction or complete contracting for construction of the satellite station within one year of the grant of the construction permit. The satellite station will also be required to be in operation within six years of the construction permit grant, unless otherwise determined by the Commission upon proper showing in any particular case. Transfer of control of the construction permit will not be considered to justify extension of these deadlines. We believe that a diligence requirement will provide a more orderly processing of applications and assure that those applicants that are granted construction permits go forward expeditiously.

115. Each application for an interim DBS system shall include a showing describing

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[25] Continental, 4 F.C.C. Red at 6296–7 (1989).

[26] *Id.* at 6301.

[27] Advanced, 6 F.C.C. Red at 2274.

[28] *See* note 21, *supra.*

[29] Advanced, 6 F.C.C. Rcd at 2274

[30] To the extent the pleadings address Advanced's applications for assignment and for modification of its construction permit, such pleadings are likewise moot and will not be considered.

[31] Under Advanced's proposal to assign its construction permit to Tempo DBS, the satellites deployed under Advanced's permit would be those now under construction for Tempo Satellite, Inc., a DBS permittee. Application for Modification of Construction Permit, DBS–94–16MP (October 14, 1994).

[32] USSB II at 7250.

[33] Advanced refers to the Commission's recent decision in Directsat Corp., 10 F.C.C. Rcd 88 (1995), as support for approval of the assignment of its construction permit to Tempo DBS. In that case, the Commission approved the transfer of control of DBS permittee Directsat Corporation from SSE Telecom, Inc. to Echo/Comms. Unlike the circumstances here, Directsat's ''investment in the development of its DBS system has been substantial and the progress set fort in its semi-annual reports has been steady and consistent with the schedule established in its construction contract.'' *Id.* at para 4. Consequently, the Commission concluded that the public interest in the expeditious provision of DBS service to the public would be advanced by this sale.

[99] A number of the interim DBS applications filed in response to the first cut-off date were found unacceptable for filing. Some of these applications were subsequently amended and may now be acceptable for filing.

the type of service that will be provided, the technology that will be employed, and all other pertinent information. The application may be presented in narrative format.[100] Each application for an interim DBS system shall be placed on public notice for 45 days, during which time interested parties may file comments and petitions related to the application. A 45 day cut-off period shall also be established for the filing of applications to be considered in conjunction with the original application. Additional applications filed before the cut-off date shall be considered to have equal priority with the original application and shall be considered together in the assignment of frequencies and orbital positions. If applications have included requests for particular frequencies or orbital positions, the cut-off date shall be considered in establishing the priority of such requests. All frequencies and orbital positions, however, shall generally be considered to be of equal value, and conflicting requests for frequencies and orbital positions will not necessarily give rise to comparative hearing rights as long as unassigned frequencies and orbital slots remain. Each application for an interim DBS system, after the public comment period and staff review, shall be acted upon by the Commission to determine if authorization of the system is in the public interest.

116. All authorizations for interim DBS systems shall be granted for a period of five years. All licensee shall be subject to the policies set forth in this *Report and Order* and with any policies and rules the Commission may adopt at a later date. It is the intention of the Commission, however, that in most circumstances the regulatory policies in force at the time of authorization to construct a satellite shall remain in force for that satellite throughout its operating lifetime.

VIII. Ordering Clauses

117. Pursuant to Section 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 4(i) and 303, it is ordered, That:

(a) Parts 2 and 94 of Chapter I of Title 47 of the Code of Federal Regulations are amended as set forth in Appendix C, effective thirty days after publication in the Federal Register.

(b) Chapter I of Title 47 of the Code of Federal Regulations is amended to include a new Part 100 as set forth in Appendix D, effective thirty days after publication in the Federal Register.

(c) The Petition for Expedited Relief submitted by the Aerospace and Flight Test Radio Coordinating Committee on August 12, 1981 is granted to the extent indicated above and is otherwise denied.

WILLIAM J. TRICARICO,
Secretary.

Appendices A and B—may be seen in FCC's Dockets Branch.

APPENDIX C

Parts 2, and 94 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

A. Part 2—Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.

1. Section 2.106 is amended by revising the ''Service'' column of the frequency bands listed below and by adding new Footnotes NG139 and NG140 in proper numerical order to read as follows:

[100] The Commission will carefully review each DBS application for completeness. Accordingly, all applicants should be sure that their applications contain a complete and detailed technical showing and that the service to be provided is adequately described. (*See also Memorandum Opinion and Order*, FCC 81–500, and *Memorandum Opinion and Order*, FCC 82–92.)

§2.106 Table of Frequency Allocations

* * * * *

United States		Federal Communications Commission	
Band (GHz)	Allocation	Band (GHz) Service	Class of Station
5	6	7	8	9

* * * * *

(b) The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the transmitter power.

(c) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

(d) The following minimum spectrum analyzer resolution bandwidth settings will be used: 300 Hz when showing compliance with paragraphs (a)(1)(i) and (a)(2)(i) of this section; and 30 kHz when showing compliance with paragraphs (a)(1)(ii) and (a)(2)(ii) of this section.

§24.134 Co-channel separation criteria.

The minimum co-channel separation distance between base stations in different service areas is 113 kilometers (70 miles). A co-channel separation distance is not required for the base stations of the same licensee or when the affected parties have agreed to other co-channel separation distances.

§24.135 Frequency stability.

(a) The frequency stability of the transmitter shall be maintained within ±0.0001 percent (±1 ppm) of the center frequency over a temperature variation of −30 Celsius to +50 Celsius at normal supply voltage, and over a variation in the primary supply voltage of 85 percent to 115 per cent of the rated supply voltage at a temperature of 20 Celsius.

(b) For battery operated equipment, the equipment tests shall be performed using a new battery without any further requirement to vary supply voltage.

(c) It is acceptable for a transmitter to meet this frequency stability requirement over a narrower temperature range provided the transmitter ceases to function before it exceeds these frequency stability limits.

SUBPART E—BROADBAND PCS

SOURCE: 59 FR 32854, June 24, 1994, unless otherwise noted.

§24.200 Scope.

This subpart sets out the regulations governing the licensing and operations of personal communications services authorized in the 1850–1910 and 1930–1990 MHz bands.

§24.202 Service areas

Broadband PCS service areas are Major Trading Areas (MTAs) and Basic Trading Areas (BTAs) as defined below. MTAs and BTAs are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39 (''BTA/MTA Map''). Rand McNally organizes the 50 states and the District of Columbia into 47 MTAs and 487 BTAs. The BTA/MTA Map is available for public inspection as the Office of Engineering and Technology's Technical Information Center, room 7317, 2025 M Street, NW., Washington, DC.

(a) The MTA service areas are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the following exceptions and additions:

(1) Alaska is separated from the Seattle MTA and is licensed separately.

(2) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.

(3) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.

(4) American Samoa is licensed as a single MTA-like area.

(b) The BTA service areas are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the following additions licensed separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; Mayagüez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayagüez/Aguadilla-Ponce BTA-like service area consists of the following municipios: Adjuntas, Aguada, Agudilla, Añasco, Arroyo, Cabo Rojo, Coamo, Guánica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marías, Mayagüez, Maricao, Maunabo, Moca, Patillas, Pëuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San Germán, Santa Isabel, Villalba, and Yauco. The San Juan BTA-like service area consists of all other municipios in Puerto Rico.

§24.203 Construction requirements.

(a) Licensees of 30 MHz blocks must serve with a signal level sufficient to provide adequate service to at least one-third of the population in their licensed area within five years of being licensed and two-thirds of the population in their licensed area within 10 years of being licensed. Licensees may choose to define population using the 1990 census or the 2000 census. Failure by any licensee to meet these requirements will result in forfeiture or non-renewal of the license and the licensee will be ineligible to regain it.

(b) Licensees of 10 MHz blocks must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. Population is defined as the 1990 population census. Licensees may elect to use the 2000 population census to determine the five-year construction requirement. Failure by any licensee to meet these requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

(c) Licensees must file maps and other supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year benchmarks of the date of their initial licenses.

§24.204 Cellular eligibility.

(a) *10 MHz Limitation*. Until January 1, 2000, no license(s) for broadband PCS in excess of 10 MHz shall be granted to any party (including all parties under common control) if the grant of such license(s) will result in significant overlap of the PCS licensed service area(s) (MTAs or BTAs) and the cellular geographic service area(s) (CGSA) of licensee(s) in the Domestic Public Cellular Radio Telecommunications Service directly or indirectly owned, operated, or controlled by the same party.

(b) *15 MHz Limitation*. After January 1, 2000, no license(s) for broadband PCS in excess of 15 MHz shall be granted to any party (including all parties under common control) if the grant of such license(s) will result in significant overlap of the PCS licensed service area(s) (MTAs or BTAs) and the cellular geographic service area(s) (CGSA) of licensee(s) in the Domestic Public Cellular Radio Telecommunications Service directly or indirectly owned, operated, or controlled by the same party.

(c) *Significant Overlap*. For purposes of paragraphs (a) and (b) of this section, significant overlap of a PCS licensed service area and CGSA(s) occurs when ten or more percent of the population of the PCS service area, as determined by the 1990 census figures for the counties contained therein, is within the CGSA(s).

(d) *Ownership Attribution.* (1) For purposes of paragraphs (a) and (b) of this section, ''control'' means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(2) For purposes of applying paragraphs (a) and (b) of this section, and for purposes of §24.229(c) (40 MHz limit in same geographic area), ownership and other interests in broadband PCS licensees or applicants and cellular licensees will be attributed to their holders pursuant to the following criteria:

(i) Partnership and other ownership interests and any stock interest amounting to 5 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS licensee or applicant will be attributable.

(ii) Partnership and other ownership interests and any stock interest amounting to 20 percent of more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee will be attributable, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to 40 percent or more of the equity, or outstanding stock, or outstanding voting stock.

* * * * *

[FCC 94–144]

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, DC 20554

In the Matter of Amendment of the Commission's rules to establish new personal communications services; Gen Docket No. 90–314; RM–7140, RM–7175, RM–7618.

MEMORANDUM OPINION AND ORDER

Adopted: June 9, 1994.

By the Commission: Commissioners Quello, Barrett, Ness, and Chong issuing separate statements.

Released: June 13, 1994.

* * * * *

V. Construction requirements

147. In the *Second Report and Order,* we stated our expectations that broadband PCS would be a highly competitive industry and that licensees would have the incentive to construct facilities to meet the demand for service in their licensed areas. We concluded that specific channel loading requirements are unnecessary; however, we required licensees to meet specified construction benchmarks to ensure efficient spectrum utilization and service to the public. Specifically, we required licensees to offer service to one-third of the population in their service area within five years of licensing, two-thirds of the population in their service area within seven years, and 90 percent of the population within ten years. We stated that failure to meet these requirements would result in forfeiture of the license and the licensee would be ineligible to regain it.[227]

* * * * *

PacBell opposes Sprint's suggestion that cellular carriers be permitted to include their existing coverage in meeting PCS coverage requirements.[243]

153. MCI asserts that some relaxation of the construction requirements is necessary if base and mobile power limits are not substantially increased.[244] US West opposes the 90 percent construction requirement, asserting that 90 percent coverage will increase the cost of PCS fourfold compared to a 67 percent population coverage requirement. It states that a stringent construction requirement is not necessary to prevent warehousing of spectrum because the spectrum will be purchased at auction. As part of its filing, US West submits an analysis of nine large western BTAs that indicates that increasing population coverage from 67 to 75 percent results in only a moderate increase in the geographic area that must be served. On the other hand, increasing population from 75 to 90 percent results in a very large increase in the geographic area that must be covered.[245]

154. *Decision.* We believe that PCS will be a highly competitive service and that licensees will have incentives to construct facilities to meet the service demands in their licensed service areas. Further, we believe that our use of competitive bidding for PCS licensing and the restrictions on the amount of spectrum that a licensee may control in a geographic area will limit the likelihood that spectrum will be warehoused. Nevertheless, we continue to believe that minimum construction requirements are necessary to ensure that PCS service is made available to as many communities as possible and that the spectrum is used effectively. We note that the Reconciliation Act amendments require the Commission to impose performance requirements.[246] While we agree with GCI, NYNEX, and others that construction requirements are needed to ensure service in a timely fashion, we also agree that relaxation of the requirements is desirable to ensure an economical deployment of the service to promote opportunities for PCS ''niche'' services, and to facilitate a competitive market.[247]

155. Accordingly, we are amending the construction requirements as follows. All 30 MHz broadband PCS licensees will be required to construct facilities that provide coverage to one-third of the population of their service area within five years of initial license grant and to two-thirds of the population of their service area within ten years. We will require the 10 MHz licensees to meet a single construction requirement of providing coverage to one-fourth of the population of their service area within five years; or alternatively, they may submit an acceptable showing to the Commission demonstrating that they are providing substantial service. We recognize that these requirements are less than the requirement for narrowband PCS licensees, but we believe this difference is appropriate given the higher expected construction costs involved for broadband PCS.[248] Moreover, since licensees must purchase their licenses, they will have added economic incentives to construct their systems as rapidly as possible and introduce service to a significant percentage of the population. In this regard, we also believe that these relaxed construction requirements may increase the viability and value of some broadband licenses, especially those in less densely populated service areas. Finally, since most areas are already served by cellular and SMR providers, we believe it unnecessary to require PCS licensees to provide identical or similar services to areas where it is uneconomic to do so. With regard to the 10 MHz licensees, we believe that the reduced construction requirement will make these licenses more attractive to applicants intending to provide residential, cutting-edge niche services or services to business and educational campuses where the population may be small except during business or school hours.

156. At the five-year benchmark we will require all licensees, and again at the 10-year benchmark for 30 MHz licensees, to file a map and other supporting documentation showing compliance with the construction requirements. Licensees failing to meet the population coverage requirements described above will be subject to the license forfeiture penalties adopted in the *Second Report and Order.*[249] We recognize that even with these requirements, factors such as incumbent microwave operation or sparse population density in some instances could make compliance difficult. In instances where the circumstances are unique and the public interest would be served, the Commission will consider waiving the requirements on a case-by-case basis.[250] These revised construction requirements will ensure efficient spectrum utilization and promote significant nationwide coverage without imposing substantial cost penalties on licensees that serve less densely populated areas. In this regard, we believe that these changes generally address the concerns of those parties that suggested lowering the construction requirements for designated entities or for BTA service areas.[251]

157. We also recognize the desirability of encouraging more than one provider to serve a diverse geographic area, and note that resale of a licensee's geographic area to other entities, subject to the licensee's control, is not prohibited by our rules. Accordingly, we recognize that licensees may resell spectrum, and believe that this will facilitate the deployment of PCS. Whether or not the licensee enters into resale arrangements, it will be responsible for insuring that the coverage requirement and all the other requirements of our rules are met. The reseller will not be a separate licensee, but rather, will operate subject to the control of the licensee. We believe that resale will encourage service provision, particularly to rural areas, and allow smaller, predominantly rural companies to participate in PCS. We intend to examine in another proceeding whether resale arrangements confer attributable interests on the reseller. *See* Section IV, *supra.*

158. In summary, our relaxed construction requirements will foster provision of PCS services and will promote diversity in their provision. Permitting licensees to resell service subareas, subject to the licensee's control, will permit smaller, rural companies to provide PCS without participating in the competitive bidding process. Finally, we intend to monitor closely the development of PCS in rural and other under-served areas and, if necessary, will readdress these construction requirements to ensure that our goals for wide area service are met.

VI. Technical Standards

A. Roaming and interoperability standards

159. In the *Second Report and Order,* the Commission provided maximum flexibility in technical standards to allow PCS to develop in the most rapid, economically feasible and diverse manner. Specific technical standards were prescribed only to the extent necessary to avoid harmful interference. The Commission recognized that several industry

[227] *See Second Report and Order* at ¶¶132–134.

[243] *See* PacBell Comments at 8.

[244] *See* MCI Comments at 17.

[245] *See* US West Reply at 7–9.

[246] *See* 47 U.S.C. §309(i)(4)(B), as amended by the Reconciliation Act.

[247] *See* Comments at 13; NYNEX Comments at 8–9.

[248] The construction requirements for narrowband PCS are set forth in *Memorandum Opinion and Order,* GEN Docket No. 90–314 and ET Docket No. 92–100, 9 FCC Rcd 1309, 1313–1314, ¶¶27–34 (1994), *recon. pending.*

[249] *See Second Report and Order* at ¶¶ 133–134.

[250] *See WAIT Radio v. FCC,* 418 F.2d 1153 (D.C. Cir. 1969).

[251] We will also allow the licensee to use, if they choose to do so, the 2000 census to determine the 10-year construction requirement, rather than the 1990 census specified in the *Second Report and Order.* This change ensures that licensees will not be required to meet benchmarks based on obsolete data.

technical and standards groups were addressing matters related to PCS technical standards. It encouraged those groups to consider ways of ensuring that PCS users, service providers, and equipment manufacturers could incorporate roaming, interoperability and other important features in the most efficient and least costly manner, noting that PCS will be more useful to the extent that users are not limited by geography or by their ability to use their equipment with different systems.

160. *Petitioners' Requests.* NCS, Motorola, and TIA request that we reconsider our decision not to adopt PCS interoperability requirements.[252] NCS requests that we adopt standards to ensure interoperability and nationwide roaming.

* * * * *

(a) The MTA service areas are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the following exceptions and additions:

(1) Alaska is separated from the Seattle MTA and is licensed separately.

(2) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.

(3) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.

(4) American Samoa is licensed as a single MTA-like area.

(b) The BTA service areas are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the following additions licensed separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; Mayagüez/Aguadilla-Ponce Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayagüez/Aguadilla-Ponce BTA-like service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Añasco, Arroyo, Cabo Rojo, Coamo, Guánica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Díaz, Lajas, Las Marías, Maricao, Maunabo, Mayagüez, Moca, Patillas, Peñuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San Germán, Santa Isabel, Villalba, and Yauco. The San Juan BTA-like service area consists of all other municipios in Puerto Rico.

§ 24.203 Construction requirements.

(a) Licensees of 30 MHz blocks must serve with a signal level sufficient to provide adequate service to at least one-third of the population in their licensed area within five years of being licensed and two-thirds of the population in their licensed area within 10 years of being licensed. Licensees may choose to define population using the 1990 census or the 2000 census. Failure by any licensee to meet these requirements will result in forfeiture or non-renewal of the license and the licensee will be ineligible to regain it.

(b) Licensees of 10 MHz blocks must serve with a signal level sufficient to provide adequate service to at least one-quarter of the population in their licensed area within five years of being licensed, or make a showing of substantial service in their licensed area within five years of being licensed. Population is defined as the 1990 population census. Licensees may elect to use the 2000 population census to determine the five-year construction requirement. Failure by any licensee to meet these requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

(c) Licensees must file maps and other supportive documents showing compliance with the respective construction requirements within the appropriate five- and ten-year benchmarks of the date of their initial licenses.

§ 24.204 Cellular eligibility.

(a) *10 MHz Limitation.* Until January 1, 2000, no license(s) for broadband PCS in excess of 10 MHz shall be granted to any party (including all parties under common control) if the grant of such license(s) will result in significant overlap of the PCS licensed service area(s) (MTAs or BTAs) and the cellular geographic service area(s) (CGSA) of licensee(s) in the Domestic Public Cellular Radio Telecommunications Service directly or indirectly owned, operated, or controlled by the same party.

FEDERAL COMMUNICATIONS COMMISSION

[8 FCC Rcd 3204; 1993 FCC LEXIS 2397]

In the Matter of the Authorization of Cable TV Services, Inc., For Multichannel Multipoint Distribution Service station WHT578 on the F-group channels at Deadhorse, Alaska; File No. 2506–CM–P–83.

Release-number: DA 93–524.

May 14, 1993 Released; Adopted May 5, 1993.

Action: [*1] Order on reconsideration.

Judges: By the Chief, Domestic Facilities Division.

Opinion by: Keegan.

OPINION

1. Introduction. After the cancellation by the Domestic Facilities Division (Division) on delegated authority of its authorization to construct and operate Multichannel Multipoint Distribution Service (MMDS) station WHT578 on the F-group channels at Deadhorse, Alaska, Cable TV Services, Inc. (Cable) requested reinstatement of its authorization.

2. Background. Although acknowledging that it had failed to complete construction by the deadline, Cable states, on reconsideration, that its authorization should be reinstated because it lost its financing and was unable to obtain substitute financing prior to the expiration of its construction period. Approximately six weeks after the construction expiration date, Cable filed an extension application. Cable justifies the late filing of its extension application because it was still searching for financing and it had orally advised Commission staff of its financing problems. Cable also argues that its authorization should be reinstated because, with the exception of video programming currently provided by satellite, no one but Cable would provide multichannel [*2] video programming to the residents of Deadhorse.

3. Discussion. Section 319(b) of the Communications Act of 1934, as amended, ''provides that a construction authorization will be automatically forfeited if the station is not ready for operation within the time specified in the construction authorization, or such further time as the Commission may allow, unless prevented by causes not under the control of the grantee.'' Miami MDS Co. and Boston MDS Co., 7 FCC Rcd 4347, 8347, 4348 (1992). The expiration date of Cable's construction authorization appeared on the face of the authorization. The authorization also contained the following express provision: ''This permit shall be automatically forfeited if the facilities authorized herein are not ready for operation within the term of this permit. . . .'' At the time, this automatic forfeiture provision was specifically embodied in Section 21.44 of the Commission's Rules. n1 Vidcom Marketing, Inc., 6 FCC Rcd 1945 n.3 (Dom. Fac. Div. 1991).

''Carriers who fail promptly to construct facilities preclude other applicants who are willing, ready, and able to construct from access to limited and valuable spectrum. This has the effect of delaying, [*3] or even denying, service to the public. Revision of Part 21 of the Commission's Rules, 2 FCC Rcd 5713 (1987).'' Miami MDS Co. and Boston MDS Co., 7 FCC Rcd 4347, 4349 (1992). Cable's loss of financing and failure to obtain new financing did not toll its construction deadline. Cable's construction authorization was automatically forfeited pursuant to Section 319 of the Communication's Act, 47 C.F.R. Sec. 21.44 and the terms of the authorization. Cable's lack of financing fails to justify reinstatement of its authorization. Cable asserted in its initial application that it was financially qualified under 47 C.F.R. Sec. 21.17. Thus, it is the applicant's independent business judgment that it is financially qualified. Therefore, an independent business judgment to delay construction for financial reasons would not be a cause beyond the applicant's control, justifying an extension of time to construct an MMDS station. See W. Lee Simmons, Inc., 2 FCC Rcd 4290 (1987) (extension applicant's business decision not to construct was within its own control); Joe L. Smith, Jr., Inc., 5 Rad Reg. 2d 582 (1965); accord Radio Longview, Inc., 19 FCC 2d 966, 968–71 (1969); Beta Television Corp., [*4] 27 FCC 2d 761, 763 (Rev. Bd. 1970). Cable was required to file its extension application prior to the expiration of its construction authorization. 47 C.F.R. Secs. 21.11 and 21.44(a). Cable failed to do so. Therefore, its extension application is hereby dismissed as untimely filed.

n1 Section 21.44(a) stated inter alia as follows: ''A construction permit shall be automatically forfeited if the station is not ready for operation within the term of the construction permit. . . .''

4. Conclusion and Ordering Clause. Have carefully considered all of the arguments and evidence presented, we find that Cable TV Services, Inc. automatically forfeited its construction authorization for failure to construct prior to the specified expiration date, reinstatement of the authorization is not justified, and its extension application was late filed. Accordingly, IT IS ORDERED that the request for reinstatement filed by Cable TV Services, Inc. regarding the above-referenced MMDS authorization is denied and its extension application is dismissed. This order is issued pursuant to 47 C.F.R. Sec. 0.291, and is effective on its release date. See 47 C.R.R. Secs. 1.4(b), 1.106, and 1.115. [*5]

JAMES R. KEEGAN,

Chief, Domestic Facilities Division.

Common Carrier Bureau.

§ 73.3533 Application for construction permit or modification of construction permit.

(a) Application for construction permit, or modification of a construction permit, for a new facility or change in an existing facility is to be made on the following forms:

(1) FCC Form 301, ''Application for Authority to Construct or Make Changes in an Existing Commercial Broadcast Station.''

(2) FCC Form 309, ''Application for Authority to Construct or Make Changes in an Existing International or Experimental Broadcast Stations.''

(3) FCC Form 313, ''Application for Authorization in the Auxiliary Broadcast Services.''

(4) FCC Form 330, ''Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign to Transfer Such Station(s).''

(5) FCC Form 340, ''Application for Authority to Construct or Make Changes in a Noncommercial Educational Broadcast Station.''

(6) FCC Form 346, ''Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station.''

(7) FCC Form 349, ''Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.''

[252] Texas Emergency also requests that we adopt a uniform standard for enhanced emergency 911 services. These matters are addressed in Section VI.E.

(b) The filing of an application for modification of construction permit does not extend the expiration date of the construction permit. Extension of the expiration date must be applied for on FCC Form 307, in accordance with the provisions of §73.3534.

§73.3534 Application for extension of construction permit or for construction permit to replace expired construction permit.

(a) Application for extension of time within which to construct a station shall be filed on FCC Form 307, ''Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit.'' The application shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such application for extension are known to the applicant in time to permit such filing. In other cases, an application will be accepted upon a showing satisfactory to the FCC of sufficient reasons for filing within less than 30 days prior to the expiration date.

(b) Applications for extension of time to construct broadcast stations, with the exception of International Broadcast and Instructional TV Fixed stations, will be granted only if one of the following three circumstances have occurred:

(1) Construction is complete and testing is underway looking toward prompt filing of a license application;

(2) Substantial progress has been made *i.e.*, demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion; or

(3) No progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction.

(c) Applications for extension of time to construct International Broadcast and Instructional TV Fixed stations will be granted upon a specific and detailed showing that the failure to complete was due to cause not under the control of the permittee, or upon a specific and detailed showing of other sufficient to justify an extension.

(d) If an application for extension of time within which to construct a station is approved, such an extension will be limited to a period of no more than 6 months except when an assignment or transfer has been approved that provides for a longer period up to a maximum of 12 months from the date of consummation.

(e) Application for a construction permit to replace an expired construction permit shall be filed on FCC Form 307. Such applications must be filed within 30 days of the expiration date of the authorization sought to be replaced. If approved, such authorization shall specify a period of not more than 6 months within which construction shall be completed and application for license filed.

§73.3535 Application to modify authorized but unbuilt facilities, or to assign or transfer control of an unbuilt facility.

(a) If a permittee finds it necessary to file either an application to modify its authorized, but unbuilt facilities, or an assignment/transfer application, such application shall be filed within the first 9 months of the issuance of the original construction permit for radio and other broadcast and auxiliary stations, or within 12 months of the issuance of the original construction permit for television facilities. Before such an application can be granted, the permittee or assignee must certify that it will immediately begin building after the modification is granted or the assignment is consummated.

(b) Modification and assignment applications filed after the time periods stated in paragraph (a) will not be granted absent a showing that one of the following three criteria apply: (1) Construction is complete and testing is underway looking toward prompt filing of a license application; (2) substantial progress has been made *i.e.*, demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion; or (3) no progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction.

* * * * *

FEDERAL COMMUNICATIONS COMMISSION

[1985 FCC LEXIS 3169]

In the matter of WULT–TV

June 10, 1985 Released; June 4, 1985

Opinion by: [*1] McKinney.

Opinion: New Orleans Channel 20, Inc., Rochester, NY.

Re: BMPCT–840710KH, BAPCT–840727KG, WULT–TV, New Orleans, LA.

GENTLEMEN: This refers to the above-captioned applications for an extension of time within which to construct Station WULT–TV, New Orleans, Louisiana, and for consent to assignment of the construction permit, a petition to deny n1 each of the applications, filed by Marvin Gorman Ministries, Inc. (MGMI), and related pleadings.

n1 Applications for extension of time to construct are not subject to petitions to deny. Therefore, the petition to deny the extension of time application will be treated as an informal objection filed pursuant to Section 73.3587 of the Commission's Rules.

The Commission granted the construction permit for Channel 20 on October 10, 1980, following a settlement agreement among three competing applicants. An application for assignment of the construction permit was granted on January 25, 1982. The assignment was not consummated and on March 15, 1983, a second assignment application was granted, and was consummated on June 28, 1983. On August 9, 1983, the Commission granted the permittee's application for [*2] a six month extension of time to construct. No construction was undertaken following any of the grants. On February 8, 1984, the Commission granted an additional six month extension of time to construct, subject to the condition that, not later than May 9, 1984, you would file a progress report with the Commission. By letter dated May 9, 1994, rather than submitting a progress report, you informed the Commission that because of the drain on your time and resources and lack of success in obtaining a suitable construction site, you had decided to assign the permit to another entity better able to pursue construction of the station. Consequently, you have once again requested an extension of time to construct in order to assign the permit to another entity. It again appears that no construction has been undertaken. You state that the proposed assignee stands ready to pursue construction of the station once the assignment application is approved.

In its objections, MGMI contends that you have had ample time in which to secure a site, have failed to do so, have received two extensions previously for failure to find a site, and that you have made little effort to procure a transmitter [*3] site. Under these circumstances, MGMI argues that you should not be allowed to profit from the sale of the construction permit which would result if the Commission grants the requested extension. MGMI alleges that you have not been diligent in your efforts to secure a transmitter site, and that you assertion that you have, lacks credibility. MGMI points out that several of its officers know of available sites for a transmitter, and that ten other applicants for Channel 49 in New Orleans have specified available sites. MGMI notes that two of the principals of New Orleans Channel 20, Inc. have been holders of the construction permit for Channel 20 since 1980. Therefore, MGMI argues, it is unreasonable to believe that these principals could not have produced a transmitter site within this four year time span. Further, MGMI states that the public interest has been successively undercut by your continuing attempt to hold on to the construction permit. MGMI asserts that your failure to construct over the past four years has removed the channel from the community and prevented any other party from applying to use it.

In opposition, you state that the objections are not based on [*4] the present set of circumstances, but on the previous extension applications and the previous applications for assignment of the construction permit which cannot be revisited. You argue that the public interest would be served by extending the construction permit and allowing the station to go on the air promptly. You assert that the public interest would not be served by opening up the channel for multiple competing applications. You note that LeSea Broadcasting, the proposed assignee, has committed itself to constructing the station, and it hopes to have the station on the air in seven months. n2

n2 The proposed assignee states that it has: (1) secured a transmitter site and filed an application to modify the Channel 20 construction permit to specify the new site; (2) placed a contingent order for broadcast equipment in the amount of approximately $2.5 million; (3) located a suitable studio site; and (4) reached agreements in principle with individuals who will be the station's operations manager and chief engineer.

Additionally, you maintain that past Commission cases made it clear that an extension of time is appropriate where a permittee that has not constructed a station [*5] proposes to assign the permit to a party that is prepared to proceed with construction. Gross Broadcasting Co., 41 FCC 2d 729 (1973); New Television Corp., 65 FCC 2d 680 (Rev. Bd. 1977); Hymen Lake, 56 FCC 2d 379 (Rev. Bd. 1975). You state that in the past, where there has been a firm commitment from the proposed assignee to construct and the probability of early inauguration of UHF television, as here, the Commission has consistently found that the public interest would be served by extending the time for construction. You contend that the extension and assignment of the Channel 20 permit would bring new television service to New Orleans at the earliest opportunity. Further, you allege that MGMI has failed to offer any support for its legal position and has provided no basis for overturning long-established Commission policy.

In reply to your opposition, MGMI maintains that you have not submitted any showing of circumstances beyond your control which prevented construction and, therefore, the permit should be forfeited. MGMI alleges that in the 11 months you have controlled the permit, you have made no discernible effort to find a site, order equipment, [*6] or to begin any type of television operation in New Orleans. Yet, MGMI states, you now hope to receive $250,000 for transferring the permit to another party.

Before an extension application can be granted, Section 73.3534(a) of the Commission's Rules requires either a specific and detailed showing that the failure to complete

construction within the time provided was due to causes beyond a permittee's control or that there are other matters sufficient to justify the extension. In the past, where an assignee made a firm commitment to construct expeditiously and the Commission was persuaded that the assignment represents the fastest way to have the station activated, the pendency of the assignment application can be considered to be such an ''other matter.'' King Communications, Inc., 47 RR 2d 109, 110 (Rev. Bd., 1980). However, the filing of an assignment application does not automatically entitle the permittee to an extension of time to have the station built. Moreover, subsequent to the King decision, the Commission has clearly stated that it will take a much closer look at extension applications. See, e.g., Revision of Form 301, 50 R.R. 2d 381, 382 (1981); MEKAOY [*7] C. (KTIE), 48 RR 2d 815, 817 (Broadcast Bureau, 1980).

Here, we note that it has been four years since the construction permit was issued for Channel 20. During this time, the Commission has granted two assignment applications and two applications for extension of time to construct. Yet, no construction has commenced and it appears that no equipment has been ordered. In granting the last extension of time to construct, the Commission granted the request subject to the condition that not later than May 9, 1984, a progress report would be filed with the Commission. However, on May 9, 1984, you informed the Commission that you had decided to assign the permit to another entity. Thus, on July 10, 1984, you filed an application for extension of time to construct and on July 27, 1984, an application for assignment of the construction permit.

In this case, the permit was assigned to you on the assumption that you would build promptly. The last extension application was approved on the assumption that its grant would expeditiously result in a new service to the public. These expectations have come to nought.

Accordingly, on the basis of the facts set forth in your application, [*8] the Commission is unable to find that construction of the station was prevented by causes beyond your control and the Commission does not find the existence of other matters which would warrant an extension. The filing of the assignment application, under the circumstances, does not warrant an extension of time. You are advised that your application for an extension of time within which to construct Station WULT, New Orleans, Louisiana, is denied, your construction permit is canceled, your call sign is deleted, and your application for assignment of the construction permit to LeSea Broadcasting, Incorporated, is dismissed, as moot.

Sincerely,

JAMES C. MCKINNEY,
Chief, Mass Media Bureau.

Mr. MCCAIN. Mr. President, I would still like to have a rollcall vote on this issue, but I have no further reason to debate the issue. So I would suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BRYAN. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRYAN. I thank the Chair.

TRANSITIONAL FUNDING FOR UNITED STATES TRAVEL AND TOURISM ADMINISTRATION

Mr. BRYAN. Mr. President, I wanted to alert my colleagues it will be my intention later on today when the floor opens up to offer an amendment with Senator BURNS to provide transitional funding——

The PRESIDING OFFICER. If the Senator would withhold.

We are in a controlled time.

Mr. BRYAN. I think my statement would take perhaps 7 or 8 minutes, if there is a parliamentary concern.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I will yield the Senator from Nevada 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 11 minutes.

Mr. DORGAN. Then I will yield the Senator from Nevada 11 minutes.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 11 minutes.

Mr. BRYAN. I thank the Chair and my friend from North Dakota for his courtesy.

As I indicated, Mr. President, it will be my intention to offer, with the distinguished Senator from Montana, Senator BURNS, an amendment later on today to provide transitional funding for the U.S. Travel and Tourism Administration.

This funding would permit an orderly transition into a new public/private-sector entity. This amendment enjoys the support of a number of Senators on both sides of the aisle, including, among many others, Senators MCCONNELL, HOLLINGS, MURKOWSKI, INOUYE, THURMOND, and DASCHLE.

I might also note, Mr. President, that the National Governors' Association at their recent annual meeting endorsed the concept embodied in this proposed amendment.

Mr. President, none of us is unmindful of the fact that the current budget pressures demand some extraordinary responses. So the purpose of this amendment is simply to provide some transitional funding until this public-private partnership can be organized.

As part of this effort, the Congress, the administration, and the travel and tourism organization that are needed best to promote the travel industry are going to need some time to put this into effect. To cut off funding cold turkey, as is contemplated in the present form of this bill, would be the equivalent of unilateral disarmament.

All of our competitors spend considerably more than we do on their national tourism offices. In fact, the United States ranks 23d, spending just $16 million while countries like Greece, Mexico, and Spain, spend more than $100 million each year. In fact, putting this in some context, Mr. President, we rank behind such powerhouses as Tunisia and Malaysia in terms of the amount of money we are spending.

Unfortunately, these spending figures are having a dramatic impact on our share of the world's tourism market. In 1993, the United States enjoyed almost 19 percent of the world's tourism receipts. This has declined to 15.6 percent this year, and is expected to shrink to 13.8 percent by the end of the decade. The chart that I have prepared will indicate that rather dramatic decline. In 1993, 18.7 percent; 1994, 17.9 percent; 1995, estimated this year, 15.6 percent; and by the end of the century, 13.8 percent.

Now, this is more than just a statistical observation. It has real impact. The loss in the U.S. share of the world's tourism market can be translated into a significant impact on our trade deficit and on employment. If we were able to keep our world tourism share from shrinking, we would improve our trade balance—that is a plus, Mr. President—by $28 billion and increase employment by 370,000 people by the year 2000.

Those are significant industries. Very few industries can shape our economy to this extent. Travel and tourism is already the second largest employer in our Nation after health care. It employs either directly or indirectly 13 million Americans.

Now, this indicates the trade surplus balance, something that is always of concern to us. We are running, in terms of our international trading accounts, a deficit.

This clearly indicates that tourism—international tourism; we are not talking about domestic tourism; this is international tourism—can be a substantial, positive, contributing factor. The estimate this year is $18.1 billion, that is, in effect, more people coming to the United States from abroad, spending money in your State, Mr. President, and others who are on the floor and my own as opposed to Americans traveling abroad and spending money in foreign countries—$18.1 billion to the good as we say.

The opportunity we have as a nation is that international travel and tourism is growing rapidly. By the year 2000 more than 661 million people will be traveling throughout the world. That is roughly twice as many people as traveled in 1985. What we need to do is to capture our share of this tourism market. We need to put the muscle of the public and private sector together in a public/private-sector relationship to make sure we advance this market, fully exploit this market to make sure that we get our fair share of the international travel dollar. And to do this we need to develop a new strategy, jointly with the private sector, to energize our international tourism efforts.

The amendment which we will be offering later today would provide $12 million in funding for USTTA, for the transition into this new public/private-sector entity. What this entity will look like is being formulated as we

speak. It should be available for scrutiny at the upcoming White House Conference on Travel and Tourism.

Australia and Canada have recently created such public/private-sector partnerships. These new organizations are each spending approximately $100 million this year and have developed creative and aggressive programs in promoting national tourism on behalf of their respective countries.

I do not come here to defend our current tourism effort. It is in need of a major overhaul. But terminating this program cold turkey is not the appropriate step to take. We must make a transition into a new market entity. This transition is important for all of us. It gives us time to begin implementing the recommendations that will emerge from the White House conference on tourism, time to help kick off the 1996 summer Olympics in Atlanta, in time to make a transition into a new public/private-sector partnership.

Later on, Mr. President, I will urge my colleagues to support this amendment, which enjoys wide bipartisan support. And I note the work of my distinguished colleague from Montana, Senator BURNS, who is a prime cosponsor with me.

Mr. President, I do not know if anyone else needs to speak, but I reserve the remainder of the time and yield the floor.

Noting no other Senator on the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2815

Mr. LAUTENBERG. Mr. President, I rise in support of this amendment, which would increase our commitment to addressing the menace of domestic violence.

Mr. President, violence against women is one of this country's most important and pressing problems. Every 5 minutes a women is raped. Every 12 seconds a woman is battered. In fact, these figures reflect only reported crimes—the actual incidence rates probably are even higher.

These numbers are mind-numbing and appalling. Yet they fail to convey the horror and the long-term physical and emotional harms that victims suffer. Sexual assault can have a devastating impact on a woman, especially if she cannot get access to needed counseling and support services. These harms can last a lifetime. It's therefore critical that counseling and other services are available to all victims.

That is one reason why last year I was proud to cosponsor the Violence Against Women Act. This act offers a comprehensive approach to fighting family violence and sexual assault.

Under the act, Federal funds are distributed to the States for victim support services, for training of law enforcement officers, for expansion of law enforcement and prosecution agencies, and for the development of more effective programs to prevent violent crimes against women.

Funds have already been distributed to the States under this act, and it's off to a good, strong start. But it's only a start. The job is far from done.

Unfortunately, in its current form, this bill would take a step backward in the battle against domestic violence. Last year, Congress authorized about $175 million for fiscal year 1996. Yet the bill would cut that level by $75 million.

In my view, that cut would be a big mistake. We simply should not turn our back on the commitment that we made last year to fighting violence against women.

So, Mr. President, I strongly urge my colleagues to support this amendment, which would provide critical additional funds for the Violence Against Women Act. It's time to make the fight against domestic violence a top national priority.

Mr. LEAHY. Mr. President, I thank my colleagues for restoring funding for the Violence Against Women Act programs. When we passed the Violence Against Women Act as part of the Violent Crime Control and Law Enforcement Act of 1994, we responded to the crisis of domestic violence that exists throughout this country, in rural and urban communities, among poor, middle class, and the rich, affecting women and children of all races and religions. Those programs are among the most important parts of the comprehensive legislation we considered and passed last year after 6 long years of debate.

To have gutted these programs through the appropriations process would have been wrong. To have done so when the funding for them was assured through the Violent Crime Reduction Trust Fund would have breached our commitment to the American people. A 99 to 0 vote in favor of restoring this funding sends a powerful message to those who would have cut funding for these important programs.

Law enforcement and community-based programs cannot be kept on a string like a yo-yo if they are to plan and implement programs to begin to deal with domestic violence and its prevention. They need to be able to initiate programs and hire staff and have a sense of stability if these measures are to achieve their fullest potential.

I know, for instance, that, in Vermont, Lori Hayes at the Vermont Center for Crime Victims Services; Judy Rex and the Vermont Network Against Domestic Violence and Sexual Abuse; Karen Bradley from the Vermont Center for Prevention and Treatment of Sexual Abuse; and others, provide tremendous service under difficult conditions. Such dedicated individuals and organizations, working in a most difficult area, on problems that were once thought to be intractable, ought not be promised support and then frustrated just as they are about to expand needed programs and services throughout the State. Vermont was the first State to apply for and the first State to begin receiving its Violence Against Women Act grant. The Governor and his advisers had made plans and promises and announced grantees through the State. That implementation of Violence Against Women Act programs ought to proceed without further delay, distraction or diminution.

What Congress needs to do is to follow through on our commitments, not to breach them and violate our pledge to law enforcement, State and local government, and the American people. Invading trust funds dedicated to Violence Against Women Act programs is simply not justifiable. Neither the elimination of the corporate alternative minimum tax nor capital gains taxes is sufficient reason for this cut.

Funding for important programs implementing the Violence Against Women Act and our rural crime initiatives should not be cut without debate and justification. There has been neither.

Earlier this year I offered a resolution rejecting the ill-advised House action cutting $5 billion from the Violent Crime Reduction Trust Fund. The Senate agreed and proclaimed its intent to preserve the trust fund so that we could fulfill the promise of the Violent Crime Control and Law Enforcement Act and our commitment to do all that we can to reduce violent crime in our local communities. The action we take today takes an important step in that same direction and preserves to our Violence Against Women Act programs funds that are needed for their proper implementation.

Mr. HOLLINGS. Regular order, Mr. President.

VOTE ON AMENDMENT NO. 2815

The PRESIDING OFFICER (Mr. DEWINE). Under the previous order, the Senate will now vote on the Biden amendment No. 2815.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio [Mr. GLENN], is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 474 Leg.]

YEAS—99

Abraham	Bryan	D'Amato
Akaka	Bumpers	Daschle
Ashcroft	Burns	DeWine
Baucus	Byrd	Dodd
Bennett	Campbell	Dole
Biden	Chafee	Domenici
Bingaman	Coats	Dorgan
Bond	Cochran	Exon
Boxer	Cohen	Faircloth
Bradley	Conrad	Feingold
Breaux	Coverdell	Feinstein
Brown	Craig	Ford

Frist	Kerrey	Pell
Gorton	Kerry	Pressler
Graham	Kohl	Pryor
Gramm	Kyl	Reid
Grams	Lautenberg	Robb
Grassley	Leahy	Rockefeller
Gregg	Levin	Roth
Harkin	Lieberman	Santorum
Hatch	Lott	Sarbanes
Hatfield	Lugar	Shelby
Heflin	Mack	Simon
Helms	McCain	Simpson
Hollings	McConnell	Smith
Hutchison	Mikulski	Snowe
Inhofe	Moseley-Braun	Specter
Inouye	Moynihan	Stevens
Jeffords	Murkowski	Thomas
Johnston	Murray	Thompson
Kassebaum	Nickles	Thurmond
Kempthorne	Nunn	Warner
Kennedy	Packwood	Wellstone

NOT VOTING—1

Glenn

So the amendment (No. 2815) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2816, AS MODIFIED

The PRESIDING OFFICER. Under the previous order, the McCain amendment is now in order. There are 4 minutes equally divided.

The Senator from Arizona.

Mr. McCAIN. Mr. President, I thank the Senator from Colorado, Senator BROWN, for his perfection of this amendment, which has allowed us to agree on this very important savings of between $300 and $700 million for the taxpayers of America. I thank Senator BROWN for that.

I yield what remaining time I have to the Senator from North Dakota.

Mr. DORGAN. Mr. President, I associate myself with the Senator's remarks. I hope the Members of the Senate will vote to approve this amendment. It does deal with $300 to $700 million that ought to inure to the benefit of the taxpayers of this country, and that is why we offered the amendment.

I yield the remainder of my time.

Mr. BYRD. Mr. President, may we have an explanation of the amendment?

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. May we have an explanation of the amendment? I understand it is a good amendment, but I would like to know what it is if we are going to be voting on it.

The PRESIDING OFFICER. The Senator will suspend. If those Members having discussions could please retire to the Cloakroom?

The Senator from Arizona.

Mr. McCAIN. Mr. President, the amendment expresses, legally, that the U.S. Senate is in favor of obtaining the maximum value for a spectrum which is valued between $300 and $700 million. This is done by auction. The perfecting amendment by Senator BROWN is that, in case there is another way to gain more money for the taxpayers, that path should be pursued by the FCC as well.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I have no particular reason to enter into any discussion on this amendment. But when we get 4 minutes allotted for explanation of these amendments, that is a very worthwhile injection into the unanimous-consent request. It means something, for the rest of the Members to understand what we are voting on.

I am not on the committee that has jurisdiction of that particular subject. I would just like a little clearer explanation. I expect to vote for the amendment. I hear a lot of good things about it. But I am sure a lot of Members have not heard debate on it. I have not.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, the reason my remarks this morning were brief is that we came at 9 o'clock this morning and began a debate on this very amendment per the unanimous-consent request last evening. There was debate on both sides of the amendment beginning at 9 o'clock this morning. My intention was not to take up any more of the Senate's time. It was debated both this morning and partially last night.

I think the amendment is a good agreement. I respect the Senator from West Virginia's interest in making sure everybody understands what we are voting on just prior to the vote, but I think we have had a good debate on this. I hope the Members will support the amendment.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, is there any time left?

The PRESIDING OFFICER. There is 1 minute 19 seconds.

Mr. BYRD. Mr. President, I am one of those Senators who stayed around all afternoon waiting on a vote yesterday. I was told there would be a vote at 9 o'clock last night, so I went home about 6:30 or 7 to get some dinner, to be with my good wife, Lady Byrd, and my little dog, Billy Byrd.

So I came back. Then, after I got back, it was my understanding there was not going to be any vote until this morning. So, as a result of all of that, to make a long story short, I did not get to listen to the debate. I do not know about other Senators, but, with that kind of discussion here, it is pretty hard to keep body and soul together with a good meal once in a while, let alone understand what is in these amendments.

The PRESIDING OFFICER. The question now is on the amendment No. 2816, as modified. The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MACK (when his name was called). Present.

Mr. FORD. I announce that the Senator from Ohio [Mr. GLENN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 475 Leg.]

YEAS—98

Abraham	Feingold	Lugar
Akaka	Feinstein	McCain
Ashcroft	Ford	McConnell
Baucus	Frist	Mikulski
Bennett	Gorton	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Gramm	Murkowski
Bond	Grams	Murray
Boxer	Grassley	Nickles
Bradley	Gregg	Nunn
Breaux	Harkin	Packwood
Brown	Hatch	Pell
Bryan	Hatfield	Pressler
Bumpers	Heflin	Pryor
Burns	Helms	Reid
Byrd	Hollings	Robb
Campbell	Hutchison	Rockefeller
Chafee	Inhofe	Roth
Coats	Inouye	Santorum
Cochran	Jeffords	Sarbanes
Cohen	Johnston	Shelby
Conrad	Kassebaum	Simon
Coverdell	Kempthorne	Simpson
Craig	Kennedy	Smith
D'Amato	Kerrey	Snowe
Daschle	Kerry	Specter
DeWine	Kohl	Stevens
Dodd	Kyl	Thomas
Dole	Lautenberg	Thompson
Domenici	Leahy	Thurmond
Dorgan	Levin	Warner
Exon	Lieberman	Wellstone
Faircloth	Lott	

ANSWERED ''PRESENT''—1

Mack

NOT VOTING—1

Glenn

So the amendment (No. 2816), as modified, was agreed to.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 2819

Mr. GRAMM. Mr. President, is the pending business the Domenici amendment?

The PRESIDING OFFICER. Under the previous order, that is the pending business.

Mr. GRAMM. Mr. President, I ask for the yeas and nays on the Domenici amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, we have before us an appropriations bill. We have imposed, on top of the House bill, our particular appropriators' likes and dislikes. But the underlying bill that the House sent to us essentially says, ''Let's keep the Legal Services Corporation, but let's make sure that those things that the Legal Services Corporation has been doing that many Senators and many people in this country don't think they ought to be doing, that those things be prohibited.''

The House did not abolish the program. The House in the appropriations bill funded legal services with these prohibitions attached.

What I am going to do now is to take the amendment that came out of the subcommittee that is on the floor on legal services, and I am going to substitute for it something very much like the House bill. So for those who wonder whether this amendment, the Domenici-Hollings and many others, whether this bill will permit the Legal Services Corporation to do business as usual, I submit to them we are going to let this Legal Services Corporation do what the House said they can do.

And what is that?

First, let me say that this approach to justice came under the regime of Richard Nixon. And what he said then I believe applies today, and maybe more so.

He said:

[It] gives those in need new reason to believe that they too are part of ''the system'' . . . [by doing what we have learned] that justice is served far better—

And continuing with his quote—

and differences are settled more rationally within the system rather than on the streets. Now [he said in the 1970's] is the time to make legal services an integral part of our judicial system.

Now, since that point until now, legal services has had a rocky career. There is no doubt about it. It has been debated on the floor. And it has been perilously close—but for Senator Rudman as a stalwart, perhaps it would have been changed and it would not be around. But essentially what the Senator from New Mexico intends is that this program be around as Richard Nixon intended.

Should not the poor people in the country should be served by lawyers when they themselves have a need for a lawyer. In fact, it was mentioned back in the days when the Legal Services Corporation was established that lawyers would be down there with the poor people taking their case, the idea of storefront justice.

I say to everyone, I do not know what is wrong with the United States of America saying to the needy people of this country that the judicial system is not only for the rich. What is wrong with that? Why should a Republican be ashamed to say that? That is what America is all about.

What we do not want, at least this Senator does not want, is the legal services to be suing the Legislature of the State of New Jersey when they are adopting a new welfare program and saying, ''You can't do that.'' I think they should leave that to somebody else. And this program ought to be for the individual poor people who have a need for a lawyer.

Let me suggest—although it is a criminal case, so it does not necessarily apply to what we are doing, I say to the Senator from South Carolina—but has anybody ever seen a situation, such as the O.J. Simpson trial, where somebody who has plenty of money gets plenty of justice?

But here we have in a poverty neighborhood an American citizen who is being thrown out of their house, and they have a legitimate reason as a tenant to remain there. But if they do not get a lawyer, they are out on the streets.

If that same thing existed and there was a tenant in a million dollar house for the summer and the landlord wants to throw them out, they will get justice, will they not? They will get justice. They will get a lawyer. Why should that poor person not get that?

Frankly, I am one of those who wants to make Government smaller. I want to balance the budget. I do not take a back seat to anybody on this. But what I am trying to do in this amendment is to return the level of funding to legal services to what it was 3 years ago. I am cutting 15 percent, I say to the Senator from Hawaii, Senator INOUYE, 15 percent from this funding. Frankly, there are not a lot of programs getting cut much more than 15 percent. There are some, and some are zero, but for the most part, 7, 8, 9 percent, even in these very difficult times.

I want to read the prohibitions, and might I say, Mr. President, I am fully aware—I am fully aware—that a number of people are going to vote for my amendment and it will be adopted. It will be adopted, you can count on it. There are a number of people who do not like all these prohibitions, but they are going to vote for it. They are going to vote for this amendment because they do not want to see an appropriations subcommittee, which probably had one hearing for 1 hour, 1½ hours, 2 hours, decide in a funding bill to do away with this program and create a new block grant that we do not even understand and, at the same time, provide such a small amount of funding for the next year that there will not be anything being done for the poor people.

We might just as well say for the next year there is nothing going to be done under the funding level here. If anybody wants to challenge me on that, do not look at the budget authority number, look at the outlay. It is a little tiny bit; $53 million in outlays for the whole next year. The House put in $278 million; $53 million versus a House Republican conservative $278 million. I bring it up to $340 million, which is 15 percent less than last year.

Let me read the prohibitions. If there is anyone here who does not think the Domenici-Hollings amendment wants to make this program work for individual American needy people in their personal litigation, let me read the prohibitions.

First, you cannot use any of this money or any money from other sources that is in the Legal Services Corporation to advocate policies relating to redistricting.

No class action lawsuits—no class action lawsuits—can be filed. To revert back to what I just described: Individual legal services for individual Americans in need, for their case and their cause and only that.

You cannot use it for influencing action on any legislative, constitutional amendment, referendum, or similar procedures of Congress, State, or local legislative bodies. The same as the House.

You cannot use it for legal assistance to illegal aliens. Americans, Americans are what we have in mind, American citizens.

Supporting, conducting training programs relating to political activities, abortion litigation, prisoner litigation—same as the House—welfare reform litigation, except to represent individuals on particular matters that do not involve changing existing law.

I can go on with the rest. I put them in the RECORD last night. If anybody has any questions on them, I will be pleased to answer them.

I know sitting on the floor right now are perhaps two Senators who would rather have less of these, and I understand that. But I want to do one thing at a time this year. I do not want to do away with the program. I do not want a block grant program designed in an appropriations subcommittee which I believe essentially is destined to get rid of the system.

I have left one part of this discussion to my good friend Senator HOLLINGS because, obviously, the chairman of the subcommittee, Senator GRAMM from Texas, is going to get up and talk about the offsets. I have not been privy to reading what he might say, nor has he shared it with me, but I can see it coming.

He is going to suggest, for instance, that salaries and expenses for the Federal judiciary, that I took a little bit of money away from—yes, I did. But we have consulted regularly on that and, basically, we are convinced that because we have increased it sufficiently, to take a small amount off, they are going to be all right, as compared to doing away with legal services for the needy and the poor.

He is going to talk, for instance, about U.S. attorneys. Let me just tell you about that one. I know the argument. The argument is going to be: There are a lot of criminals out there who need to be prosecuted. Are we going to take away prosecutions of those people to keep legal services?

Mr. President, I say to my fellow Senators, what actually happened is the subcommittee took the President's budget on new U.S. attorneys, which was more than adequate. All the U.S. attorneys around said, ''That's a great number,'' and the subcommittee increased it, maybe increased all of those kinds of funding, so there would not be anything left for a program like this. Then we come along and say, ''Let's bring it down to the President's budget,'' and we are cutting U.S. attorneys.

Having said that, there are a number of other things. I am going to ask if my good friend, Senator HOLLINGS, who is my cosponsor, who has chaired this subcommittee and is the ranking member, might address the Senate now with

reference to his feelings on this amendment. And with particularity, if he can talk a little about the offsets, I would appreciate it.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank my distinguished colleague from New Mexico and former ranking member and the former chairman of our subcommittee.

In short, Senator DOMENICI talks with expert knowledge, intimate knowledge, of this particular appropriations measure.

First, Mr. President, Legal Services is a many splendored thing. I do not say that lightly. Yes, it was an idea that came to fruition, you might say, under President Nixon. But it was long since due, if you please. We had many in the vineyards who had been working over the many years. In the 1920's, Charles Evans Hughes; our former President, Chief Justice William Howard Taft; and Elihu Root supported the formation of a standing committee on legal aid work in the American Bar Association. And Taft wrote, in 1925:

> Something must be devised by which everyone, however lowly and however poor, however unable by his means to employ a lawyer and to pay court costs, shall be furnished the opportunity to set this fixed machinery of justice going.

Then it was some 40 years later, almost 50 years later, that our distinguished former President, Richard Nixon, came in 1970 with the American Bar Association. When I say a ''many splendored thing,'' everybody thinks voluntarism begins in Washington, families begin in Washington, and everything that is done begins in Washington.

The fact of the matter is that society has been very concerned about the poor having their day in court. We, as oldtime trial lawyers, know that, yes, with respect to damage suit cases and injury cases whereby you can get a verdict, there is a long since-established system that has worked extremely well—and now the Brits, by the way, are coming to it—whereby we take it on a contingent basis because we know the poor injured do not have the money to investigate, do not have the money to pay hourly payments that they get in Washington.

There are 60,000 lawyers under billable hours running around this town who have never been in a courtroom. On the contrary, the poor can come to a trial attorney. He will take care of the court expenses, the medical expenses of the doctors testifying, the experts drawing plats and what have you. And if he loses his case, the poor do not owe the lawyer anything. That is a contingent fee basis of trial work.

But when it comes to these smaller cases where there is not any contingency to be paid—namely, a domestic case, an unemployment case, a landlord-tenant case—for the poor, in these types of cases, there is no time in it or benefit with it with respect to the practicing bar. And they have been more or less shut out over the many, many years until President Nixon and the Legal Services Corporation under the American Bar Association got started.

Now, what has developed? Mr. President, I think there are over 130,000 lawyers. Imagine that. Do away with this and give it to the Governors with block grants and try to find the lawyers who are going to come in on this particular thing. They will start putting tanks on the lawn again and buying airplanes and everything else of that kind. As the distinguished chairman of my subcommittee knows, you get that fish—what do we call it, the ''funk'' or the ''monk'' fish, whatever it was.

I refer, Mr. President, to when we had the stimulus bill and they had asked the poor mayors what they would like to do to stimulate the economy. They came up with cemeteries. They came up with golf courses. They came up with parking garages down there for the youngsters to park at Easter-time on Fort Lauderdale beach. We had to put in all kinds of restrictions there on the local effort and what local people can spend for legal services, or not spend.

What you are doing is really destroying, if you please, one of the finely honed societal developments, led, if you please, by the American Bar, and former Associate Justice Lewis Powell when he was the president of the American Bar Association, and President Richard Nixon.

I remember it well. I had been involved in this since the early days. We have had stormy times. After it got started, everybody was jumping up and down on the Capitol steps, saying ''Hey, hey, go away; how many did you kill today?'' and all of that. Yes, we were paying them—Legal Services were paying them. I had to treat that with amendments and say, no, let us get back. We are not paying for demonstrating groups to come.

As the distinguished Senator from New Mexico has referred to, and as concerned as the Senator from Texas and the Senator from South Carolina are, the next thing you know a couple years ago, there went Legal Services suing the State of New Jersey.

That is not the intent. There are plenty of moneys for class actions for these other groups. You have to keep it couched and carefully controlled in order to maintain the credibility and the effectiveness of the program.

So I welcome the restrictions that have been put on by Senator GRAMM and others here with respect to class actions and illegals and otherwise. Let us make sure that we maintain the integrity of the program. There were 250,000 cases last year, and, yes, with a $400 million appropriation. The communities come, the local governments and State governments, and the various bar associations, and they pitch in over $255 million—over half again what we appropriate at the Federal level. If you put in a Federal program—if you put in block grants—I can tell you right now they are not going to come with any moneys. You really are messing up a many, many splendored thing.

So the Senator from New Mexico is following right now in the footsteps of the Senator from New Hampshire, Senator Rudman. I will tell you right now, do not get in Senator Rudman's way if you were going to challenge the Legal Services. He would knock over chairs and tables and come at you. I used to get out of the way. I am glad to get out of the way now under the leadership of Senator DOMENICI for the most worthwhile program that has been developed in a bipartisan fashion and should be maintained as such.

What about these offsets? First you have to understand that the moneys taken from the Department of Justice have to be understood. I think I have the exact figure here. After all of the offsets are taken in the Domenici-Hollings amendment, what happens is we still have increased the Department of Justice a tremendous amount in percentage—some 18-percent increase over this year. In other words, let us not argue. Let us take and try on the offsets from the Department of Justice, because I am a champion of that particular Department, having been the chairman, and ranking member now, and on this subcommittee for over 25 years. The FBI will have an 18.3-percent increase. The FBI, with its attorneys and otherwise, will be left with a $418 million increase in this budget for 1996 over 1995.

So, in no way are we cutting back. It is a tremendous increase. The truth of the matter is, I was actually amazed—and I have sworn I am not going to ever use any charts around here. I am tired of it. If we want to balance the budget, we ought to put a tax on charts used by us politicians on the floor of the Senate and I think we could balance the budget. Every time I look around, somebody is running out with one of these mischievous charts.

It is jogging my memory here. By 1983, after almost 200 years of history, we got to a $3 billion budget in the Department of Justice. Mind you me, having been the chief law enforcement officer, having been a Governor of a State, we have argued, and still argue, that the police powers—those that belong rightfully at the local level—that the primary function of the State government is its police powers to enforce the law.

So we have been very askance about the Federal Government coming in on all of these particular initiatives because we in Washington like to get reelected.

We identify with the hot-button crime issue and we throw money at it. We have had more crime bills come spewing down the road. We have $1 billion backed up there in the Bureau of Prisons. We are building them like

gangbusters all over the land, all because crime is a hot-button item.

It took 200 years to get to $3 billion. This budget here for 1996 will carry us to $16.95 billion—17 billion bucks.

Actually, the increase—taking the offsets in our Legal Services amendment—the increase will exceed $3 billion, even accounting for these offsets in the Department of Justice. In other words, in 1 year we are increasing the Justice budget by the amount that the total budget was just a few short years ago.

We think it is needed. As I say, I was on the committee. I did not just do it willy-nilly, but we wanted to respond to immigration, border patrol, the prison system, the Marshals Service, the FBI, Drug Enforcement Administration, and on down the list. We have been working and working and working.

Here we come with an offset respecting the particular crime lab. Now, with respect to that crime lab, I know full well that the Department of Justice is working with the Department of Defense to get that new laboratory. It is a technical support center. That is over $300 million in new initiatives.

Earlier this year, Judge Freeh came up with that particular need after the tragic incident down there in Oklahoma. Just sort of like a pinata, broke it, and all the gifts went in all directions. We just started anywhere that anybody came up from the Justice Department. We voted aye, we said you got that, do not worry about it, and everything else.

Looking at that laboratory which we support out there at Quantico, we know full well that the Justice Department is conferring now with the Department of Defense, and they do not even have the site and the land and everything else.

What we are trying to do is support the requirement as needed, and to back up the money and the particular offset. It is not a question of us not supporting the technical support center, but once we get the site we have to draw the plans and everything else of that kind. What we need to do is go in a deliberate fashion there.

With respect to the topography lab, it is a new one. There is an effort in this Government along that line. You have to speak advisedly because most of this is classified, but I can tell you here and now if you have served on the Intelligence Committee—I served with the Hoover Commission back in the 1950's investigating these type of activities—that they are awfully, awfully expensive. The effort, I think, that we have now in the Government is more than adequate without starting a new one.

I defer to the chairman of our Intelligence Committee, the distinguished Senator from Pennsylvania, Senator SPECTER, and our ranking member, Senator ROBERT KERREY of Nebraska. I am confident that the offsets there are not going to injure in any fashion the efforts of law enforcement or the Department of Justice.

With respect to the working capital fund, what we need to do is get a little bit of discipline there. We have been liberal. In fact, we like it when we handle these appropriations. If we had a working capital fund in everybody's subcommittee, the chairman and the ranking member could allocate around, somewhat like Plato's famous saying that a politician ''makes his own little laws and sits attentive to his own applause.'' All we need to do is not tell people about this working capital fund and we can sit around and divide money up all year long. The offset here is not going to hurt the Department of Justice, in any fashion.

With respect to the conference success, I want to quote to you the inspector general's observations contained in the annual report: ''We are concerned that a successful decennial census could be jeopardized if the Bureau attempts to accomplish too much too soon.''

Now, we never had any hearings on the census on our side of the Capitol. The distinguished chairman, Mr. ROGERS of Kentucky, over on the House side did have deliberate hearings that went into the census budget in detail, and the amounts offset in the Domenici-Hollings amendment provide $67 billion that we came in on this particular appropriations over the House, which is $60 million above the current year.

In reality, Mr. President, what we are doing is almost like conferees—we can see ahead down the road when we confer with our House friends on a conference of committees to finalize the figure that we are going to reconcile this backwards.

What happens is that Senator DOMENICI has very wisely come and said we should do a little of the reconciling at this particular point to save an awfully important entity. We do not want to change this to any kind of block grant. We do not want to be cutting it back.

These lawyers—they are inspired. I commend the law schools of the country over for inspiring these young attorneys coming out to do good, to offer public service—with many of them wanting the experience and saying, ''I will give a little bit of time now to the public. I will learn and be able to better represent, and I will be doing some good for the communities in which I live.'' So they come in there.

I think the average fee of any legal service lawyer—they are earning around $30,000 to $33,000 a year. No, that does not take these Ivy League boys who come and go into downtown Washington and downtown New York who start out at $80,000 a year and everything else. That is not the case. We are not enriching any lawyer. We are enriching society.

This amendment is well conceived. The offsets, I can say, will never cause injury. On the contrary, what is still left is over and above the House side. Even though our budget, our 602(b) allocation was $1 billion below the House, we still come in $750 million above the House with these particular offsets. We are in good, strong shape. I think the Senator from Texas would want to join us in this amendment.

Mrs. KASSEBAUM. Mr. President, I want to take just a few minutes as the chairman of the Labor and Human Resources Committee, the authorizing committee for the Legal Services Corporation, to express strong support for the Domenici-Hollings amendment.

I want to say why I do so. We have had an extensive hearing in the Labor and Human Resources Committee. We heard from witnesses on both sides of the issue. I have introduced legislation in the Senate as a companion measure to the McCollum-Stenholm bill that is under consideration in the House. We will soon be marking up this legislation in the Labor Committee.

As Senator DOMENICI pointed out quite correctly, the language in the Domenici-Hollings amendment is agreed to by some and not by others. It is language that returns the Legal Services Corporation to its original mission. It is language that reforms the program in a way that restores it to what it was supposed to be when the legislation was passed and became law.

The most important part of this amendment is that it restores funding for the Legal Services Corporation. That point has already been well made by Senator DOMENICI and Senator HOLLINGS. As Senator DOMENICI also noted, this amendment has important reforms and tight restrictions on permissible activities. I would just like to reiterate those, if I may, very briefly. In terms of operational reforms:

Frist, a competitive bidding system will be required for awarding LSC grants based on quality and cost effectiveness of service; second, the governing board of LSC grantees will establish priorities for the types of cases to be handled. thrid, the LSC grantees will be required to keep time sheets identifying the client and matter under consideration; fourth, LSC grantees will be restricted in their use of non-LSC funds. and fifth, finally, there are new safeguards requiring the identification by name of plaintiffs and statement of facts underlying the case before initiating litigation or settlement negotiations.

On the restrictions side, Legal Services grantees: May not lobby for passage or defeat of legislation, may not represent illegal aliens, may not participate in training programs and political activities, may not take redistricting cases, may not participate in abortion litigation, may not participate in class actions, may not challenge welfare reform, may not defend tenants evicted from public house projects because of drug dealing, may not take fee-generating cases, and may not solicit clients.

These are all very important restrictions. Some, as Senator DOMENICI pointed out, were far too restrictive for

some of our colleagues. Nevertheless, I believe these restrictions provide the necessary guidance to take Legal Services back to its primary mission, which is providing assistance to those who need legal representation and cannot afford it.

It is very important that low income individuals have the same access as anyone else to the legal system. But it seems to me, over the years, the Legal Services Corporation has gone far beyond its initial mandate when the law was passed under President Nixon's leadership.

So, for all of those reasons, I strongly support and have high regard for the legislation that has been put forward as an amendment by Senator DOMENICI and Senator HOLLINGS.

I yield the floor.

Mr. DOMENICI. Will the Senator yield for a question?

Mrs. KASSEBAUM. I will be happy to yield to the Senator from New Mexico.

Mr. DOMENICI. It is correct, is it not, that the competitive bidding of grants is in this amendment? You stated it as being part of your new reauthorizing, but you have noted it is in this amendment also, is that not correct?

Mrs. KASSEBAUM. That is right, the competitive bidding is based on quality and cost effectiveness.

Mr. DOMENICI. That is correct.

Mrs. KASSEBAUM. Yes.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, there are an awful lot of points to make in opposition to this amendment. Let me begin by saying it is very interesting that those who came here today to defend the Legal Services Corporation refuse to defend it. The best they can do in the way of defense is to give us a list of outrageous abuses that they propose that we try to stop. That is a very weak defense indeed.

But I do not want to begin by talking about legal services, and going through the list of numerous organizations who support the committee's position and strongly oppose the Domenici position to bring back a Federal Legal Services Corporation. There are really several issues in debate here, and the one I want to begin with is about the choices that are made to allow Senator Domenici to fund the Legal Services Corporation at $340 million.

Our dear colleague from South Carolina glosses over those decisions by simply saying that we are providing a lot of money to fight violent crime and drugs, and so taking some of that money away from that battle in order to fund legal services is probably a good thing. This is one of those occasions where I wish we could sit around the kitchen table of every working family in America and discuss this issue. If we could, this amendment, and probably those who advocate it, would be thrown out of the kitchen. But let me go through the programs that are cut by the Domenici amendment, and their ramifications.

Because our colleagues are so desirous of preserving the Legal Services Corporation as a Federal entity, many of them, who have stood on the floor of the Senate and argued for block granting decisionmaking back to the States when it served their purpose, now oppose letting States run a program which is a renegade program, which has abuses that probably equal or exceed that of any other similar Government program funded in the modern era by our Government. But let me start by going through what is being cut, what is being denied to the American people to provide $340 million to legal services. And then I will try to talk about why legal services does not deserve the $340 million.

First of all, the Domenici amendment cuts the general legal activities of the Justice Department by $25,131,000. In listening to Senator HOLLINGS, you get the idea we are just throwing so much money at the Justice Department they do not know what to do with it, they have all the prosecutors they need to prosecute every drug dealer and every violent criminal in America. The only problem with that argument is the American people know that does not reflect reality.

In fact, our bill, which Senator DOMENICI cuts from, already provides $10 million below the level requested by President Clinton in his proposed appropriation for the Justice Department. So, before we would cut the $25 million from the legal activities section of the Justice Department, as Senator DOMENICI proposes, we already, because of lack of funds, had cut it by $10 million.

Where is this money coming from? Since the average person in America does not understand what the general legal activities of the Justice Department does, here is what it does.

It prosecutes organized criminals, it prosecutes major drug traffickers, it prosecutes child pornographers, it prosecutes major fraud against the taxpayer, it prosecutes terrorism and espionage cases. These cuts will mean that we will have 200 fewer prosecutors in America next year, if this amendment passes, who will be prosecuting organized crime, major drug traffickers, child pornographers, major fraud against the taxpayer, and terrorism and espionage cases.

I remind my colleagues, we are already providing $10 million less than what the President has requested. But the Domenici amendment would further cut the level of funding for those prosecutors to prosecute organized crime, major drug traffickers, child pornographers, and fraud against the taxpayer, terrorism and espionage by another $25 million.

Legislating is about choosing. And what the Domenici amendment says is a federally run Legal Services Corporation, a program that is so filled with outrageous actions that even in this amendment Senator DOMENICI seeks to curb their abuses—the Domenici amendment says that funding that Federal program is more important than providing prosecutors to prosecute organized crime and the other crimes that I have outlined.

The second cut made by the Domenici amendment, in order to fund legal services, is cutting $11 million from the U.S. attorneys office.

I remind my colleagues, and the American people who might be watching this debate, that our U.S. attorneys are our first line of defense. They are the people who try cases in Federal court. They are the people who prosecute major drug dealers. The amendment that is offered by Senator DOMENICI, to preserve the Federal Legal Services Corporation, will terminate at least 55 assistant U.S. attorneys who otherwise would have been employed in prosecuting violent criminals and drug felons, pornographers, and terrorists.

I believe that legislating means making choices. I ask my colleagues, is preserving the Federal Legal Services Corporation rather than letting the States run it through a block grant program worth taking 55 assistant U.S. attorneys out of prosecution in America? My answer is no.

We had a discussion about construction for the FBI. As I read the amendment, what is being cut here is not crime labs, though I strongly support them, what is being cut is the very heart of new facilities construction at the FBI Academy. The Domenici amendment, in the name of preserving a federally run Legal Services Corporation, a corporation which as of today has filed a lawsuit against every State in the Union that is trying to implement welfare reform by requiring welfare recipients to work, which is funding drug dealers who are trying to stay in public housing units so that they can more efficiently market drugs, in seeking the preservation of this Federal program, the Domenici amendment would require cutting the FBI Academy and its construction at Quantico by some $49 million.

I have a letter from the head of the FBI. Unfortunately, as Senator HOLLINGS noted, it is a classified letter. But it is certainly not classified material that the head of the FBI has said that our facilities are becoming antiquated; that as we have cut the President's request for the FBI in recent years, we have not kept up our infrastructure and that we are not going to be able to maintain our training if we do not build new facilities. I remind my colleagues that by a vote of 91 to 8, we passed the Comprehensive Terrorism Prevention Act, which authorized the expenditure of these moneys. I remind my colleagues that the FBI Academy does not just train FBI agents and Federal law enforcement officials, but in fact, last year, it trained 1,225 State and local law enforcement officials.

Obviously, the question that we have to ask is this: Is preserving the Federal Legal Services Corporation rather than

block granting it to the States—as we are block granting aid to families with dependent children, as we are block granting Medicaid—is preserving this program as a Federal program run out of Washington, DC, worth denying the facilities we need in Quantico to train FBI agents and to train 1,225 State and local law enforcement officials?

Mr. President, my answer to that question is clearly no. Anyone who has found themselves in the jurisdiction of a Federal court knows that we have a real problem in the Federal court system because it is very difficult to get a case to trial.

In terms of getting civil justice, we are now talking about years of waiting to get a case before the court. In terms of criminal justice, in bringing violent criminals to justice, we are talking about a long wait because we do not have enough courts, we do not have enough judges, and we do not have enough prosecutors.

The Domenici amendment, in order to preserve a federally run Legal Services Corporation—which is opposed by every organization in America from the Farm Bureau Federation to Citizens Against Government Waste—would cut $25 million from our Federal courts. That $25 million, for example, could fund 400 probation officers to supervise convicted criminals in America.

I ask my colleagues, is it worth denying 400 probation officers supervising criminals in order to fund the Federal Legal Services Corporation? My answer is no. Let me remind my colleagues that the funds that would be cut include funds that provide mandatory drug testing for all convicts who are released to assure that while they are on parole and on the streets, they remain drug free. Is a cut in funding for this program worth making to preserve a federally funded Legal Services Corporation? My answer is no.

Mr. President, there are a lot of other programs that have been cut here. Strong cases can be made for them. I want to make one more case. It is not a case that is going to sway anybody because if you are not swayed by these other cuts, then you are not going to be swayed by this. If you have long ago decided that this agency we call Legal Services, which has such a poor record that not even those who would fund it can defend it, then no amount of prosecutors, no amount of training police officers, no amount of drug testing for convicted felons who are walking the streets on probation, no amount of supervision is going to change your position.

But I do want to mention one other offset which very few people find moving, but I think it is important; that is, substantial cuts in census are included in this offset. Most people do not understand the census. It is obvious that Alan Greenspan understands the census because Alan Greenspan, in testimony before the Banking Committee, asked that we fully fund data gathering. The apportionment of population in terms of measuring the number of people in America to decide how many Congressman each State has depends on the census.

The allocation of funding for programs, from the FBI to the new Medicaid Program to virtually every other program undertaken by the Federal Government, depends on the census. We are getting ready to have the 2,000 census, the millennium census. It is the only millennium census that we are ever guaranteed to take in the United States of America. I hope it will be the first of many. But this is a critically important census.

If we take the recommendations of Senator DOMENICI and we cut funding for this census, we are going to have to make the funding up in future years as we get closer to the year 2000. If we make this cut now, the 2000 census will be more inefficient. It is going to cost more money. And I do not believe that this is an exchange that should be made.

Let me talk about the amendment itself, and then turn to the Legal Services Corporation.

It is interesting to me that this amendment has a great big budget gimmick in it. And the great big budget gimmick in it is that it has a delayed obligation. For those who do not understand what that means, let me try to explain. One of the things some people often do in Congress when they want to spend money but do not want people to know that they are spending money is to use a delayed obligation, which means they provide money but do not let the money kick in at the beginning of the fiscal year. In this case, the money would kick in a month from the end of the fiscal year, on September 1, so that there is a huge surge of $115 million that would become available on that date, 30 days before next year's budget would have to be written.

Now, what is the purpose of this budget gimmick? The purpose of this budget gimmick is not only to commit a huge surge of contracts for legal services a month before the new budget, but it also makes it difficult next year for us not to fund those programs because they will already be underway, and so when the chairman of this subcommittee next year writes a budget, that chairman will be looking at $115 million of programs that will kick in just 30 days before the end of the fiscal year.

What is the purpose of this gimmick which we have denounced over and over and over again? I have heard many Members of the Senate stand up and denounce these delayed obligations as basically perverting the budget process itself.

What is the purpose of this? The purpose of this is basically to try to get the level of spending in this program up at the end of the year so that next year it will be harder to achieve the savings to which we have already committed in trying to achieve our balanced budget.

Let me talk about legal services, and I want to begin by asking unanimous consent that letters from the Citizens Against Government Waste in opposition to any attempt to restore or increase funds to the Legal Services Corporation, the Christian Coalition, the American Farm Bureau, the Family Research Council, the Traditional Values Coalition, the Coalition for America, the Eagle Forum, that these letters strongly opposing the Domenici amendment and supporting the action of the committee be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

LETTERS IN OPPOSITION TO THE LEGAL SERVICES CORPORATION

COUNCIL FOR CITIZENS AGAINST GOVERNMENT WASTE,
Washington, DC, September 20, 1995.

DEAR SENATOR: The Council for Citizens Against Government Waste (CCAGW) and our 600,000 members support H.R. 2076, the Commerce, Justice, State, and the Judiciary Appropriations for FY 1996. CCAGW commends Subcommittee Chairman Phil Gramm and Appropriations Chairman Mark Hatfield for sending to the floor a bill which spends $4.6 billion less than the budget request and $1 billion less than the House version of H.R. 2076.

The $26.5 billion spending bill prioritizes the budgets for each agency under its jurisdiction. For example, the Justice Department receives $15 billion for FY 1996, almost $3 billion more than in FY 1995, to fight our nation's crime problem. But with a nearly $5 trillion national debt, there is always more to cut from spending bills.

CCAGW supports the following amendments:

The McCain amendment to mandate the Federal Communications Commission to auction the one remaining block of Direct Broadcast System spectrum. If this spectrum is auctioned, communication industry experts believe it will sell for between $300 to $700 million. It is in the best interest of the American people that the spectrum be sold at public auction.

The Grams amendment to eliminate the East-West Center and the North/South Center, saving taxpayers $11 million next year.

CCAGW opposes the following amendments:

Any attempt to restore or increase funds to the Federal Maritime Administration.

The Inouye amendment to restore funds to the Federal Maritime Administration.

The Bumpers amendment to restore funds for the Small Business Administration.

The Bumpers amendment to restore funds for the Death Penalty Resource Centers.

CCAGW urges you to support these amendments and H.R. 2076. It prioritizes cuts while ensuring that state and local law enforcement agencies are properly funded. CCAGW will consider these votes for inclusion in our 1995 Congressional Ratings.

Sincerely,

THOMAS A. SCHATZ,
President.
JOE WINKELMANN,
Chief Lobbyist.

CHRISTIAN COALITION,
Washington, DC, September 14, 1995.

Re Key Vote Notice: Eliminate Legal Services Corporation—Support Block Grants for LSC.

DEAR SENATOR: The Senate will soon consider the FY 1996 Appropriations for Commerce, Justice, State and Judiciary. On behalf of the 1.7 million members and supporters of the Christian Coalition, I urge you to vote against any amendments that would weaken the committee-approved provision regarding the block grant for Legal Services Corporation (LSC).

LSC is a failed agency. Elimination of the Corporation and instead providing legal services to the poor through block grants to the States, as the Appropriations Committee approved, is the minimum that Congress can do to begin to put an end to the well known abuses of the Corporation. The block grant alternative provides a better delivery system for legal services to the poor and breaks up the monopoly currently enjoyed by the Corporation.

Christian Coalition opposes any amendments that would restore the Corporation, increase funding or in any way water down the restrictions currently provided for in the bill. Before the 1996 election, Christian Coalition will distribute 50–60 million voter guides and congressional scorecards. Weakening amendments regarding LSC will be key votes.

Thank you for your consideration of our views.

Sincerely,

BRIAN C. LOPINA,
Director, Governmental Affairs Office.

AMERICAN FARM BUREAU FEDERATION,
Washington, DC, September 18, 1995.

Hon. SPENCER ABRAHAM,
U.S. Senate, Washington, DC.

DEAR SENATOR ABRAHAM: In a very short time, the Senate will consider H.R. 2076, the Commerce, Justice, State Appropriations bills, as amended by the Senate Commerce, Justice, State Appropriations subcommittee. The portions of this bill which pertain to delivery of legal services for the indigent will create an entirely new program for this purpose. This program is designed to function, much like public defender programs which provide legal representation for indigent criminal defendants. We believe this program will meet the goal of ensuring civil legal assistance for the poor without the many problems which have plagued the Legal Services Corporation since its inception in 1974. With specific respect to the delivery of legal aid to the indigent, we urge you to support H.R. 2076 as reported by the Appropriations Committee.

The operative provisions of H.R. 2076 with respect to legal services were modeled on a bill introduced by Rep. George Gekas (R–PA) and recently reported to the House by the Judiciary Committee. This legislation was carefully crafted to ensure that the federal program would finance representation for causes of action for which there is no other provision for payment of attorney's fees, or where it is highly unlikely that the ''target'' would have resources with which to pay attorney's fees. Thus, the bill did permit grantee attorneys to pursue ''deadbeat dad'' cases, but not employment law cases (because most employment discrimination and other types of employment laws provide for the recovery of attorney's fees for a successful plaintiff). We urge you to oppose any effort to add to the bill provisions allowing causes related to employment law, constitutional challenges, and consumer fraud.

We believe the Gekas legal services bill, as included in H.R. 2076, will create a federal program that will provide basic legal services for indigent people.

DEAN KLECKNER,
President.

FAMILY RESEARCH COUNCIL,
September 14, 1995.

DEAR SENATOR: On behalf of the more than 250,000 families which the Family Research Council represents, I would like to urge you to expedite the intent of the House-passed budget resolution by declining to reauthorize the Legal Services Corporation (LSC). Reform of the Corporation is not an acceptable option due to the fact that it has not been successful within the last fifteen years, particularly since liberal activists who favor a militant agenda have been charged with the oversight of the program. Past experiences have shown that merely adding restrictions to the program is a futile gesture.

The LSC was created to perform legal services for the poor and the underprivileged, yet the liberal agenda of its proponents has overtaken for its original mission. The antifamily litigation that the LSC supports is appalling. We have found cases where LSC has litigated with a pro-abortion agenda, they have been active in blocking attempts to reform welfare, aiding the homosexual agenda, supporting the notion that children have rights independent of their parents, and representing convicted criminals in civil cases.

The Legal Services Act, as amended in 1977 and in subsequent appropriations acts, prohibit LSC from being involved in abortion related cases. Nonetheless, LSC has remained firmly committed to abortion on demand and has worked around the law in an attempt to secure unlimited taxpayer-funded abortions. LSC has worked against waiting periods, physicians' consent, parental consent, parental notification and spousal notification. This blatant disregard for the congressional intent is another facet in the argument to not reappropriate.

Attempts to reform LSC have failed and it should be abolished. During consideration of the Commerce-Justice-State Appropriations bill, the Appropriations Committee passed a compromise proposal that provides $210 million for state level legal assistance in FY 1996. While we believe that these funds would be better dedicated to deficit reduction, we can accept the Committee's action. I strongly urge you to oppose any effort that may be made to undermine the Committee's proposal through the amendment process, including efforts to restore funding for the fatally flawed Legal Services Corporation.

Sincerely.

GARY L. BAUER,
President.

CHRISTIAN COALITION ET AL.,
September 14, 1995.

U.S. Senate,
Washington, DC.

DEAR SENATOR: The Senate will soon be voting on the Commerce, Justice State and Judiciary Appropriations bill. The subcommittee bill includes a proposal to provide legal services to the poor through a state administered grant structure, rather than through the Legal Services Corporation.

On behalf of the millions of members of our collective organizations, we strongly urge you to vote in favor of the state grant proposal. Here are several strong reasons to support a state grant rather than the Legal Services Corporation:

There is accountability. Attorneys are required to keep time records. These records are subject to audit. Currently, Legal Services Corporation grantees are accountable to no one—no time records, no audits. That leads to mischief.

Attorneys will receive funds *after* they perform legal services, not before. Currently, Legal Services Corporation grantees receive a pot of money up front, and spend it as they see fit without accountability. That lead to mischief.

The state grant proposal breaks up the Legal Services monopoly. It enables attorneys and law firms all across America to openly compete for legal services contracts. If ever there was a case for open competition and against a monopoly, this is it. The Legal Services Corporation has not credibility when it comes to being wise stewards of the taxpayer's money.

The state grant proposal restricts the legal causes of action for which taxpayer funds can be used to a specified list of noncontroversial legal needs such as bankruptcy actions and cases of spousal abuse. There would be no more taxpayer funded lawsuits related to abortion, labor strikes, etc.

Restrictions to prohibit mischief are included. There would be no more taxpayer-funded lobbying, grass roots organizing, class action lawsuits, etc.

We strongly urge you to vote against any amendments to strip out the bill's state grant proposal for legal services. Thank you for your consideration.

Sincerely,

CHRISTIAN COALITION,
FAMILY RESEARCH COUNCIL,
TRADITIONAL VALUES COALITION,
EAGLE FORUM,
CONCERNED WOMEN FOR AMERICA,
AMERICAN FAMILY ASSOCIATION,
LIFE ADVOCACY ALLIANCE.

COALITIONS FOR AMERICA,
Washington, DC, June 28, 1995.

Hon. ROBERT DOLE,
U.S. Senate,
Office of the Majority Leader,
Washington DC.
Hon. NEWT GINGRICH,
House of Representatives,
Office of the Speaker,
Washington DC.

DEAR BOB AND NEWT: In the budget-cutting atmosphere on Capitol Hill these days, it is important not to overlook the Legal Services Corporation. Here the need is not merely to cut some of its programs, reduce its budget or to try yet again to reform it, but rather to eliminate it entirely. This year, President Clinton has proposed $415 million for the Legal Services Corporation budget. That amount, however significant, pales in comparison to the trouble and expense this agency causes.

The agency charged with providing legal services for those who could not afford to pay for them instead because a hotbed of judges and legal activities who used their authority to interpret the law to fit their personal ideology. The Legal Services Corporation has an agenda that includes providing benefits for illegal aliens, alcohol and drug addicts, and criminals. It accomplishes this task by suing any and all levels of government to prevent them from putting the brakes on any kind of welfare spending, and indeed to increase welfare benefits whenever and wherever it can do so.

Here are some examples of the Legal Services Corporation at work:

In 1992, Southern Minnesota Regional Legal Services won disability benefits for a 40-year old heroin addict by making the case that his addiction kept him from being able to work.

In North Carolina, an LSC grantee stopped the eviction from a public housing unit of a tenant who had shot and killed a child in the complex.

The LSC has blocked eviction of drug dealers from public housing units on technicalities such as the charges being ''too vague.''

In Virginia, a public housing tenant who had acted in a violent and dangerous manner won her case with aid from LSC because some minor mistakes were made in the attempted eviction.

In addition, the LSC has blocked efforts by states to establish paternity for child support payments, opposed Medicaid program cuts, and demanded that criminals in mental health facilities be granted the right to vote.

In short, the Legal Services Corporation has sought to subvert every federal, state or local effort to penalize, restrict, reform or otherwise hold accountable an individual for his or her behavior. Measured by the exact nature of its ''legal services,'' it has been estimated that the true cost of the Legal Services Corporation since its founding has been some two trillion dollars, with no end in sight.

We understand that in normal Congressional politics it is easier to reduce an agency's funding than to eliminate entirely both the funding and the agency. In this case, however, no other solution will do. The Legal Services Corporation is wholly bad, and if now, in the time of a Republican majority in both Houses of Congress, it is merely reduced, it will certainly spring back to life later with greater vigor. It must be killed, dead.

We stand ready and willing to work with the leadership of both Houses in pursuing this objective, but we will accept no lesser goal nor outcome. Quite simply, if the Legal Services Corporation is not eliminated in this year's budget—funded at zero—we cannot be credible in arguing to our members and supporters that the Republican Party means that it says about creating change in Washington.

Sincerely,

PAUL WEYRICH,
National Chairman.

COALITIONS FOR AMERICA MEMBERS

Morton C. Blackwell, VA GOP National Committee.

Andrea Sheldon, Traditional Values Coalition.

——— ———, National Center for Policy Analysis.

Amy Moritz, National Center for Public Policy Research.

Mike Korbuy, United Seniors Association.

Penny Young, Concerned Women for America,

Ronald W. Pearson, Conservative Victory Fund.

Brian W. Jones, Center for New Black Leadership.

Joan L. Hutu, American National Council for Immigration Reform.

Brian Lopina, Christian Coalition.

D. Scott Peterson, Conservative Victory Committee.

——— ———, Association of Concerned Taxpayers.

Martin Hoyt, American Association of Christian Science.

Major F. Andy Messing, Jr., USAR (ret.), National Defense Council Foundation.

Martin Mawyer, Christian Action Network.

Peter T. Flaherty, Conservative Campaign Fund.

Kenneth F. Boehm, National Legal and Policy Center.

——— ———, The Conservative Council.

Karen Kerrigan, President, Small Business Survival committee.

Fred L. Smith, Jr., Competitive Enterprise Institute.

James Wootton, Safe Streets Coalition.

——— ———, Eagle Forum.

James L. Martin, 60 Plus Association.

Grover G. Norquist, President, Americans for Tax Reform.

Michael Farris, President, Home School Legal Defense Association.

Kevin L. Kearns, President, United States Business and Industrial Council.

Michael E. Dunker, Family taxpayer's Network.

Grant Danes, Assistant Director, Christian Network Association, Inc.

Mr. GRAMM. Mr. President, I think it would be useful for the American people to get some idea what the Legal Services Corporation is doing. The Heritage Foundation has put together a list of lawsuits that describe the horror stories that have come into existence as a result of the Legal Services Corporation and its actions. Let me just read the first one, but I am going to ask that all of these be put in the RECORD. The first one is a Georgia Legal Services lawsuit June 15, 1995. Here is a short summary.

The Legal Services Corporation defended a Miss Whitehead from eviction after crack cocaine was found in her apartment, arguing that she had not violated her lease because she was not present at the time the search warrant was executed.

I have page after page after page of these horror stories, and let me turn to the last page. Here is a lawsuit—I will just pick the second one on the page. The Legal Services Corporation sued to obtain unemployment benefits for a teacher fired for drug possession, arguing that the teacher had not lost his job through misconduct.

I am perfectly aware—and I do not want anybody to be confused—that Senator DOMENICI has nothing like the restrictions on legal services that I would impose in the committee bill, but he cannot stand here and defend the Legal Services Corporation, and instead he has proposed limiting actions they can take.

I should like to remind my colleagues that this is the same Legal Services Corporation that President Reagan was not able to rein in as a Federal program. I am hopeful that if the amendment is successful, which I hope it will not be, we can at least enforce some of these restrictions.

I also can go through other examples of Legal Services misconduct. Let me just pick one here on agriculture because the American Farm Bureau very strongly opposes this amendment. This is a lawsuit filed by the Legal Services Corporation on June 23, 1995. All these examples are from this year or last year. You do not have to go back 20 years to find horror stories.

The Legal Services Corporation sued a tomato farmer, the neighbor who rented the labor camp to the farmer, their crew leaders, and the tomato packing company when a farm worker got injured while reaching under a moving truck at a labor camp.

Every day in America the Legal Services Corporation is hassling American agriculture.

Mr. President, I ask unanimous consent that this very short, concise list of abuses, most of which occurred in 1994 and 1995, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LSC LITIGATION HORROR STORIES

LSC grantee and source	Description
DEFENDING CRIMINAL ACTIVITY	
Legal Services Corporation litigation has prevented public housing authorities from evicting drug dealers in Georgia, New York, Florida, and Connecticut. The LSC has also defended tenants who engage in the malicious destruction of property in public housing projects. Finally, one LSC grantee even contested the eviction of a tenant whose son had shot and killed a child living in a neighboring apartment in the complex. Query: How does this sort of litigation improve the lives of poor people?	
Georgia Legal Services: Macon Housing Authority v. Tabitha Whitehead: Testimony by John Hiscox before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995).	Defended against eviction of Tabitha Whitehead after crack cocaine was found in her apartment, arguing that she had not violated her lease because she was not present at the time the search warrant was executed.
LSC grantee:. Testimony by Michael Policy Pileggi before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995).	Public Housing Authority (PHA) prevailed in evicting Victoria W. following the confiscation of 66 vials of crack cocaine in her unit. To avoid eviction, legal services filed a chapter 7 bankruptcy petition on her behalf that led to an automatic stay.
Wexford Ridge Associates v. Bankston (1993): ''The Real Cost...''., by Phillips and Ferrara.	Defended against an eviction for drug dealing, arguing that a notice stating the tenant was ''dealing cocaine out of your unit'' was too vague.
Housing Authority of Norwalk v. Harris, Conn. Super. No. SPNO 9009–10295 (1993).	Defended against the eviction of a man whose daughter was selling drugs on the property, claiming that he was not aware of the activity.
Charlotte Housing Authority v. Patterson (1994): ''The Real Cost . . .'', by Phillips and Ferrara.	Defended against eviction even though the tenant's son had shot and killed a child who had been living in another apartment in the complex.
Moore v. Housing Authority of New Haven Connecticut Conn. Super. Ct. (1993): ''The Real Cost...'', by Phillips and Ferrara.	Successfully argued that the local Public Housing Authority (PHA) must repair apartment damage even though it was caused by the tenant or her guests.
Georgia Legal Services: Macon Housing Authority v Tina Burke: Testimony by John Hiscox before House Jud. Subcommittee on Commercial and Adm Law (June 15, 1995).	Defended against eviction of Tina Burke after drug dealing was observed in her apartment, arguing that she did not violate her lease because she was not in possession of crack cocaine or cash at the time of the arrest.
Macon Housing Authority v. Patricia Osborne: Testimony by John Hiscox before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995).	Defended Patricia Osborne from being evicted after undercover officers purchased crack cocaine outside her back door.
Macon Housing Authority v. Enga Scott: Testimony by John Hiscox before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995).	Fought the eviction of Enga Scott and her son Shon after Shon pled guilty to possession of cocaine with intent to distribute.
Neighborhood Legal Services: Testimony by Harriet Henson before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995).	Has repeatedly defended tenants in Pittsburgh from eviction for reasons including tearing up the property, violating the lease (having dogs), and dealing drugs in their apartments.
Legal Services of Greater Miami: Furr v. Simmons (1993): ''The Real Cost...'', by Phillips and Ferrara.	Argued that a landlord of a government-subsidized housing facility in Florida could not evict a tenant whose daughter was dealing drugs on the premises because he had prior knowledge of the drug activity and had failed to take action to stop it.
LSC grantee: Buffalo Municipal Housing Authority v. Jones (1993): ''The Real Cost...'', by Phillips and Ferrara.	Successfully argued that a public housing tenant in New York who had engaged in criminal or drug activity could not be evicted without 30 days prior notice.
Connecticut Legal Services: Edgecomb v Housing Authority, U.S. Dist. Ct. for the District of Conn. (1994): ''The Real Cost...'', by Phillips and Ferrara.	Stopped termination of a tentant's housing subsidy for drug related criminal activity because the tentant had not been allowed to confront and cross-examine witnesses. Legal service lawyers were awarded $20,000 for this case.
LSC grantee: Allen v. Great Atlantic Management Co. (1993): ''The Real Cost...'', by Phillips and Ferrara.	Defended a tenant against eviction who had engaged in violent and destructive conduct on the property.

LSC LITIGATION HORROR STORIES—Continued

LSC grantee and source	Description
FAMILY CASES	
Legal Services Corporation attorneys have provided legal assistance to the poor in some very curious ways. LSC grantees have filed suits arguing that unemancipated minors have a right to their own public housing units, that children should be able to terminate their parents' rights over them, and that homosexuals should be able to adopt children.	
Lehigh Valley Legal Services: Testimony by Kenneth Boehm before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995). The Morning Call (March 2, 1995).	Represented a 16-year-old juvenile delinquent in his quest to retain parental rights to the child he fathered by raping a 13-year-old girl. The father had a history of other criminal offenses and has repeatedly failed to comply with his probation.
Legal Service of Greater Miami: Cox v. Florida 656 So.2d. 902 (1995).	Represented two homosexuals in their fight to overturn a Florida law that prohibits homosexuals from adopting a child.
Idaho Legal Services: Testimony by Kenneth Boehm before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995).	Sued on behalf of the Ogala Sioux Tribe for custody of a 4-year-old boy who has lived with his adoptive family since he was born. The tribe claimed rights because the boy is half-Sioux. The boy's family had to sell their home to raise money for the case.
Legal Services of Greater Miami: K v. K (1992): "The Real Cost of the Legal Services Corporation," by Howard Phillips (Conservative Caucus) and Peter Ferrara (National Center for Policy Analysis), June 14, 1995.	Argued that children should be able to sue to terminate their parents rights over them.
Central Pennsylvania Legal Services: Rodriques v. Reading Housing Authority 8 F.3d. 961 (1993): "The Real Cost . . .", by Phillips and Ferrara.	Sued to force the Reading (PA) Housing Authority to accept as tenants minors who had not been emancipated from their parents.
Legal Services Organization of Indiana: Indiana Dept. of Public Welfare v. Hupp 605 N.E.2d 768 (1993).	Sued the state to stop termination of AFDC benefits to a parent whose children had been removed from her home by the state because she had failed to exercise responsibility for the day-to-day care and control of the children.
CHILD SUPPORT	
Legal Services Corporation grantees have successfully blunted efforts by North Dakota and Michigan to require welfare mothers to identify the deadbeat dads of their children to welfare officials.	
Legal Assistance of North Dakota: S. v. North Dakota Department of Human Services 499 N.W. 2d. 891 (1993).	Successfully argued against states requiring mothers receiving welfare subsidies to identify the fathers so the state can pursue him for child support.
Oakland Livingston Legal Aid in Michigan: In Re Schirrmacher (1993): "The Real Cost . . .", by Phillips and Ferrara.	Successfully argued against states requiring mothers receiving welfare subsidies to identify the fathers so the state can pursue him for child support.
HOUSING	
Legal Services Corporation grantees have sued state and local governments to demand expensive new housing "rights." These rights include more government subsidized housing, higher rental allowances, and payment of child care, furniture storage and transportation expenses. LSC grantees have also attempted to silence ordinary citizens who oppose the placement of housing for drug addicts and the mentally ill in their neighborhoods.	
LSC grantee: Herrara v. City of Oxnard (1994): "The Real Cost . . .," by Phillips and Ferrara.	Sued City of Oxnard (CA) to demand more government subsidized housing.
Lubold v. Snider (1993): "The Real . . .," by Phillips and Ferrara.	Suit against Pennsylvania arguing a "right to shelter" provided by the government.
Legal Aid Society of NYC: McCain v. Dinkins 84 NY 2d. 216 (1994).	Suit against New York City arguing a "right to shelter" provided by the government.
Coalition to End Homelessness w/ Amy Eppler-Epstein, Esq.: Hilton v. City of New Haven 233 Conn. 701 (1995).	Suit against New Haven (CT) arguing a "right to shelter" provided by the government.
LSC grantee: Jiggetts v. Perales 202 A.D. 2d. 341 (1992).	Sued New York City to establish higher rental allowances.
Cambridge and Somerville Legal Services: Aguirre v. Gallant (1993): "The Real Cost . . .," by Phillips and Ferrara.	Sued to stop reductions in monthly rental allowances in Massachusetts.
Western Massachusetts Legal Services: Berrios v. Gallant (1991): "The Real Cost . . .," by Phillips and Ferrara.	Demanded under an emergency housing assistance program in Massachusetts for furniture storage, moving expenses, child care, transportation, and more.
National Center for Youth Law: Testimony by Kenneth Boehm before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995).	Argued that citizens could not oppose the establishment of housing in their neighborhood for recovering drug addicts and the mentally ill.
LSC grantee: Testimony by Michael Pileggi before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995).	Claimed that PHA failed to timely transfer Christine L. from a five-bedroom unit to a six-bedroom unit even though PHA has a limited number of six-bedroom units and, in fact, was able to transfer her within seven months of her initial request.
Community Legal Services Inc., of Philadelphia, PA: Gwendolyn Smith v. Philadelphia Housing Authority U.S. Dist. Ct. for the Eastern Dist. of PA. (1995): Testimony of Mike Pileggi before House Judiciary Subcomm. on Commercial and Adm. Law (June 15, 1995).	Sued Philadelphia Housing Authority on behalf of Gwendolyn Smith, claiming PHA failed to perform over 20 repairs in her unit. An investigation showed that much of the damage was caused by the tenant (fire damage, holes punched in walls and doors).
Community Legal Services: Lupina Rainey v. Philadelphia Housing Authority U.S. Dist. Ct. for the Eastern Dist. of PA. (1993): Testimony of Mike Pileggi before House Judiciary Subcomm. on Commercial and Adm. Law (June 15, 1995).	Represented Lupina R. in a civil rights lawsuit against PHA even though they suspected her for engaging in criminal conduct including dealing drugs, extorting money, loan sharking, and filing bogus bankruptcies on behalf of PHA tenants.
LSC grantee: Testimony of Mike Pileggi before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995).	Filed suit against Philadelphia Housing Authority on behalf of Krissy J., claiming that a $50 check owed to her was not timely processed. The case was settled immediately, yet PHA had to pay over $500 in attorney's fees to legal services.
CRIMINAL RIGHTS	
Legal Services Corporation grantees have pursued a number of novel theories all designed to broaden the rights of convicted criminals. In one instance, an LSC grantee challenged Washington state's reform of its parole laws that would have ensured longer sentences for convicted criminals.	
LSC grantee: Decker v. Wood (1992): "The Real Cost...", by Phillips and Ferrara.	Sued to demand that criminals in a mental health facility be allowed to vote.
Thorton v. Sullivan U.S. Dist. Ct. for the District of Alabama: Testimony by Dean Kleckner before Senate Committee on Labor and Human Resources (June 23, 1995).	Sued to obtain Social Security disability benefits for a thief who was injured while committing the crime.
Evergreen Legal Services: Powell v. Du Charme (1993): "The Real Cost...", by Phillips and Ferrara.	Sued to prevent changes in the Washington parole laws from being applied to those currently in prison. The reformed laws would have ensured longer sentences for convicted criminals.
National Legal Aid and Defender Association: Testimony by Kenneth Boehm before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995), The New York Times (Feb. 8, 1995).	NLADA was the only group to oppose a bill (passed the House by a vote of 432 to 0) requiring criminals to pay compensation to their victims. NLADA represents legal services lawyers and receives substantial funding from LSC grantees.
Georgia Legal Services: Testimony by Kenneth Boehm before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995), Los Angeles Times (Nov. 12, 1994).	Filed petitions to get the release of David Naggel from a maximum security mental hospital. Nagel was imprisoned for murdering both of his grandparents when they refused to give him the keys to their car.
Greater Orlando Area Legal Services: Testimony by Kenneth Boehm before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995), The Orlando Sentinel (Sept. 30, 1994).	Sued Orange County on behalf of 18 former inmates to eliminate segregation of inmates based on whether or not they have been exposed to the AIDS virus. Infected inmates were returned to the general inmate population without notification to other inmates.
Legal Assistance Foundation of Chicago: Duran v. Elrod 760 F. 2d. 756 (1985).	In pioneering "inmates rights," this case set a legal precedent that has resulted in cable television and expensive weights rooms in prisons.
ALIENS	
Legal Services Corporation grantees have filed lawsuits arguing that aliens, both legal and illegal, are eligible for welfare benefits, Medicaid, Social Security disability benefits and food stamps. In one lawsuit, an LSC attorney argued that an alien who was deported twice for criminal activity was entitled to Social Security retirement benefits.	
LSC grantee: Graham v. Richardson 403 U.S. 365 (1991).	Argued that states may not deny welfare benefits to aliens.
Gulfcoast Legal Services: Smart v. Shalala 9 F.2d. 921 (1993).	Sued to obtain Social Security retirement benefits for an illegal alien who had been deported twice for criminal activity.
Pine Tree Legal Assistance of Maine: In Re Doe (1992): "The Real Cost...", by Phillips and Ferrara.	Sued to obtain Social Security disability benefits for an alien seeking political asylum.
Western Reserve Legal Services in Ohio: Joudah v. Ohio Department of Human Services 94 Ohio App. 3d. 614 (1994).	Sued to obtain AFDC, Medicaid, and food stamp benefits for an alien family seeking political asylum.
Legal Aid Society of San Mateo County: Gillen v. Belshe (U.S. Ct. App. for the First Circuit): Testimony by Dean Kleckner before Senate Committee on Labor and Human Resources, (June 23, 1995).	Filed suit to force California to provide health services, welfare, and food stamps while deportation proceedings are pending.
California Rural Legal Services: Naranjo-Aguilera v. INS 30 F.3d. 1106 (1994).	Sued to prevent enforcement of INS regulations that would deny aliens the right to participation in an agriculture program if they have been convicted of a felony or two misdemeanors.
California Rural Legal Assistance: Catholic Social Services v. Reno: Testimony by Dean Kleckner before Senate Committee on Labor and Human Resources (June 23, 1995).	Sued to challenge regulations governing the twelve month amnesty program enacted by Congress that requires illegal aliens to demonstrate that they lived continuously in the U.S. from Jan. '82 until Nov. '86 and that they are financially responsible.
California Rural Legal Assistance: Zambrano v. INS 972 F.2d. 1122 (1992).	Sued to challenge regulations governing the twelve month amnesty program enacted by Congress that requires illegal aliens to demonstrate that they lived continuously in the U.S. from Jan. '82 until Nov. '86 and that they are financially responsible.
WELFARE	
Legal Services Corporation grantees have won hundreds of billions of dollars in expanded rights to welfare benefits. In recent years, the LSC has sought to obstruct or stop welfare reform in nearly every state in which it has been attempted, including New Jersey, Michigan, Ohio, Minnesota, New York and California. What follows are but a few examples of litigation inspired by LSC grantees in this area:	
Legal Services of New Jersey: C.K. v. Shalala (1994).	Sued the state and federal government when they adopted a welfare experiment to eliminate routine increases in welfare subsidies to recipients having children.
Michigan Legal Services: Babbitt v. Michigan Department of Social Services (1991): "The Real Cost...", by Phillips and Ferrara.	Sued the state when AFDC benefits were reduced in 1992 under an appropriations bill requiring statewide across-the-board budget cuts.
Legal Aid Society of Cincinnati& Legal Aid Society of Dayton: Daugherty v. Wallace 87 Ohio App. 3d. 228 (1993).	Sued Ohio to stop reductions in the state's General Assistance benefits. They argued there is a right to welfare under the state's Constitution.
National Center for Youth Law: Angela R. v. Clinton 999 F.2d. 320 (1993).	Sued Arkansas to force the state to expand its child welfare system.
Kansas Legal Services: Allen v. Sullivan (1991): "The Real Cost...", by Phillips and Ferrara.	Won full SSI benefits for a claimant on the grounds that the room and board his mother provide could not count as income because it would have to be repaid.
LSC grantee: In Re Leistner (1994): "The Real Cost...", by Phillips and Ferrara.	Won public assistance for a minor even though the parents' home was available and won the claim that applicants were not required to pursue potential alternative resources as a condition of eligibility for food stamps.
Bland v. New Jersey Department of Human Services (1993): "The Real Cost...", by Phillips and Ferrara.	Won continued AFDC benefits for a recipient who became a VISTA volunteer rather than get a job. The stipend she received from VISTA was excluded from her income in calculating AFDC eligibility.
National Peurto Rican Coalition v. Alexander (1992): "The Real Cost...", by Phillips and Ferrara.	Demanded expansion of the Department of Education's vocational education program regardless of the availability of Federal funds.
Western Massachusetts Legal Services: Testimony by Kenneth Boehm before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995), USA Today (Jan. 10, 1995).	Filed suit on behalf of Arthur Cooney to get him back on welfare after he spend the $75,000 he won in a lottery. Most of his winning went to drugs and gambling.
Testimony by Kenneth Boehm before House Jud. Subcommittee on Commercial and Adm. Law (June 15, 1995), Readers Digest (July 1994).	Published a brochure detailing how to take advantage of a welfare rule allowing recipient to collect cash windfalls without losing public assistance for more than a month.
Southern Minnesota Regional Legal Services: Mitchell v. Stetfen (1992): "The Real Cost...", by Phillips and Ferrara.	Successfully struck down 6-month residency requirement for General Assistance benefits in Minnesota.
Monroe County Legal Assistance Corp.: Aumick v. Bane (1993): "The Real Cost...", by Phillips and Ferrara.	Brought suit against residency requirement for receiving New York General Assistance benefits.
Legal Aid Society of San Mateo County: Green v. Anderson (1993): "The Real Cost...", by Phillips and Ferrara.	Sued to strike down a one-year residency requirement for full AFDC benefits.
MEDICAID	
Legal Services Corporation grantees have sought, and often won, expensive expansions of the Medicaid programs in states such as California, Vermont, Pennsylvania, Missouri, New York, and Maine.	
LSC grantee: Clark v. Cage (1993): "The Real Cost . . .", by Phillips and Ferrara.	Successful suit against California demanding increased benefits under the state's Medicaid program. The LSC grantee won $1.2 million in legal fees.
Vermont Legal Aid: Garrett v. Dean (1993): "The Real Cost . . .", by Phillips and Ferrara.	Sued to stop a 2% cut in Vermont's Medicaid program.

LSC LITIGATION HORROR STORIES—Continued

LSC grantee and source	Description
LSC grantee: Felix v. Casey (1993): ''The Real Cost . . .'', by Phillips and Ferrara.	Sued Pennsylvania to challenge limits on cold medications and dental services under state Medicaid program.
Legal Services of Eastern Missouri: Nemnich v. Strangler (1992): ''The Real Cost . . .'', by Phillips and Ferrara.	Brought suit against Missouri challenging limits on the services provided under state Medicaid program.
LSC grantee: Sweeney v. Bane (1992): ''The Real Cost . . .'', by Phillips and Ferrara.	Sued to stop New York from requiring co-payments for its Medicaid program.
Fulkerson v. Commissioners (1992): ''The Real Cost . . .'', by Phillips and Ferrara.	Sued to stop the adoption of a system of co-payments for the Maine Medicaid program.
National Center for Youth Law: Barajas v. Coye (1992): ''The Real Cost . . .'', by Phillips and Ferrara.	Sued California to extend its Medicaid program to cover preventive dental services for children.

FARMING

Legal Services Corporation grantees have initiated many frivolous lawsuits against farmers, ten of which are listed here:

Farmworkers Legal Services of North Carolina: Testimony by C. Stan Eury before Subcommittee on Commercial and Administrative Law, (June 15, 1995).	Filed numerous frivolous class action lawsuits intended to strongly discourage the use of the H2A temporary agricultural worker program to supplement the labor force when there is an insufficient supply of U.S. workers.
LSC grantees: Testimony by Harry Bell before Subcommittee on Commercial and Administrative Law, (June 15, 1995).	Multiple lawsuits filed by LSC-funded attorneys in Florida have prompted the sugar cane growers to mechanize rather than continue their efforts to maintain a H2A temporary guest-worker program.
Friends of Farmworkers, Inc.: Testimony by Dean Kleckner before Senate Committee on Labor and Human Resources, (June 23, 1995).	After losing most of a lawsuit against Phil Roth, a fruit grower in Pennsylvania, FOF demanded $65,000 in attorney's fees from Mr. Roth, an amount more than 100 times greater than the disputed wages found to be due to the workers involved in the case.
Advocates for Basic Legal Equality: Testimony by Dean Kleckner before Senate Committee on Labor and Human Resources, (June 23, 1995).	Sued tomato farmer, the neighbor who rented the labor camp to the farmer, their crew leaders, and the tomato packing company when a farmworker got injured while reaching under a moving truck at the labor camp.
Michigan Migrant Legal Action Program: Testimony by Robert DeBruyn before Senate Committee on Labor and Human Resources, (June 23, 1995).	Sued DeBruyn Produce on behalf of three farm workers in an effort to use a very minor housing dispute to bring employer provided housing under landlord tenant law.
Texas Rural Legal Aid: Testimony by Robert DeBruyn before Senate Committee on Labor and Human Resources, (June 23, 1995).	Sued DeBruyn Produce on behalf of 27 plaintiffs, claiming that they were owed a full crop year's wages. In fact, none of the plaintiffs appeared in the company's employee, tax, or workers' compensation record. They never worked for the company.
Advocates for Basic Legal Equality: Testimony by Harry Bell before Subcommittee on Commercial and Administrative Law, (June 15, 1995).	Initiated litigation to undermine a cooperative dispute resolution agreement between pickle growers and a farmworkers' union (Farm Labor Organizing Committee).
LSC grantee: Testimony by Harry Bell before Subcommittee on Commercial and Administrative Law, (June 15, 1995).	An LSC attorney sued a grower in South Carolina for improper payment of a farmworker even though there was documented evidence that the worker was in jail in North Carolina at the time of the alleged violations.
Farmworkers Legal Services of North Carolina: Testimony by C. Stan Eury before Subcommittee on Commercial and Administrative Law, (June 15, 1995).	Litigated against the North Carolina Employment Security Commission, resulting in the destruction of a successful interstate clearance system used as a means to recruit farmworkers that provided continuity of employment to the workers.
California Rural Legal Assistance: Testimony by Dan Gerawan before Subcommittee on Commercial and Administrative Law, (June 15, 1995).	Charged Gerawan Farming with numerous violations relating to damaged housing. During the trial it was proven that the damage was not intentional, but that CRLA had actively promoted the intentional damage and even prohibited repairs from being done.

DISABILITY PROGRAMS

Legal Services Corporation grantees have aggressively sought Social Security disability benefits for alcoholics and heroin addicts. LSC attorneys have also sought disability benefits for novel categories of disability such as ''antisocial personality disorder'' and ''attention deficit disorder.'' In one instance, LSC attorneys argued an employer could not require an alcoholic worker to attend AA meetings on the theory that alcoholism is a disability protected under the ADA.

Legal Assistance Foundation of Chicago: Jones v. Shalala (1993): ''The Real...'', By Phillips and Ferrara.	Sued to obtain SSI disability benefits for 44-year-old due to alcohol and opinoid dependence and antisocial personality disorder.

LSC LITIGATION HORROR STORIES—Continued

LSC grantee and source	Description
Legal Aid Society of Metropolitan Denver; Trujillo v. Sullivan (1992): ''The Real Cost...'', By Phillips and Ferrara.	Obtained Social Security disability benefits for an alcoholic with back pain.
Southern Minnesota Regional Legal Service: In Re X (1992): ''The real Cost...'', by Phillips and Ferrars.	Won disability benefits for a heroin addict, claiming he was incapable of working.
Alaska Legal Services: S v. Sullivan (1992): ''The Real Cost...'', by Phillips and Ferrara.	Won Social Security disability for an alcoholic who was not able to work because he could not stop drinking.
Merrimack Valley Legal Services: Smith v. Sullivan (1993): ''The Real cost...'', by Phillips and Ferrara.	Won SSI benefits for a drug addict suffering from migraines and arthritis.
New Orleans Legal Assistance Corporation: Schultz v. Nelson (1993): ''The Real Cost...'', by Phillips and Ferrara.	Won benefits for a 56-year-old woman who claimed to have tendonitis that prevented her from engaging in productive work.
Central California Legal Services: Testimony by Harry Bell before Subcommittee on Commercial and Administrative Law, (June 15, 1995).	Sued an employer contending, a warehouse worker with a history of alcohol abuse could not be required to attend Alcoholic Anonymous meetings as a condition of employment arguing that alcoholism is a disability under the Americans with Disabilities Act.
Legal Aid Society of San Diego: Testimony by Harry Bell before Subcommittee on Commercial and Administrative Law, (June 15, 1995).	Asserted that Attention Deficit Disorder is a disability within the meaning of the Americans with Disabilities Act. The client was a welfare recipient who was studying for a degree in criminal justice as part of a state-sponsored training program.

OTHER

Legal Services Corporation grantees routinely bring other cases with no logical connection to serving the needs of the poor. These include cases to secure unemployment benefits for a teacher who was fired for drug use, challenging the use of literacy tests as a criteria for high school graduation and challenging a public health law designed to prevent individuals from intentionally spreading infectious diseases.

Tampa Bay Legal Services: Meyerson, A., ''Nixon's Ghost'', Policy Review, Summer 1995.	Challenged the establishment of a functional literacy test as a criterion for high school graduation in Florida. The test measures this ability to fill out basic job application, do basic comparison shopping, and balance a check book.
Vermont Legal Aid: Rodriguez v. Vermont Department of Employment (1992): ''The Real Cost...'', by Phillips and Ferara.	Sued to obtain unemployment benefits for a teacher fired for drug possession, arguing that the teacher had not lost his job through misconduct.
Legal Aid Society of Orange County: Tobe v. City of Santa Ana (1993): ''The Real Cost...'', by Phillips and Ferrara.	Sued claiming that the city's prohibition on camping out, using sleeping bags, and storing personal property, in the city streets was unconstitutional.
Evergreen Legal Services: Roulette v. City of Seattle (1993): ''The Real Cost...'', by Phillips and Ferrara.	Sued claiming the city's prohibitions on sitting or lying on sidewalks in commercial areas and aggressive begging were unconstitutional.
Ledesma v. Seattle School District (1991): ''The Real Cost...'', by Phillips and Ferrara.	Sued to demand bilingual education in Seattle schools.
Georgia Legal Services Martin v. Ledbetter: Testimony by Dean Kleckner before Senate Committee on Labor and Human Resources, (June 23, 1995 .	Challenged Georgia state law permitting involuntary hospitalization of individuals with infectious diseases who represent a danger to public health.
California Rural Legal Aid: Testimony by Harry Bell before Subcommittee on Commercial and Administrative Law, (June 15, 1995).	Sued to kill the Targeted Industries Partnership Program, joint federal-state project to direct labor law enforcement resources at problem employers, with the resultant spectacle of one taxpayer-funded entity suing another.

Mr. GRAMM. Mr. President, I also have another letter by a former Legal Service Corporation president, Terry Wear, explaining why in his experienced opinion the Legal Services Corporation cannot be reformed and should either be turned over to the States or be eliminated entirely. Frankly, he recommends that it be eliminated. I ask unanimous consent that this comprehensive letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

LAW OFFICES OF TERRANCE J. WEAR,
Washington, DC, September 20, 1995.

Senator PHIL GRAMM,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR GRAMM: My purpose in writing is to outline some of the problems that I encountered during my tenure as President of the Legal Services Corporation during portions of the Reagan and Bush Administrations, and to comment on S. 1221, the Senate companion bill (introduced by Senators Kassebaum and Jeffords) to HR 1806, the McCollum-Stenholm legal services bill.

By way of background, the federally funded component of the legal services program is one of Lyndon Johnson's poverty programs, having originated in the Office of Economic Opportunity in the Johnson Administration's Department of Health, Education & Welfare. The program was taken out of HEW in 1974, and set up in a free standing non-profit corporation similar in structure to that of the Corporation for Public Broadcasting.

The Legal Services Corporation (LSC) now disburses approximately $400 million annually in taxpayer funds, in the form of grants to local legal services providers, which in turn use these funds to hire full-time lawyers, who in turn provide civil legal services to eligible poor persons. Over the last fifteen years, the existing grantees have been able to insulate themselves from competition for these grants, and the same grantees now receive the monies year after year.

The President nominates candidates to the Corporation's 11-member Board of Directors, and these nominees are subject to Senate confirmation. Other than that, the President (and the Executive Branch) has no control over the actions of the corporation, its Board of Directors, or its approximately 320 grantee legal services providers.

Some believe that the LSC, and the federal component of the legal services program, was structured this way purposely; so no one (other than the local legal services grantees) could control which cases they handle. The grantee providers pick and choose the specific cases they handle, in order to ''raise the consciousness'' of the persons being sued, as well as the communities in which these persons reside. They sue to ''strike a blow'' for a favorite cause, or to create legal precedents that they believe are ''favorable'' to poor persons as a class, rather than to the individual poor client whose name appears on the court pleadings. Cases are pursued for purposes of setting these kinds of legal precedents, even when such action is not in the best interest of the client being represented. (See e.g., ''War on the Poor,'' National Review, May 15, 1995; pp. 32–44.)

Often, these programs refuse to serve poor persons with ''run of the mill'' or ''mundane'' legal problems; preferring to concentrate on the ''sexy,'' ''snazzy,'' or ''high profile'' cases that promote their view of ''how society should be.'' Let me cite just one example: A legal services program in Washington state refused to help a poor single mother (and her three children) with a landlord-tenant problem (and the woman lost her rental unit as a result), because the program was ''too busy'' with other matters.

The ''other matters'' that the program chose to handle at the time this woman was seeking legal assistance included:

Helping an alcoholic father, who claimed he was unable to work because of his ''disability,'' avoid paying child support for his children;

Preventing a public housing authority from evicting two tenants who had not disclosed their prior criminal histories in their rental applications, as they were required to do; and

Obtaining a nationwide permanent injunction blocking federal reductions in the cash and medical welfare benefits given to newly arrived refugees.

These examples clearly demonstrate the desire of many legal services programs to handle the ''high profile'' cases, in which they can ''strike a blow'' for a particular cause, at the expense of individual poor persons with ''mundane'' legal problems.

The ''housing authority'' example deserves further examination: Oftentimes, legal services programs try to block the eviction of known drug dealers from public housing units; effectively allowing these people to ply their trade for these housing units, and effectively putting the other tenants (and their children) into a drug war ''free fire zone.'' Under the existing legal services system, there is nothing anyone can do to prevent these government-funded lawyers from doing these things, regardless of the suffering they inflict on the innocent families who live in these housing units.

There are dozens of other examples of legal services lawyers inducing or aiding and abetting conduct that is self-destructive. Space does not permit me to mention them all, but some of the most egregious examples include:

Several legal services programs routinely advise poor parents to get a divorce, and poor non-abused teenagers to set up households of their own, all for purposes of maximizing the total amount of welfare payments that the group can obtain.

Other legal services programs work to obtain federal disability payments (amounting to hundreds of dollars per month) for alcoholics and drug addicts, who then use these funds to ''feed'' their self-destructive habits.

A legal services program obtained government disability payments for a convicted burglar; using as the basis for his claim the injuries the burglar sustained during the course of committing his crime.

Another legal services program helped a convicted rapist get custody of the child he sired as a result of the rape, even though a psychologist testified that the rapist was likely to harm the child.

Lastly, a legal services program employee being paid by the U.S. taxpayers used his position to organize civil unrest in New York's Attica Prison, in order to use this unrest to ''commemorate'' the anniversary of the 1971 Attica Prison riots, in which 43 inmates and guards were killed.

Based upon my experiences with the federal legal services program, I do not believe the current program is salvageable; consequently, it should be ended now. Some Members of Congress, such as Congressman McCollum, have suggested that the corporation and the current program should be continued, with restrictions placed on what the legal services lawyers could do, the kinds of cases they could handle, etc. This approach does not take into account the history of the program, and the past failed attempts to do the very same thing. Let me mention some examples:

When the federal legal services program was set up under the corporation in 1974, restrictions were written into the statute saying that legal services lawyers could not engage in political activities; or handle abortion cases, desegregation cases, etc. During the Reagan and Bush Administrations, similar attempts were made to limit the kinds of activities and cases that could be handled by legal services personnel. These restrictions were implemented through Appropriations Acts ''riders'' that were added to the bills that funded the program.

Many of these restrictions were effectively circumvented by the legal services lawyers; or were openly violated in the case of the handling of abortion cases. The plain facts are that the legal services activities are not interested in having their activities restricted in any way; and will not abide by the McCollum restrictions:

For example, certain legal services grantees handled several abortion cases during my tenure as LSC President, and refused to stop when I ordered them to do so. These programs then used the money, which I had given them to help poor people, to pay for a law suit to block imposition of the discipline I imposed on them. They successfully stalled my attempts to curtail their activities, even through they were clearly in violation of the federal Legal Services Corporation Act. These law suits dragged on for several years, and were subsequently settled by one of my successors, on condition that no disciplinary action be taken against these programs.

In 1980, after completion of the national census, the legal services programs spent over 28,000 hours and over $600,000 in federal funds on Congressional redistricting activity. Their purpose was to redistrict ''in'' those Members or candidates who were sympathetic to the political and social goals of these activists, and redistrict ''out'' those who were not. During the 1980s, many legal services programs tried to carry out this same sort of activity at the State and local levels.

In 1989, I caused the corporation to enact a regulation prohibiting the involvement of the legal services programs in redistricting, as it was clearly ''political activity'' which was forbidden under the Legal Services Corporation Act. I was then promptly sued by three of the legal services programs that I was funding. These programs used the money, which I had given them to help poor people, to pay for a law suit to keep me from enforcing this regulation; and successfully tied up its enforcement for more than three years.

The Congress should not be fooled by the McCollum attempt to reform the existing legal services program. There is no reason to believe a new set of restrictions of the kind proposed by Congressman McCollum (and Senators Kassebaum & Jeffords) will be any more effective than the earlier sets of restrictions were. These activist lawyers will simply exploit the ''loop holes'' in the McCollum restrictions, ignore them, or file law suits to challenge those they do not like; and the restrictions will be suspended for 4 or 5 years, while these cases work their way through the courts. The activists will use the courts to effectively gut any attempt to regulate their behavior, and will ''wait the Congress out'' until it gives up and goes on to other things.

This conclusion is particularly noteworthy, in light of the announced intent, on the part of the legal services lawyers, to make ''the road to welfare reform a legal obstacle course'' for the Congress. In the April 1995 issue of the American Bar Association (ABA) Journal (pp. 82–88), the activists threw down the gauntlet to this Congress, by outlining just how they intend to sue the legal system, and the federal dollars they are given, to attack any effort to reform the current welfare system.

I'm also heartened to note, however, that ending the current legal services program will not end legal services for the poor:

The Gekas legal services bill (H.R. 2277), as introduced, provides for a transitional system of block grants to the States, which will be used to fund legal services for poor persons. I'm aware that you have incorporated this bill into the Senate version of the State, Commerce, Justice Appropriations bill, and that the Gekas bill will become law if this appropriations bill is enacted.

Among other things, the grants authorized in the Gekas bill will be awarded competitively; and, while existing grantees will be eligible to compete for these grants, the grant awarding process will not be ''stacked'' in their favor.

I believe viable grant candidates, who have no ''social'' agenda but who are genuinely interested in helping individual poor persons with their legal problems, will compete for these grants; will win large numbers of them, and will do a good job for their poor clients.

The Gekas bill will also pay grantees after they have finished their work; rather than giving the grantees money up front, as the McCollum bill would do. Under the Gekas approach, if a grantee does things that are prohibited, the grantee will not be paid for them, and its grant will be terminated. This should be a particularly effective way to ensure that taxpayers' funds are used only for the kinds of activities permitted in the Gekas block grant program.

Even the liberal Washington Post agrees that downsizing of the federal legal services program is inevitable, and that the block grant approach in the Gekas bill will allow more of the ordinary problems of poor people to be handled, leaving the ''high profile'' cases of interest groups like the ACLU. (See, Washington Post Editorial, September 18, 1995.)

Many of the current legal services programs receive substantial funding from IOLTA (Interest on Lawyers' Trust Accounts), private charities and endowment funds, the United Way, and State and local governments. I'm advised that, in 1993, non-LSC funding for legal services amounted to $246 million; as compared with $357 million in funding from the federal government. Consequently, the two-year phase out of the federal legal services program, as provided for in the House Budget Resolution and in the Gekas legal services bill, will not end legal services for the poor.

There also are approximately 900 legal aid programs that are not affiliated with the federal legal services program; these programs will help ''take up any slack'' that may result from the termination of the federal portion of the legal services program.

There also are other substantial private pro bono efforts that are underway to aid poor persons. For example—

The American Bar Association has suggested to its 375,000 members that they donate 50 hours per year of free legal services to low-income people.

The New York City bar association recently raised $3 million for its own legal services program, which provides free legal services for indigent families, and others.

The Iowa State Bar Association has adopted a resolution urging its members to donate ''a reasonable amount of time, but in no event less than 20 hours per year'' to pro bono legal activities.

These kinds of activities are underway in many states; and will cushion the termination of federal funding for legal services. Also, virtually all the states have formal or informal systems under which lawyers in private practice provide pro bono legal services to poor persons.

Whenever the Congress or the States attempt to revise any ''poverty'' program; the proponents of the program rail about ''mean-spirited attacks on the poor.'' These attacks are usually the ''knee-jerk'' responses of people and institutions with special interests to protect. In this situation, it is not the poor who are complaining, but rather the lawyers who benefit from the program. In fact, this program has become a general welfare program for lawyers, rather than one primarily benefiting poor people; and it is the lawyers who are lobbying for its retention.

The ''knee-jerk'' responses about ''mean-spirited attacks on the poor'' are usually

overstated; cases in point are the attacks that were levied on the welfare reform programs instituted in the States of Michigan and Wisconsin. When these reforms were proposed, there was a great ''hue & cry'' about hurting the poor, but this has proven not to be the case at all. I believe this earlier pattern is being repeated here, and that the Legal Services Corporation and its 320 grantees will not be missed when they are gone.

It is interesting to note that there have been no ''poor persons'' who have come forward to testify in any of the Congressional hearings held on the legal services program. I believe this is true, at least in part, because poor people do not rank legal services as a high priority in their lives, and do not believe the current program has been all that helpful to them.

In fact, the lawyer-activists who have used the funds in this program to promote their view of ''how society should be;'' do so without regard to the effects of their actions on the poor, i.e., the poor persons who must live next to the drug dealer whom legal services has kept from being evicted. These poor people have to live with the consequences of the ''social experiments'' of these activists; and, I suspect, are getting tired of them.

If someone must ''take the blame'' for the demise of the Legal Services Corporation and the federal funding for its grantees, it rightly must be the legal services activists who have abused the program through their irresponsible behavior, and their past refusal to accept common sense reform. The facts speak for themselves; they clearly demonstrate that the Legal Services Corporation and its grantees, at a minimum, use federal monies for a lot of ''stupid'' things. The current program is not susceptible to reform because of the attitudes and behavior of the activists who receive these federal funds; serves no useful purpose, and should be terminated.

I hope these thoughts are helpful to you. I stand ready to meet with you at any time if I can be of service to you as you consider this important issue.

Sincerely,

TERRANCE J. WEAR.

Mr. GRAMM. Mr. President, I am sure there will be others who want to debate this amendment, and so let me summarize my arguments and then yield the floor so that we can continue the debate.

Legislating is about choosing. Legislating is about deciding what is worth doing and what is not worth doing. Although it sometimes appears that the same laws of economics do not apply to the Federal Government that apply to families and businesses. Every day families have to say no. Seldom does Government say no. One of the reasons that families have to say no so often is because Government cannot; $1 out of every $4 earned by the average American family with two children now goes to Washington so that Government can say yes so often.

However, even in the Federal Government, we have to make choices. The Domenici amendment asks us to choose. It asks us to choose between funding legal services and providing funds for the prosecution of organized crime, drug trafficking, child pornography, fraud against the Government, terrorism, and espionage. It asks us to choose between funding the Legal Services Corporation over funding 55 U.S. attorneys and 55 support personnel that in each of the judicial districts in America could use to make our streets safer, that could be prosecuting people who have preyed on innocent men and women, who could be prosecuting people who are selling drugs at the door of every junior high school in America.

The Domenici amendment asks us to choose. It asks us to choose a federally funded Legal Services Corporation over funding for an FBI Academy at Quantico, VA, which is critically important to maintaining our ability to train 1,225 State and local police officers every year.

Let me remind my colleagues that the highlight of a law enforcement career in America is coming to the FBI Academy. My proposal would allow each and every one of these 1,225 people, who are chosen because they are the finest America has in law enforcement, to come to the FBI Academy, to be trained so they can go back and train other State and local law enforcement officials, in things that are critical—when to use deadly force and when not to, how to exercise judgment, how to carry out their function. They need this sort of training so that when some brutal predator criminal kills one of our neighbors, we are able to apprehend them, convict them, and hopefully, if they are richly deserving, put them to death.

And, Mr. President, this is not a priority that just I as a Member of the Senate have set; 91 Members of the U.S. Senate, including the authors of this amendment which would cut this program, voted for the Comprehensive Terrorism Prevention Act of 1995, which authorized us to begin to upgrade the infrastructure of the FBI Academy.

I do not believe that reasonable working Americans would choose to spend $49 million on the Legal Services Corporation over spending that money to upgrade the FBI Academy, thereby allowing us to train more and better law enforcement officials for America.

I do not believe, Mr. President, that the average working American family would support taking $25 million away from our Federal courts, money that could be spent on 400 probation officers to supervise convicted felons who are walking the streets, in order to fund a Federal legal services program.

We all heard of this case—one of the cases, in fact, that President Clinton ran a TV ad on—about a brutal murder that occurred. What he did not tell us was that this brutal murderer had been convicted of a violent crime, was in prison, had been released, and was being supervised by a parole officer. He had to meet with the parole officer once a year—once a year he had to show up for a meeting. And he went out and killed somebody. And the President tells us as a result of that we ought to ban guns.

But the point is, we do not have so many probation officers that we can simply afford a cut that would lead to 400 fewer.

This is a critically important area, and I urge my colleagues in their zeal to preserve the Legal Services Corporation as a Federal program to ask themselves, not would you want it if it were free, but are you willing to cut funding for the Federal judiciary by $25 million knowing that with $25 million we could fund 400 more probation officers, that we could have funding that is needed for such programs as mandatory drug testing of criminals that are on release walking the streets of America? Those are the choices that we have to make and these are the questions we must ask.

Now, I have not gone into great lengths in talking about the Legal Services Corporation. Many of the areas that they are engaged in are those in which the public perceives to be an abuse of power, whether you are talking about suing every State in the Union that has tried to reform welfare—the provisions in our bill, in allocating a block grant to the States to provide legal services, have very, very stringent limits that say, if you take any of this money for legal services, you cannot use it, nor any other money in this bill, to try to block welfare reform in America.

The Domenici language is not as strong as our language in terms of limiting the action or the use of legal services funding. It is a step in the right direction, but why not give this program back to the States? What is it about this program, other than the political base that it enjoys, that is so different from aid to families with dependent children? Can we trust the States with seeing that poor people are fed cannot we trust the States to see that legal services are provided?

What is it about this program that makes it so different than Medicaid? I assume that those who support this amendment, at least some of them, will support block granting Medicaid. We called for it in our budget and I assume we have the votes to do it. That has to do with people's health, with their access to medical care. How is it that can we trust the States to run Medicaid but yet we cannot trust them to administer funds for legal services?

Well, let me say this, Mr. President. I believe the Legal Services Corporation is a renegade agency which has spent a tremendous amount of resources promoting a political agenda. I think the superstructure of the agency which will be preserved by the Domenici amendment is engaged in an activity which is the right of every free citizen. Every free citizen has a right to advocate their views, no matter how extreme someone else may feel they are. And I defend that right. But they do not have the right to do it with taxpayers' money.

If they object to reforming welfare, let them run for the legislature and explain to people that they do not want welfare recipients to have to work. But

they should not be able to take taxpayer money to file those lawsuits.

If they believe that the Government ought to be involved in elections, or they believe the Government ought to be involved in other areas, let them get out and engage in the public policy debate, but not with the taxpayers' money.

I do not believe that we are going to be able to solve these problems if we keep this infrastructure in place. I think that the only thing that is going to change the focus of the Legal Services Corporation to the legal needs of poor people is to eliminate the Federal superstructure, a superstructure and bureaucracy which has proven beyond a shadow of a doubt that it has a social and political agenda. I oppose its agenda. It has a right to an agenda, but not at the taxpayers' expense.

I believe we can meet the legitimate legal needs of the poor by setting up a block grant which was supported by the subcommittee and by the full committee. That block grant will give the money back to States and, within the guidelines which will say that no entity taking this money can file lawsuits to block welfare reform, keep drug dealers in public housing, or any of all the other things that this agency is famous, or infamous, for. It would be administered by the States, with greater supervision and control, where people in an area who are outraged about an action cannot just write their two Senators and their one Congressman, but actually get the legislature and the Governor to make a change.

Is that not logical reform? Is that not what the Contract With America was about? Is that not what the party I represent stands for? I think it is.

I think this is a clear-cut choice. And I want our colleagues to look very closely at these offsets and understand the damage we are doing to law enforcement, to our anticrime and antiviolence efforts by providing this funding level to the Legal Services Corporation. The $340 million that would be provided under the Domenici amendment is taken away from programs that, not only in my opinion, but I would assert in the opinion of virtually any reasonable working American, are of much greater importance.

I hope my colleagues will reject this amendment.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. COVERDELL). The Chair recognizes the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I say to the Senator from Massachusetts, let me just respond to three or four of the Senator's points.

First of all, Mr. President, so everybody will understand, I will try to address a couple issues of the Senator from Texas with reference to what we are cutting.

It is interesting, when this side of the aisle, including my wonderful friend from Texas, when you are not really cutting something, but merely reducing its growth, you like very much to tell everybody, ''We're not really cutting, we're just reducing the growth.'' In discussing my chosen offsets for this amendment, he chooses to ignore that. So let me give you a couple of examples. I think you ought to know that if these examples strike home—and every one of the Senator's examples is festered with the same problem, every one of them has the same problem in terms of how they are attempting to mislead us.

First, let us talk a minute about the U.S. attorneys. The amendment that we have funds the U.S. attorneys at $28 million above the U.S. House of Representatives. Frankly, I do not believe the U.S. House of Representatives would be cutting U.S. attorneys knowing the subcommittees over there and what their desires are about crimefighting.

The U.S. attorneys, under this proposal, will increase $87 million. No cut. U.S. attorneys in America will have a 10-percent increase. So whatever the good Senator from Texas said, we are providing $87 million in new money for U.S. attorneys; not a cut, an increase.

Frankly, if you want to increase something in a committee so that you can say you are the greatest crimefighter in the world and one up everybody, then go ask the Justice Department, ''Well, if you don't get that, how many are you going to lose?'' that is, in essence, every argument the Senator has made.

The truth of the matter is, there will be many, hundreds of new U.S. attorneys, even after we provide legal services for the poor.

Let me talk about the FBI. The discussion here sounds like this 1,225 people from the hinterland that we train we are not going to be able to train because of the Domenici amendment. Absolutely untrue. They will all be trained, there is no question about it. So you can strike all that talk. They will all receive education and training.

This proposal that is funded in the bill is the following: $52 million for some additions to their training center at Quantico. They do not have a site yet, they do not have a plan yet, and the estimates are they will spend $5 million of the $52 million at the most this year. All of it will be spent next year and the year after.

What is wrong with saying since you cannot spend it, since you do not have a plan, is there anything wrong with saying, let us provide legal services for the poor, if that is what it takes? Frankly, I do not believe, if the Director of the FBI was sitting across the table and told about this, that he would stand up and say, ''I insist on $52 million that I don't need, that won't be spent until next year and because I want it so much, I would like no poor people to have any legal services in America.'' Does anybody believe that?

Let me go on to just a couple more. General legal activities. My good friend from Texas has made an argument about all these professionals they are going to lose. Under the committee bill general legal activities is slated to increase by $13.4 million.

I could go on with each one of them. I have tried my very best to be as honest as I can about U.S. attorneys. They are going up dramatically, not coming down. FBI construction; the now named candidates from around the country will be trained. We are just not going to put money in for a building they do not have a plan or site for. We can do it next year if we find, indeed, they are prepared to allocate the funding.

My last point has to do with my good friend from Texas talking about a budget gimmick. Frankly, Mr. President, I say to my fellow Senators, I do not let too many gimmicks get through, but they get through. Every appropriations bill has some kind of forward funding in it. In fact, I suggest, and if my good friend from Texas would like me to pull the bill, I will, but I suggest it is way back in my recollection that the last time he was ranking member for the HUD and NASA bill, that there was over $1 billion forward funded in order for them to get a bill through.

Check the number. Maybe it is $850 million, but it is close to a billion. And it was praised on the floor by my good friend from Texas.

But mine is not the gimmick he describes. As a matter of fact, we phased our funding because we want to encourage the Legal Services Corporation to implement a competitive bidding system for grants in a timely manner. The first $225 million will be released in order for the Corporation to continue service. The additional money at the end is going to be used as incentive money to implement competition and to supplement earlier funding for legal services.

Last but not least, Mr. President, I looked at all these letters my good friend from Texas has submitted for the RECORD in opposition to my amendment. I have copies of them now. I am about as close to the Farm Bureau as anybody in this Senate. Frankly, if the Farm Bureau knew that the Domenici prohibitions, which are similar to the House, were going to be adopted as part of the law, they would not write this letter. And that is what it is going to be, because both bills prohibit the kind of actions that the farming community, and many others, are arguing about, complaining about the abuses, which I acknowledge. They would say, ''Great, if you want to have legal services with these prohibitions, we are not against helping the poor.''

There is not a single one of these organizations who wants to go on record saying, ''We don't want any legal services for the poor of the United States.'' They do not want the abuses.

Why are we apt to stop the abuses this time when we never have before? I

will say it plain and simple. I do not intend to in any way antagonize my Democratic friends, but the fact of the matter is, we never had a Republican House, that is why we never got the prohibitions.

They are in the House bill. They put the prohibitions in. We are going to put them in. There will not be a Commerce, Justice bill without the prohibitions in, and there will be no funding for legal services without the prohibitions. When you put all the prohibitions in, when you understand the nature of the reductions we had to make, I am sure many who listened to the Senator from Texas will take another look. They will clearly decide that even the average working man that my friend from Texas uses so wonderfully in talking about not wanting to pay taxes and they are the ones that are working and that they ought to get out and pull the wagon, that if you put an average working man or woman in a room and you say, ''If these abuses are not there and it is just providing an attorney for a poor person whose opponent has an attorney and they are desperately in need, average working man and woman in America, would you like to say to those people, you get nothing, you go defend yourself, do away with legal services?'' Well, I will take that issue to the average working men and women in this country, and I believe by an overwhelming majority they are decent people and understand if you are in litigation, you have to have some help. If you are a poor person and getting sued, you are involved in a landlord-tenant dispute, any of the thousands they handle—let me tell you, they are handling, on an individual basis, huge numbers—thousands—if somebody knows, maybe they can insert it into the RECORD. They have nothing to do with class actions.

My closing remark is if you are worried about the abuses, about class action, about suits against legislators or Governors, or welfare, those are gone in the Domenici amendment, finished, they are not around anymore.

I yield the floor.

Mr. GRAMM. Mr. President, let me respond to the points Senator DOMENICI has made. First of all, the committee bill does not eliminate legal services. It eliminates the Federal entity, the Federal bureaucracy, but gives funds to the States with stricter prohibitions than the Domenici amendment, so that the funds can be used through State-run programs, without this overarching Federal bureaucracy and its political agenda, so that the funds available can truly go to help poor people with real legal needs.

So the suggestion that the alternative is the Domenici way or no way, simply does not bear up under scrutiny.

Now, with regard to the gimmick used when we are talking about funding, the question is not do we have more prosecutors than we had last year after the Domenici cuts are made. The question is, Do we have more prosecutors than we need? The point is, for example, in the general legal activities of the Justice Department, we have provided $10 million less than Bill Clinton says we need to prosecute organized crime and major drug traffickers and child pornography and major fraud against the taxpayer and terrorism and espionage. We have provided $10 million less than the President says we need. The Domenici amendment would take away $25 million more, eliminating 200 prosecutors from the Justice Department. Now, those are 200 additional prosecutors who would have been there were we not maintaining the Federal Legal Services Corporation.

That is the choice. Do you want them there or not? Senator DOMENICI says, well, look, they were not there last year, were you not happy without them? No. The American people want more prosecutors. The American people want to go after organized crime and drug traffickers and child pornographers and fraud against the taxpayers and terrorism and espionage. So the question is: Do you want 200 more prosecutors doing these things, or do you want a Federal Legal Services Corporation? That is the question.

Senator DOMENICI says, well, you will end up with more U.S. attorneys under the bill even with his cut. That is true, but it is not very relevant. The point is, the American people want to grab criminals by the throat and not let them go in order to get a better grip. The American people, I believe, given a choice of spending $11 million so they can have 55 more assistant U.S. attorneys and 55 more support personnel to go after people selling drugs at every junior high school in America, I think given that option, they would choose to have them there.

In terms of the FBI Academy, the argument made is that they do not need new facilities. Well, everybody associated with the FBI says they do. They say that the infrastructure is becoming antiquated.

Mr. DOMENICI. If the Senator will yield, I did not say they did not need it.

Mr. GRAMM. I believe the Senator said they just will not be able to build a new facility as soon.

Mr. DOMENICI. I said they cannot build it because they do not have a location or a plan, and they cannot spend the money.

Mr. GRAMM. All I know is that the head of the FBI asked me both in testimony and in a letter, to provide the funds because he said it was needed. I think the Senator is talking about the technical support center. I am talking about the FBI Academy. As I read the amendment, it is cutting the academy and not the technical support center.

In any case, our infrastructure and our effort to fight violent crime and drugs is getting old. When we had testimony before the subcommittee, the head of the FBI said that one of his top priorities was to try to upgrade the training facilities, which is desperately needed. I think that is a priority item.

Look, it is a matter of choice. You may want a Federal Legal Services Corporation more than you want to modernize the training of the FBI Academy. That is a perfectly legitimate choice. But it is a choice, this is not a free amendment. This amendment will mean fewer prosecutors and fewer convictions. It will mean facilities that will not be modernized as rapidly. It will mean a lower quality of training. It will mean fewer people will get trained. That is the choice that you are making and it is not a choice that can be wished away.

Now, you can say, well, we still would be doing more than we were doing last year. But the point is, we will not be doing as much as we are capable of doing.

In terms of the Farm Bureau, I would be happy to call in the Farm Bureau and ask Senator DOMENICI, if they do not support his position, if they would rather do it my way, if he would pull his amendment down. My feeling is that they would rather eliminate this Federal superstructure, which basically has, since the beginning of the Legal Services Corporation, pursued a political agenda, a political agenda that we are trying to deal with right here in this very amendment. This amendment is not as strong in dealing with this agenda as we are in the committee bill, which is why I want to preserve the committee bill.

I yield the floor.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, I rise to speak on behalf of the poorest of the poor of this land. Mr. President, I rise to speak on behalf of the first Americans of this land, the native American, the Indian.

In 1788, our forefathers, the elected representatives of the first nine States of this Union, gathered to ratify and adopt the Constitution of the United States. This noble document has served us for over 200 years. In the first article of this great document is a provision that recognizes the important role and the specific role played by the Federal Government of this United States to carry out obligations that we solemnly promised by treaty and by law. It also recognizes the sovereignty of these people. These were proud people. They numbered at that time in excess of 50 million in North America. Today, I am sorry to say they number less than 3 million. At the moment of the signing of the Constitution, these great people exercised dominion over 550 million acres of land, and we recognized and honored that at that moment.

Today, the descendents of these Indians exercise dominion over 50 million acres of land. Because these Indians, who exercise dominion over all these lands—including the land on which we are standing at this moment—we the

people of the United States, because of their granting of title to these lands to us, promised by treaty that as long as the Sun rises in the east and sets in the west, we will make certain that their lives will never be placed in jeopardy, that we will provide them with shelter, health, and education.

I am sorry to say we have not lived up to these obligations. In fact, our predecessors, the U.S. Senators of the older days, were faced with the ratification of 800 treaties. Of the 800 treaties, our predecessors felt that 430 were not worthy of our consideration. These treaties were signed by the President of the United States, or a proper representative, and signed by the chiefs and great leaders of Indian lands.

We said, ''You give us this land, and we will provide you with help.'' Mr. President, 430 are still in the files. The reasons are very simple. After these treaties were ratified and signed by the President and sent to the Senate, they found gold or they found oil or people wanted to settle on their lands. I am happy to say we did ratify some—370 of them.

History shows that we proceeded to violate provisions in every single one of them. The reasons are easy. Whenever this Nation was confronted with a choice of priorities—what is more important, U.S. attorneys or the plight of the Indians—the Indians always came out at the end. It never failed.

That is the history of the United States. So today, instead of owning this land, they have dominion over 50 million acres. Last August, a few weeks ago, it was announced by the Labor Department that the unemployment rate of this land was 5.6 percent; in Indian country, the average is over 40 percent. In some of the reservations, it gets closer to 90 percent. It is a sorry sight, but 13 percent of the families of this land live in poverty below the poverty line; in Indian country, it is 51 percent, half of the families. In most instances, the only legal assistance available in Indian country is through this program, the legal services program.

I am not speaking of $340 million. I am not speaking of offsets. I am speaking of $10 million. The Domenici amendment includes $10 million, a program that has paid for the services of 150 lawyers to deal with the problems of Indians throughout this land. There are 33 legal service programs and they service 2 million Indians living on reservations.

Without these resources, Mr. President, these tribes and these Indians would have no access to legal assistance. I do not think any of my colleagues would think for a moment that law firms would open up their branches in a Hopi mesa or in some Pueblo Tribe. I cannot think of any law firm opening up their practices in Navajo land. There they are almost always located far away from the urban centers of this country.

Lawyers do not find it profitable to go to Indian country; 80 percent are unemployed, 50 percent of the families are below the poverty line—they cannot pay any lawyers's fee. They have to depend upon legal assistance and legal services program.

Mr. President, I rise to support the Domenici amendment because it has the sensitivity to recognize our obligations. It is a small amount, $10 million. I am sorry to say the committee bill does not involve $10 million. I believe a clarification of this point is necessary.

The distinguished Senator from Texas noted that this amendment, the committee amendment, was adopted by the subcommittee and adopted by the full committee. Technically, that is correct.

In the subcommittee, we were all told, ''Let's not take up matters of controversy.'' That is a practice of the Appropriations Committee. ''Let's not waste our time. Let's not take up matters of controversy. Let's wait until we get to the floor.''

The same thing happens in the full committee. Otherwise, we would still be in that room, S–126, debating this measure.

Mr. President, I have no idea, because the votes were not taken, but I have a feeling that if votes had been taken in the full committee, the Domenici amendment would have been adopted.

Mr. President, I hope my colleagues will not place too much weight upon the statement that this was adopted by the subcommittee and adopted by the full committee. This is where the controversy is debated. This is where the major decisions of the Appropriations Committee are determined.

Mr. President, I speak and I rise to support the Domenici amendment. It fulfills our obligations as those who followed our forefathers. I think it is about time we maintain and keep our promises.

The PRESIDING OFFICER. The Chair recognizes the Senator from Arizona.

Mr. McCAIN. First of all, I want to thank the Senator from Hawaii for his very powerful statement about conditions in Indian country. It has been my great honor and privilege to work with him for many, many years on Native American issues. I know of no greater advocate for native Americans than my dear friend from Hawaii.

However, he and I have a very different view of the impact of the legislation as proposed. I will ask my friend from Texas in a minute to respond to a couple of questions.

The fact is, in this present legislation, we have for the first time carried out the intent of the government-to-government relationship and respectful tribal sovereignty which we have sought for years.

This legislation, as crafted by the Senator from Texas, provides for direct block grants to tribal governments for legal services on the same terms as State governments.

To me, that is a major and important step forward. The present legislation also calls for the State or tribal governments with significant numbers of Indian households below the poverty line to receive 140 percent of what they would otherwise receive. I have not seen that before. Now, the Domenici amendment, as I understand it, strikes that provision of the bill. It strikes section 120 of the bill as reported.

If the Domenici amendment is adopted, then we will lose that government-to-government relationship. We will lose the 140 percent of what they would otherwise receive. Frankly, I do not understand why all of us would not be supporting provisions that provide direct block grants to the tribal governments—which is entirely in keeping with what I have been trying to do for the last 13 years, that is, respect tribal sovereignty—and provide the funds directly to those tribes.

If the manager of the bill, my friend from Texas, would respond, is it not true that in this legislation, in his proposed legislation, the States or tribal governments with significant numbers of Indian households below the poverty line would receive 140 percent of what they would otherwise receive? Is that a correct statement on my part, I ask the Senator from Texas?

Mr. GRAMM. That is a correct statement. States that have substantial Indian population will receive 140 percent of what would be their normal allocation. This was the amendment offered in committee by Senator STEVENS, aimed specifically at dealing with this problem.

Mr. McCAIN. Is it not true that this is the first time that we have made this kind of special consideration for native Americans, that would give them as much as 140 percent of what they otherwise would receive? Is that a correct statement?

Mr. GRAMM. That is correct. As far as I am aware, this is the first time a special provision has ever been made for Native Americans.

Mr. McCAIN. Is it also not true the tribes are block granted these funds outside of any involvement on the part of the State, which is in keeping with the government-to-government relationship that we are trying to achieve?

Mr. GRAMM. It is true. In fact, the money goes directly to the tribe, bypassing the State.

Mr. McCAIN. The Domenici amendment, as I understand it, strikes the provision in section 120 of the bill we were just talking about; is that correct also?

Mr. GRAMM. That is correct.

Mr. McCAIN. I have to say, in all due respect to my friend from Hawaii, my dear, dear friend from Hawaii, and my friend from New Mexico, why we would want to destroy what is clearly a very important step forward in this process, it is something, frankly, I cannot support. I hope Senator DOMENICI will modify his amendment, would seek to modify his amendment to give 140 percent of present funding to areas where

Indian households, significant numbers of Indian households below the poverty line, would receive those extra benefits; that he would modify his amendment that would provide for direct block granting.

It is not so important to me, very frankly, how much money there is, which is obviously one aspect that is important. But, for us to filter these moneys through the States, simply does not work on any program.

I urge my colleagues, who are interested in how this legislation treats native Americans, to reject the Domenici amendment.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Hawaii.

Mr. INOUYE. Mr. President, if I may briefly comment on the statement just made, the committee amendment contributes funds to States on the basis of the census. Yes, it does say Indians should get 140 percent more than other Americans. Under the present program, the program that is now in effect at this moment, Indians receive about 5 times what we in Washington, or New York, or Chicago receive. For obvious reasons, Mr. President: 51 percent live in poverty; 80 percent are unemployed. It should be 5 times. If we adopted the committee amendment, it will not be 5 times; it will be less than 2 times. In fact, the present scheme is not sufficient but it is much, much better than what the committee amendment proposes.

So I hope my colleagues will support the Domenici amendment.

The PRESIDING OFFICER. The Chair recognizes the Senator from Maine.

Mr. COHEN. Mr. President, I rise in support of the Domenici amendment. I would like to address a comment made by the Senator from Texas. I think he is exactly right. This is a matter about choices. We are called upon to make choices each and every day in this Chamber.

When it comes to priorities, for example, the Senator from Texas cited requests from the FBI Director or from the Clinton White House. If we look at the defense bill, the Clinton White House did not request money for the B–2 bomber. The Secretary of the Air Force did not request money for the B–2 bomber. Somehow, $500 million is added for the B–2 bomber program, just another downpayment on a $30 billion project. That is a choice that has been made. It does not apply to this particular bill, but we make choices.

Would I rather see $500 million applied to other programs? Low-income heating assistance? Assistance for the poor? Feeding programs for children? I would put my priority over there. But soon we will be presented with a measure that will add another $500 million to keep a program alive, a program the Pentagon is not even requesting.

So, we are faced with choices. I took the floor the other day in opposition to the space station—a $100 billion program. I think we can find better ways of spending $100 billion—such as satisfying our research and development needs in medicine—than to put it in a space station which is going to cost us more and more as our European partners decline to make their contributions.

As the Senator from Texas has articulated the issue, he said, basically, if you are for more prisons and prosecutors and taking drug addicts and pushers and terrorists off the streets, then you will support him. But if you are in favor of protecting the poor or providing legal services to the poor, if you want to have that kind of a dichotomy, that kind of a balance, then you will support Senator DOMENICI.

Really, it is a nice positioning on the part of the Senator from Texas. But it seems to me that we have an obligation to provide poor people in this country with an opportunity to get to the courthouse. It is something that every one of us enjoys. We can afford it. But in this bill, we are saying, ''Poor, no longer will you have a Legal Services Corporation. We do not like this structure. It has a left-wing agenda. We do not want any left-wing agenda.'' But I submit, if we genuinely aspire to have a system of ''Equal Justice Under Law,'' as it is written on the front of the Supreme Court, then our neediest citizens must have access to that system.

The facts simply do not support the contention that legal services organizations are promoting a left-wing agenda. About one-third of the cases involve family violence. We have a serious problem in this country dealing with family violence. People are being abused. There are 52,000 clients seeking protection from abusive spouses, who are represented by attorneys funded through the Legal Services Corporation. There are 240,000 poor senior citizens who are represented by legal services attorneys. Tens of thousands are represented in landlord-tenant disputes. Tens of thousands were assisted in applications for public benefits. But our answer is, ''We do not want this structure anymore. We do not want a Federal hand in this anymore. We want to turn this all back to the States.''

By the way, you do not just turn a Federal program back to the States at no cost. Under the block grant proposal, 50 separate States, with their own bureaucracies, will have to administer the funds. And unless the Domenici amendment is passed, none of the funds can go to a legal services organization; they can only go to individual lawyers. If you take away the Federal structure and you prohibit money from going to established organizations within the State, the funds must go to individual attorneys. Then, eventually, you will find very little representation for the poor.

''Let the private lawyers take care of this,'' you say—pro bono work. I used to do a lot of it myself. I used to think I had an extension of the Pine Tree Legal Assistance operation in my law firm because there were a lot of poor people who came to the door who simply could not afford to pay the legal fees, and I represented them.

But we are deluding ourselves if we think we are going to see an expansion of these points of light, that many thousands and tens of thousands of law firms are going to undertake representation for all of the needs of the poor or take on and fight the landlord-tenant disputes. How many poor people have complaints against the landlords—slum lords, in many cases—of uninhabitable, rat-infested, asbestos ridden residences. We say, ''Well, tough luck. You are poor. You do not get representation.''

The law firms are not going to give you their youngest attorneys. They are on corporate mergers now. That is a higher priority at the law firm. They say, ''We have big mergers taking place. We do not have time to allow you to engage in bringing a lawsuit to protect people from uninhabitable conditions.''

Mr. President, I am not entirely satisfied with the Domenici amendment, as it places unprecedented restrictions on legal services organizations such as Maine's Pine Tree Legal Assistance. Unlike previous LSC legislation, this bill not only places restrictions on Federal funds, it also restricts how organizations such as Pine Tree may spend money received from State grants, State bar associations, and private donations. This is a Federal mandate. We are telling States like Maine that they cannot give grants to legal services organizations to represent immigrants or pursue class action lawsuits.

There are times, in my own State, when State legislators ask legal services attorneys for advice about how they should shape laws and regulations to help out people in need. We cannot do that under the Domenici approach. These attorneys cannot be called to testify before legislative hearings. They cannot file class action suits. So basically it is pretty restrictive. The amendment does not go as far as I would like to see it go.

Let me provide one example. A number of years ago there was a lapse in a Federal program that provided assistance for displaced workers. The Maine Legislature requested advice from Pine Tree Legal Assistance to determine how the law could be changed to ensure that these workers could qualify for State unemployment benefits. But under the amendment, Pine Tree would have to remain silent; its expertise would be wasted.

I am going to support the Domenici amendment, however, because I believe we have an obligation to see to it that poor people in this country have access and keys to the courthouse. There is a major trial taking place right now which thankfully is coming to a close. Not many people in this country can afford that kind of representation.

That is in a criminal case. I am talking about the civil actions now. Not very many people in this country, especially those at the very lowest of the economic strata, can call up an attorney and say, ''Would you represent me against this claim? Would you represent me against my husband or against my wife? I am being abused. I need help.'' ''Sorry. We do not have any money to help you.''

Mr. President, I hope my colleagues will support the Domenici amendment.

Mr. FEINGOLD. Mr. President, I rise today in support of the amendment offered by the Senators from New Mexico and South Carolina. This amendment will allow continuation of legal services to low-income individuals.

The credibility of the American legal system demands that all Americans, regardless of their economic station in life, have access to the courts. To put the promise of justice beyond the reach of a group of people because they cannot afford proper representation defies the notion of equal justice for all.

Since its inception in 1974, the Legal Services Corporation has worked to provide equal access to the justice system to a group of Americans which is sadly growing larger in number and increasingly disenfranchised from our democratic way of life.

An editorial in the Milwaukee Journal Sentinel recently noted that the Legal Services Corporation helps people in very basic, and important ways. They help:

> . . . the child who needs health care, the elderly couple negotiating their way through Medicare, the battered woman who needs help getting a divorce and child custody, the victims of consumer fraud.

I think we would all agree that these are all laudable goals. And yet, if you look at the language contained in H.R. 2067, you will see that the battered woman who needs help getting a divorce and child custody is foreclosed from utilizing Legal Services for that purpose. What could be so controversial about helping a battered woman and her children out of a violent and abusive situation? Nothing. And yet, the language contained in the bill currently being considered, prohibits the use of funds to obtain a divorce.

However, Mr. President, this very troubling provision is but one example of the shortsightedness of eliminating the Legal Services Corporation. Although it is not without its detractors, the Legal Services Corporation provides basic legal services to the poor of this Nation in an efficient, cost-effective manner.

As has been noted many times, only 3 percent of the total Legal Services appropriation is used for administrative purposes. The remainder is sent out to the various legal service organizations throughout this Nation. Ninety-seven percent of the Legal Services Corporation's funding goes directly to local programs to address priorities established at the local level.

Throughout this Congress we have heard time and time again that decentralization is the key to many of our problems—let the people in the communities make the decisions. Legal Services does that now and this bill eliminates it.

Ninety-seven percent of the Corporation's funds are distributed directly to organizations like Legal Action of Wisconsin, Western Wisconsin Legal Services, Wisconsin Judicare, and Legal Services of Northeastern Wisconsin. All of these local organizations know and understand the needs of the poor throughout the State of Wisconsin and are dedicated to addressing them. Under the present system, they make the decisions, they set the priorities.

Not only does the language in the bill eliminate the decentralized system that exists today, it replaces it with a more onerous and traditional inside the beltway style bureaucracy. Under the proposed language, the Department of Justice would become the primary grant administrator to the States. The money no longer goes directly to the providers, it goes to the States. The States in turn establish their own administrative structure to oversee and administer the money to the local organizations, which ultimately provide legal services for the poor. These additional layers of bureaucracy will increase administrative costs and result in less money being available to help the poor.

If the goal of this body is to slow delivery of legal services to the poor and to create more bureaucracy, then we should support the proposed block grant. However, if the goal is, as it should be, to maintain a workable delivery system of legal services to the poor in this Nation, then the efficiency, flexibility and the decentralization of the current Corporation is the obvious choice.

Mr. President, we often hear about the need for private enterprise to pick up where Government leaves off. The citizens of Wisconsin are very fortunate to have a private bar dedicated to ensuring legal representation to all people. I know that other Senators can say the same of their home States.

But we delude ourselves if we think these dedicated private attorneys alone can meet the enormous needs of the poor. I have been contacted by many organizations from Wisconsin, all concerned about, and working to help, the poor in our State. Each of these groups, be it the Wisconsin State Bar, the Association for Women Lawyers, the Milwaukee Bar Association or any of the others that contact me, knows that the elimination of the Legal Services Corporation will seriously hamper the ability of this Nation's poor to obtain legal representation.

If we follow the committee language, and effectively exclude millions of poor Americans from one of this Nation's most important institutions—the justice system—we risk creating a society where justice exists only for those above the poverty line. Such a result is unacceptable.

I appreciate that no one approves of every case that legal services undertakes, but the proposed amendment seeks to address some of the concerns that people have raised regarding the scope of Legal Services activities. Some may think the restrictions in the amendment go too far, others, not far enough. However, we must not lose sight of the fact that our goal should be to maintain a system of legal representation for the poor that allows them to avail themselves of the protections of the American justice systems.

Protections that many of us, the more fortunate in our society, may take for granted. However, imagine the importance we all would place in these protections should they disappear or be placed just beyond our grasp. And yet, the language in this bill potentially subjects millions of poor people in this Nation to just such a reality.

The amendment offered by the Senators from New Mexico and South Carolina acknowledges the essential fact that we must preserve the access of the poor in this Nation to the judiciary. This amendment allows this Nation to move ahead toward equal justice for all, rather than retreat from this noble goal. Accordingly, I urge my colleagues to support this amendment.

I ask unanimous consent that an article in the July 19 edition of the Milwaukee Journal Sentinel entitled ''Legal Services for Poor Need Protection'' be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Milwaukee Journal Sentinel, July 19, 1995]

LEGAL SERVICES FOR POOR NEED PROTECTION

The Legal Services Corp., which gives the poor access to lawyers, has been fighting for its survival this year as never before. The agency still stands. But in House action so far, its funding has been lopped by a third and major restrictions have been placed on its activities.

A weakened agency still does not satisfy the extreme right, which has put, you might say, a contract out on the organization. Some congressmen are expected to try to make good on that contract in House action this week.

House members most certainly must rebuff this attempt to kill Legal Services, the major source of funds for Legal Action of Wisconsin. America will have no hope of being a fair society if the poor lack reasonable access to lawyers; justice simply won't be served.

We are not talking big bucks here, at least not by federal standards. The proposed budget for next year stands at $278 million, down from the current $415 million. Legal Action's share currently is $2.4 million.

Like its counterparts across the country, Legal Action of Wisconsin represents poor people in myriad civil cases—the child who needs health care, the elderly couple negotiating their way through Medicare, the battered woman who needs help getting a divorce and child custody, the victim of consumer fraud.

The firm doesn't handle frivolous cases. Most are settled without even going to court. And for want of staff Legal Action serves only a small share of those who need its help.

Though only a tiny fraction of Legal Action's work, class action lawsuits draw the most attention because of their wide impact. Far-right critics act as if federally financed law firms think up exotic challenges to the status quo just to promote a far-left agenda. But these legal challenges flow out of the real needs of poor people.

For instance, mothers complained to Legal Action that because they couldn't afford child care, they were having a tough time getting training or education to get off welfare. Legal Action successfully sued the state, forcing it to satisfy its obligation to the federal government to pay for child care for 4,000 parents.

Unwisely, restrictions in the current House bill would prevent such lawsuits in the future. Class action suits against government and welfare mitigation would both be banned.

The most immediate threat, however, is a move to kill Legal Services altogether. Fairness demands that the House turn it back.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, thank you.

Mr. President, I want to commend the Senator from Texas for his leadership and what he has done to make the changes in the Legal Services Corporation.

Mr. President, House and Senate conferees are expected to begin meeting soon to consider welfare reform legislation. I sincerely hope that the conference report contains illegitimacy provisions like a family cap and a restriction on cash benefits to unwed minor mothers.

But no matter how strong the welfare conference report turns out to be, it will not succeed in ending welfare dependency unless we also reform the Legal Services Corporation, the agency which has for years furnished the rope to hang welfare reform efforts in the States.

For example, the State of New Jersey was granted a waiver in 1992 by the U.S. Department of Health and Human Services to institute a family cap provision denying an increase in welfare benefits for women who have more children while already receiving welfare.

The Legal Services Corporation sued the New Jersey Department of Human Services to challenge the family cap. Rightly, the U.S. District Court decided that it is perfectly legitimate for the State of New Jersey to implement a family cap.

But they had to defend it against the Legal Services Corporation.

Welfare reform is not the only arena where Legal Services attorneys have defied common sense and hurt the very people whose interests they claim to represent and have sued the people who are paying them.

In my own State of North Carolina, in a pattern that is repeated all over the country, Legal Services attorneys have caused growers who employ seasonal workers to lose millions of dollars defending themselves against frivolous nonexistent lawsuits. They have extorted money from growers by threatening them with lawsuits unless they settle up—to the tune of $500 per nonexistent violation, per worker.

As the Senator from Maine talked about some of the people not having the money to sue and the need for legal services, what we are talking about here are small people trying to make a living defending themselves against legal services, and they do not have the money to hire the lawyers either.

Even for a small family farmer with 10 acres or less of crop acreage, this can add up to tens of thousands of dollars. For a small farmer, that can add up to bankruptcy. And a bankrupt farmer can not hire seasonal laborers or anybody else.

In recent years, North Carolina produce farmers have been a target of Legal Services attempt to destroy the Department of Labor's H2A Program, which brings in temporary foreign workers to harvest crops for farmers who cannot find enough domestic workers.

But Legal Services have harassed these people to the extent that the program is no longer functioning. This program is designed to help farmers and workers. But they have been harassed by the Legal Services so often that they have simply stopped using it or the farmers have been put out of business.

Legal Services is nothing more than an entitlement program for activist lawyers. We simply subsidize them and pay them.

My colleague and friend from Texas, Senator GRAMM, has a reasonable and innovative block grant solution which I strongly support. I personally would feel better to end the disastrous program of Legal Services altogether. But we cannot do that.

Therefore, I oppose adamantly the amendment by the Senator from New Mexico, and I urge my colleagues to do the same and to support the Senator from Texas. He is doing what needs to be done.

Mr. President, I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Chair recognizes the Senator from Minnesota.

Mr. WELLSTONE. Thank you, Mr. President.

Mr. President, I agree with my colleague from Maine, Senator COHEN.

Mr. President, what is at issue here, when all is said and done, is whether or not we as a nation are going to support the idea that each and every person, regardless of their income, is going to receive equal protection under the law. That is really what having a Legal Services Corporation is all about. Ensuring that people are treated equally under the law. Not just the wealthy but, everyone.

Mr. President, this is in the very best of the tradition of our country. Speaking for Minnesotans, this is the Minnesota ethic. Minnesotans believe in equal protection under the law. Minnesotans believe that regardless of a person's station in life he or she should be entitled to representation in our court system.

Mr. President, I will reluctantly support the Domenici amendment. To do otherwise is to have a proposal that will essentially eliminate what I would call the heart and soul and integrity of the Legal Services in the United States of America. In that sense, I believe Senator DOMENICI has made an enormous contribution. But I have some serious misgivings about the Domenici amendment albeit, I admire what the Senator from New Mexico is trying to accomplish. I believe he has made a real contribution toward fairness in our country through his amendment. But by the same token, this is a very steep price we will pay for rescuing Legal Services. There is a price for agreeing to the restrictions in the Domenici amendment.

Mr. President, we had this debate before in this Chamber last Congress. A debate that I was very active in. It was a debate with my colleague from Texas, as a matter of fact.

When you have a restriction that says you are going to have a prohibition on welfare reform litigation, then I would ask the following question: Has this just become a kind of mean season on the poor of this country?

Mr. President, we are talking about children. The most vulnerable members of our society. Not too long ago we made a profound mistake in agreeing to the so-called welfare reform measure that passed this body. At that time, I think Senator MOYNIHAN said it better than anyone. He essentially said that for the first time in over a half a century, we as the U.S. Senate, will say there will be no floor beneath which children could fall.

Mr. President, you and I have had a debate on this issue. It has been an honest difference of opinion. But if we are going to say that, and we are also going to say there is no kind of national community commitment, no sort of obligation, responsibility or standard in relation to nutrition, in relation to making sure that every child at least has an adequate diet, that in and of itself I think is a turning back of the clock, away from the very best of this country, because I think it will be more children are going to go hungry and more children are going to be impoverished.

Now what we have is a restriction that says in addition to no national standard, no floor, there will be restrictions on Legal Services lawyers who rightfully want to challenge any of the laws or practices that are called welfare reform.

How can we argue that Legal Services lawyers will not be able to issue any challenges when we do not know exactly what is going to happen back

in the States and back at the county level.

There are all kinds of examples. Suppose, for example—I had an amendment which dealt with the whole issue of domestic violence—you have a woman who has been battered. Imagine what it would be like if you had been battered steadily for 2 years. You have two small children, and you are told you go into a work program or you lose your assistance. Suppose she could not because she had not healed; she is not ready to work physically or mentally. Under these draconian restrictions a woman would not be able to receive Legal Services representation to challenge this particular restriction. Where is the fairness in that? Is this just? I submit to my esteemed colleagues, that this is not justice and it is not fair.

Mr. President, this strikes me as just being a mean season on the poor. Senator DOMENICI has made a real contribution because he is attempting to make sure we do not pass any extreme proposals, which is I believe the Gramm proposal is about. But these restrictions trouble me, and these restrictions should not be the price people pay to receive the most basic legal representation to protect their rights.

I hope that when it comes to authorization we will have a debate, and we will be able to come up with constrictive solutions to some of these problems.

Mr. President, what happens if a mother is told she has to work but because of a prior work experience she has a bad back? People quite often think it is an excuse—she has a herniated disk, and she cannot do the kind of physical work she used to do. She says I can no longer perform this type of work, or there is no one to take care of my small children, and she might be cut off. She has no legal representation?

What happens if we go back to what used to be the man-in-the-house rule, and it is decided at the county level that a woman who is single now, has been through a divorce, and a male friend visits her one day, and somebody is there from the welfare department who determines she should be cut off because there is a man in her house that can support her. Will she have legal representation to challenge this kind of determination? No.

I do not know how we can have this kind of restriction when we do not even know how it is going to be at the State and local level. What if it is repressive? What if it is harsh? What if it is degrading? What if it violates the Constitution of the United States of America? Are we saying a whole group of citizens, which, by the way, are women and children, are not going to have legal representation?

Mr. President, the Gramm proposal goes beyond the goodness of America. The Gramm proposal to essentially gut legal services goes beyond the goodness of Minnesota. I believe the Gramm proposal will be voted down. I think the Domenici amendment will pass, and it should because the whole idea of equal protection under the law is an idea that fires the imagination of Americans. This about basic fairness and justice.

What I worry about as I look at these restrictions, whether it be welfare or whether it be a broad definition of lobbying, or whether it be advocacy or no class action lawsuits, is that I believe we are heading in the wrong direction because ultimately what this debate is about—is about power and powerlessness in America. And if you are going to say that, yes, there will be funding for Legal Services but we will so severely restrict what you can do that those who are powerless do not have the ability to challenge some of the powerful institutions in America, then we just deepen all of the inequalities.

Hospitals are supposed to take care of sick people. Welfare agencies are supposed to be concerned about the welfare of the people they serve. Schools are supposed to educate children, all children. Housing agencies are supposed to be concerned about housing, housing for all people. It is written somewhere that just because you are poor, you do not get adequate representation.

Are we now saying that a whole group of citizens in America, disproportionately women, disproportionately children, are no longer going to have access to lawyers who can challenge some of those discriminatory policies?

I will tell you what this is going to do, Mr. President. It is going to breed contempt for our legal system among the very citizens we do not want to see have that contempt.

We have young people who are growing up in communities across our country, in more brutal circumstances and conditions than any of us want to admit. I think the Senator from Hawaii, [Mr. INOUYE], has probably been the champion for people in Indian country. He knows their condition better than maybe any other Senators here.

If we have young people growing up in more brutal circumstances than any of us want to face up to, and we are now going to severely restrict what Legal Services lawyers can do, we are just going to breed contempt on the part of those young people in this system. They are going to see no way that they can seek redress of grievances through our system; they are going to see a legal system they are not going to believe in; they are going to see a political system they are not going to believe in; they are going to see a nation that they believe betrays the very idea of equal justice under the law. Where do you think that is going to take us?

When young people growing up in poverty, growing up in impoverished communities, growing up under brutal circumstances do not see any way through the legal system that they can seek redress of grievances, do not see a system through which there is an opportunity for them working within our system in a nonviolent way to improve their lives, it creates an enormous vacuum.

I will tell you what fills that vacuum. I have been to a lot of these communities. What fills that vacuum is the politics of despair, the politics of cynicism, and all too often the politics of hatred.

Mr. President, the Gramm approach is to extreme; it goes too far. What the Senator from Texas has done is to belie the best of America. Senator DOMENICI is right with his amendment. But as to the restrictions in the Domenici amendment, I hope later on as we move forward on legal services, we will be able to have a good discussion and we will be able to make the kinds of changes that will provide poor people in America with strong legal representation.

Just because you are poor does not mean you should not be able to challenge those who have the power in America. Just because you are poor or just because you are living in a poor community or just because you are a whole community that is denied a voice or just because you are a whole community that does not have the power, does not mean you should not be entitled to some legal services lawyers that can work with you. It should not mean you cannot be entitled to challenge the policies and practices that discriminate against your families, that hold your families down, that lead to inadequate housing, that lead to your children not having an adequate education, that lead to health care institutions that sometimes do not take care of you.

You should be able to challenge those policies and practices. You should be able to challenge those institutions. That is the best of America. That is equal justice under the law. With these restrictions, that is not going to happen. So, Mr. President, to conclude, I will not cosponsor the Domenici amendment because of the restrictions, but I certainly will vote for it.

I think the Senator from New Mexico, my friend, is making a real contribution: A little more fairness, a little more justice, a little more compassion, a little bit more of what is right in America.

My God, Mr. President is this the mean season on the poor? I hope when it comes to authorization, we will be able to look at these restrictions and we will be able to make the kinds of changes that will lead to legal services, and will provide people in this country, poor people, whether they live in urban America or rural America or suburban America, with equal protection under the law. That is what this amendment is all about.

I yield the floor.

Mr. STEVENS. Mr. President, I support the Domenici-Hollings amendment restoring funding for the Legal

Services Corporation. This amendment will ensure that poor people in underserved ares continue to get legal advice. The Domenici-Hollings amendment contains important restrictions on the use of funds by the Legal Services Corporation. These restrictions, which were also supported by the House, are necessary to ensure that abuses that have occurred in the past do not continue. The funding that is provided under this amendment can not be used for things like class actions, lobbying, or representing illegal aliens. These restrictions are to ensure that funding is used to provide the traditional legal services that are most needed by poor people.

I want to thank the Senator from New Mexico and his staff for accommodating the special needs of Native Americans and those in areas like Alaska where travel to remote villages increases costs. Last year the Alaska Legal Services Corporation successfully completed 4,629 cases. In most cases the people who the Corporation represented had no where else to turn for legal advice because they could not afford to hire an attorney.

The poor people in my State—and across America—need the help of the Legal Services Corporation. I urge my colleagues to support this amendment.

Mr. DOLE. Mr. President, there are few examples that better illustrate the case of good intentions gone awry than the Legal Services Corporation.

Created in 1974 to relieve the burden of an expensive legal system for poor Americans, the Legal Services Corporation has become in many instances the instrument for bullying ordinary Americans to satisfy a liberal agenda that has been repeatedly rejected by the voters.

Mr. President, I wish to make clear at the outset that I support efforts to help low-income Americans by ensuring that they are not shut off from legal redress, especially where important constitutional rights are concerned. And I also have no doubt that the existing legal services framework has produced good programs and employs good people who are devoted to providing the very best representation to those who otherwise could not afford it.

But as the Washington Post noted on September 18, 1995, the model of providing legal services to the poor has become twisted into something ''more ambitious: a powerful network of poverty lawyers funded by Washington and backed up by university-based centers of expertise, that would help not just individual clients but 'the poor' as a whole.''

There are two points to be made about this outcome: First, despite many dedicated lawyers who have undoubtedly helped poor clients through Legal Services grants, the inevitable result of this shift in focus has been to hurt those whom the Corporation was created to help. The impoverished individual who has run-of-the-mill, but important, legal needs is shunted aside by Legal Services lawyers in search of sexy issues and deep pockets. And in some cases the agenda of helping the poor as a class has perpetuated and deepened the worst aspects of a welfare state that has utterly failed poor Americans.

Second, this twisting of the original purpose of the Legal Services Corporation is antidemocratic. In most cases, what passes as a class action lawsuit—whether it addresses welfare benefits, or employer-employee relations—is nothing more than a policy dispute that should be, and often has been, the subject of the legislative process. To subvert the legal system in order to overturn legislative judgments is fundamentally at odds with our system of government.

How did this happen? A lack of accountability. The very structure of the Legal Services Corporation has produced this result. Although the Corporation has an 11-member board, the reality is that money flows to over 300 local nonprofit groups with attorneys accountable to no one. This is not an accident. With the best of intentions, the idea was that the Corporation should be insulated from political pressures. But this laudable goal was taken too far. Laws addressing the misappropriation of Federal funds, for example, are not even applicable to the Corporation under the terms of the act creating it.

Thus, this is not a case of passing more laws and creating an increasingly complex regime to govern the operation of the Legal Services Corporation. The problem cannot be papered over. The problem flows from the present structure of how we provide legal services to the poor.

The time has come to end this abuse of the legal process and return to the original purpose—providing the means to help the poorest among us to cope with their genuine and individual legal needs.

I am committed to providing some mechanism that provides legal assistance to the impoverished among us. But in this, as in so many other areas, it is time to return power and responsibility back to where it belongs—the States. Supporters of the present Legal Services framework will undoubtedly claim that the poor will suffer. I believe that is wrong. The legislation before us provides a responsible response to the legitimate legal needs of the poor—a block grant program that can be run by those closest to the needs of their citizens and implemented with the appropriate safeguards that have heretofore eluded the Federal Government.

Mr. President, I urge my colleagues to support repeal of the Legal Services Corporation Act.

Mr. GRAHAM. Mr. President, as we enter into the debate as to whether we should convert yet another Federal program into a block grant, it would behoove us to consider fully the wise comments of our former colleague, Gov. Lawton Chiles. I ask unanimous consent that the following letter from Governor Chiles, which questions the wisdom of transforming the Legal Services Corporation into a block grant, be printed in the CONGRESSIONAL RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF THE GOVERNOR
Tallahassee, FL, September 14, 1995.

Hon. BOB GRAHAM,
U.S. Congress, Hart Senate Office Building, Washington, DC.

DEAR SENATOR GRAHAM: I am writing to inform you of my position on the Legal Aid Block Grant Act of 1995 contained in the State, Justice, Commerce Appropriations bill (HR 2076) which would provide that funds in FY 1996 for the legal services organizations be routed through the governor's office of distribution.

First, I urge you to consider the efficiency of the current system. Only 3% of the funds which are allocated are spent on overhead, and the remainder reaches the direct delivery system in the states. This efficiency would be difficult to duplicate at the state level, especially as we will have to invent a delivery system at a time of fiscal change.

Second, after a review of this matter and its implications for State government responsibility, I have determined that the burden to Florida is great and that there is no increased benefit to the state in channeling such funds through this office.

In summary, I am asking you to vote against a block grant proposal for legal services. As usual, I appreciate your efforts to achieve fiscal responsibility while providing for the needs of our less fortunate citizens.

With kind regards, I am

Sincerely,

LAWTON CHILES.

Mr. BIDEN. Mr. President, I stand here to pledge my support for the amendment offered by my colleague, Senator DOMENICI, which preserves the Legal Services Corporation.

This organization has been both efficient and effective in providing legal services to the poor, so that those who are most vulnerable in our society have access to the courts, not just those who can afford it.

Contrary to the rhetoric of some of my colleagues who oppose the Domenici amendment, the vast majority of cases handled by the Legal Services Corporation are not controversial—they are individual cases arising out of everyday unfortunate problems—losing a job, suffering a serious illness, facing the breakdown of family relations of simply dealing with Government redtape.

As someone who has long sought to do what I could do to prevent and to fight against family violence, I am most grateful for the help that the Legal Services Corporation provides to victims of family violence.

In fact, representation of victims of family violence is the single largest category of cases handled by local legal services programs—accounting for one out of every three cases processed last year.

In 1994 alone—the year we passed the Violence Against Women Act—local

legal services programs handled more than 50,000 cases in which women sought legal protection from abusive husbands, and over 9,000 cases involving neglected and abused children.

This amendment places a number of prohibitions on the Legal Services Corporation, but keeps this much-needed organization intact, enabling it to continue to provide traditional legal services to those who desperately need them.

I hope all of my colleagues will join me in supporting Senator DOMENICI'S amendment.

Mr. BINGAMAN. Mr. President, I speak on behalf of the Legal Services Corporation.

In my home State of New Mexico, the Legal Services Corporation has a proven track record. Without this program, there are few alternatives if any for the poor to have access to the legal system. Many of the people who benefit from Legal Services were once considered part of the middle class. However, as a result of unemployment, illness, divorce or aging, these people are now left without the means to afford a private attorney. Some of the people who are helped by this program are: the senior citizen living on social security in rural New Mexico who is a victim of a consumer fraud scam; the disabled veteran who has had VA health benefits denied; the woman who has children and is trying to escape form an abusive relationship.

There are many reasons to vote against the block grant approach adopted by the appropriations committee. By eliminating the Legal Services Corporation, a new bureaucracy is created because States now have to set up administrative structures to fund and oversee legal services programs. This new bureaucracy with higher administrative costs will soak up much needed resources. Further, the block grant proposal limits legal representation to the ''most basic needs.'' For example:

A person may still be represented in an eviction case; there will still be services available to probate a will; in cases of child abuse; in seeking a protective order; file a petition for bankruptcy; a quiet title action.

However, the question becomes: Are these the only legal services that the poor seek? Obviously, the answer is no. Other possibilities have been prohibited by the block grant and that is the heart of the problem with this appropriations bill. Here are some types of things that will not be permitted under the block grant: assistance in a divorce (applies to abusive situations); abortion; applying for veterans benefits; obtaining home ownership; credit access; Indian/Tribal Law issues; paternity; adoption; rights of the physically disabled; and consumer-related law (elderly scams).

There are many reasons to support the Legal Services Corporation, but the primary one remains the reason this program was created in the first place—it is the most cost efficient way to allow the poor to have access to our legal system. If the goal of a block grant is to allow local control and flexibility, then the Legal Services Corporation is already accomplishing this objective.

Mr. President, this particular system is not broken. The Legal Services Corporation uses only 3 percent of its budget towards administrative expenses. The decision making is divided among those with knowledge in poverty law. Currently, the mid-level bureaucracy is eliminated because grants do not have to be approved by State or local governments.

In essence, this appropriations bill is placing the burden on the shoulders of those who are not represented in this debate, the poor, and I urge my colleagues to restore the Legal Service Corporation.

Mr. ROTH. Mr. President I would like to inquire of the Senator from New Mexico as to the intent of his amendment with regard to the International Trade Commission.

Mr. DOMENICI. As my colleagues know, I intended this amendment to be the first amendment before the Senate.

I intended for some weeks to offer an amendment to retain the Legal Services Corporation and to provide it with adequate funding to continue providing legal assistance to those who could otherwise not afford it.

That amendment was drafted to the bill reported by the Appropriations Committee.

Last night the distinguished full committee chairman filed a reallocation of funding to the subcommittee, and the Senate adopted an amendment to restore some $400 million to various programs in the bill including $4 million for the ITC.

This amendment made significant changes to the bill as reported, and thus affected the amendment that I am offering with other Senators.

I would like to clarify that the intention of the Domenici amendment is to take a reduction in the International Trade Commission [ITC] by $4 million from the level approved in the managers amendment rather than from the level of funding reported in the original bill.

It is not my intention to reduce the ITC by 30 percent as some may assume from a literal reading of the amendment.

I understand the concerns of some of my colleagues over the use of the ITC funding as an offset. As a conferee on the bill, I will work with Chairman HATFIELD to sustain a level of funding that will be adequate to support the work of the International Trade Commission.

Mr. ROTH. I appreciate the clarification from my distinguished colleague from New Mexico. I am greatly concerned about the impact of the proposed appropriations reductions on the ITC. I hope the conferees will provide the maximum level of funding possible for the ITC in the final bill.

Mr. LAUTENBERG. Mr. President, I rise in support of this amendment to increase funding for legal services, and to retain the Legal Services Corporation.

Mr. President, the debate over this bill, when you get right down to it, is a debate about priorities.

And in my view, little is more important than ensuring that all Americans have access to justice.

After all, the principle of ''Equal Justice Under Law'' is at the heart of our democratic system. Every American is supposed to have the same legal rights. No matter their race. No matter their religion. No matter whether they are rich or poor.

Today's Legal Services Corporation helps make this principle a reality.

It protects victims of domestic violence.

It defends senior citizens and veterans against bureaucrats who arbitrarily deny them benefits.

It forces landlords to follow the law in eviction procedures.

It stops nursing homes from dumping patients who have become expensive or difficult to serve.

It helps the mentally ill and disabled get the benefits to which they are entitled.

And it helps ensure that Constitutional rights are real for all Americans, whether or not they can afford their own lawyer.

Mr. President, the need for legal services among low-income people is intense. Over 50 million Americans are living near the poverty level, and potentially eligible for legal services. One of every four children under six lives in poverty.

For people like these, Mr. President, legal services can mean access to critical support from an absent parent. It can mean a decent home to live in. Access to health care. Access to education. Or escape from a violent home.

Despite these critical needs, Mr. President, 70 percent of our country's least fortunate lack access to any legal services. One reason is that the number of legal services attorneys has been cut by one-third since 1981.

A recent survey found that, on average, legal services programs turned away 43 percent of eligible individuals because they lacked sufficient resources. For some programs, the rate was as high as 60 percent.

Mr. President, given these shortfalls, we ought to be increasing funding for legal services, not cutting it. Yet the bill approved by the Appropriations Committee would cut funding from legal services from $400 million to $210 million. That, in my view, would be an outrage.

This amendment would increase that level to $340 million. That does not go far enough, and would leave the Legal Services Corporation with a significant cut. Still, it is a big improvement. And, from all indications, it is the best we can do for now.

I also want to express my concern about the restrictions on legal service

lawyers that are included in this amendment. For example, the amendment would prohibit LSC lawyers from pursuing class action suits. I think that is a mistake. If a group of poor people are harmed by wrongful conduct, why should each person have to pursue a remedy individually? That only increases litigation, increases costs, and makes it more difficult for poor people to get justice. I do not think it makes sense.

But having said that, Mr. President, I realize that many of my colleagues feel strongly about this and other restrictions. And it appears that at least many of these restrictions are necessary to ensure that the program as a whole is supported and funded.

So, in conclusion, I want to commend Senator DOMENICI for taking the lead in this area, and I would urge my colleagues to support the amendment. The Legal Services Corporation deserves our support. Because each and every American deserves access to justice.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Mr. President, I have had an opportunity now to review some of the restrictions on the Federal Legal Services Corporation and its national bureaucracy that would be imposed under the Domenici amendment.

As I said earlier, I believe these provisions are far less restrictive than those that are in the bill, but there are several that I want to comment on and, I think, in commenting really make the point that as long as you have this national superstructure, you are not going to curb these abuses.

One of the restrictions in the Domenici amendment is to limit the ability of the Legal Services Corporation to file lawsuits that have to do with redistricting; that is, lawsuits that have to do with deciding where lines are drawn in terms of State legislatures and in terms of congressional redistricting.

The only problem with this restriction is it is already the law of the land. We currently have a ban on the ability of Legal Services Corporation to engage in lawsuits that relate to representation and to redistricting in legislatures and in Congress. But a perfect example of how this fails is that this restriction was in place in 1990 when the Texas Rural Legal Aid, which is funded by the Legal Services Corporation, challenged a redistricting plan in Texas in that year, in what the Bush administration saw as a violation of the congressional prohibition on lawsuits involving redistricting.

When the Bush-appointed Legal Services Board attempted to discipline the Texas Rural Legal Aid by reducing their funds, the Texas Rural Legal Aid sued the Legal Services Corporation. As a result, funds continued to be provided to the Texas Rural Legal Aid for the remainder of the Bush administration, when the new Clinton board was seated, they settled the case out of court.

So here is a perfect case in point where there has been a violation of a restriction on legal services funding. They clearly violated the rules in 1990, and when the Legal Services Board, appointed by President Bush, tried to step in and penalize them for violating the rules they went to court and continued to receive funds. Then the Clinton Legal Services Board settled the case out of court.

That is a perfect example of where we already have the restriction and, yet, with a Federal bureaucratic overlay on this program, we are unable to enforce the intent of Congress.

A second provision I look at is a prohibition against legislative lobbying, but there is a major loophole in the Domenici amendment on this issue as well. The major loophole is subsection 14(b) where funds are allowed to be used to lobby for more money and for fewer restrictions. I am not sure what else they would lobby for, but I think that is exactly what most people have in mind when you say that you are limiting their ability to lobby. If they can lobby to get more money and to get fewer restrictions, then they are clearly free to lobby.

The Domenici amendment has a requirement that there be timekeeping, that there be separate accounting, that there be monitoring, that there be no attorney-client waiver. And yet, routinely, these provisions are circumvented from monitoring on the grounds of the attorney-client privilege. I think it is a legitimate concern of whether we are going to be able overcome the assertion of that privilege when the Legal Services Corporation does not want to abide by the rules and when its client does not want to abide by the rules. I would like to have some assurances that, in fact, the rule is going to be abided by.

Another major problem has to do with public housing. In the list of abusive cases by Legal Services Corporation, probably no list is longer of those that I had included in the RECORD than the list of cases that involves public housing.

The Domenici amendment would prohibit legal services from defending a tenant who was charged with drug violations. But I want to remind my colleagues that often the tenant who has the contract with the public housing project is not the person who is charged. Often, they are simply abetting the crime by allowing a friend or children to use their unit of public housing for that purpose.

As I read the amendment, if they are charged with shooting and killing someone, there is no provision prohibiting a legal services defense. We deal only with drugs, not with guns, and not with violence. But I think, again, when you start looking at each one of these things, you find how very difficult it is to enforce these provisions, so long as there is a governing entity that basically wants the Legal Services Corporation to do these things.

I think these are very real concerns, and I think that these are concerns that need to be dealt with.

Finally, I just want to make note, I did not mention it before, and not that I expect that anybody is going to be greatly moved by it, but when we adopted a budget in the Senate and in the House we called for Legal Services Corporation funding at $278 million. The Domenici amendment would raise that funding level to $340 million. While it is not technically a violation of our budget, it is interesting to note that we are being called upon here to cut Federal prosecutors, to reduce Federal courts, to reduce funding for U.S. attorneys, to reduce FBI funding for construction at the FBI Academy in order to fund a level for the Legal Services Corporation which is above the level which was called for in the budget that was adopted in the U.S. Senate.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, might I ask the Senator from Texas a question, just from the standpoint of those who have other amendments and those who are calling and asking me as to where we are. I think we have had a good debate. I compliment him on the quality of his debate, and I wonder if there is any thought that he might have as to when we might vote. It does not matter to me. Last night, I indicated a genuine interest in voting quickly. Frankly, if we do not want to get a bill, that is up to the Senator from Texas.

Mr. GRAMM. Let me say to the Senator, it is my understanding that Senator KENNEDY and Senator LAUTENBERG are on their way here to speak on behalf of the bill.

Let me call those who have suggested to me that they might be interested, and it may well be at that point that we could reach a determination as to whether I want to make a motion or whether I just simply want to have a vote.

Mr. President, I suggest the absence of a quorum.

Mr. DOMENICI. Can we withhold on that?

The PRESIDING OFFICER. Will the Senator from Texas withhold?

Mr. GRAMM. I will be happy to withhold.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I just want to read one more time and make one more observation, there is no doubt that the principal concern about

the Legal Services Corporation has been class action lawsuits, lobbying, soliciting work, and a number of issues, and I will go through a list in a minute.

But I want to remind everyone again, we have never been able to literally write all of these prohibitions into the law.

Again, I want everyone to know the reason for the prohibitions is because legal services, when it was founded by Richard Nixon in association with the American Bar, intended this to represent individual poor people in individual cases, not to represent a class of poor people suing a welfare agency or suing a legislature or suing the farmers as a class.

We have never been able to put those kinds of prohibitions into law because we never had agreement between the House and the Senate. So I want everyone to know that, with few exceptions, the House has already agreed to the same kind of prohibitions that are in this bill. The House does not block grant this in their appropriations bill. They have funded it.

So with reference to the House, the only difference is that we seek to add some money so that this program gets cut 15 percent, which we think, in comparison to other things, is clearly fair, and we put the same prohibitions and some additional ones in.

So if this bill ever gets signed into law, and unless it does, there will be no funding unless we have an ongoing continuing resolution for the whole year, and it will be close to last year's level—10, 15 percent like we have. If a bill is going to come out and get signed, it is going to have these prohibitions and, once and for all, that is going to be the law.

Having said that, just a budget remark because my friend from Texas said it right. He said, technically, that this bill calls for more money than the budget resolution. I would not want anybody to think that is a rare exception around here either. Frankly, what is really binding is the total amount of the dollars. If we were able to write in the budget resolution and designate the funding level for every program, then there would be no need for annual appropriations. The appropriators could go out of existence. Some might say that is a good idea. I know the occupant of the chair is wondering, and I also believe we ought to appropriate every 2 years instead of every 1. I do not know why we do not change that. It has been proven very worthwhile in many States. But we still have a law that says the appropriators decide with finality. So there is no violation of the budget. If that were the case, every bill appropriations bill that came through here would be in violation because they all have items with different funding levels than the assumption in the budget resolution—maybe 20, 30 times in each bill. That is the prerogative of the Appropriations Committee, and the Senate as an institution. Only if we breach the cap, go over the total amount allowed, is it subject to the budget resolution, which is seeking not specificity but overall control.

So, indeed, if one were to talk about legal services being somewhat higher than the assumption, one could also say that almost all of the Justice Department and the anticrime measures in the bill are higher than the budget resolution. In that context, technically, they are doing much the same thing, letting the appropriators seek what they think is the appropriate level. So I think everybody should know on the up side and the down side of funding, that goes on in every appropriations bill. It does not violate the budget, so long as you do not breach the overall budget target.

I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I support the amendment offered by my distinguished colleague from New Mexico. I do so after having had considerable experience as a lawyer. I think I understand the need for representation of the poor in America on many of the complex legal issues and problems which they face.

My first exposure to representation of the poor came as a volunteer defender when I was a year and a half out of law school. That was before the Gideon versus Wainwright case, which established a constitutional right for defendants to have lawyers in criminal proceedings. It is unthinkable in 1995 that there was ever a time when someone would be ''haled into court,'' as Justice Black put it, and not have an attorney represent him when his liberty was at stake. But there was a day, and I was a year and a half out of law school and at a big Philadelphia law firm. There was an enormous backlog of criminal cases, and people were held at detention at the Montgomery County prison. I went over for a month to represent indigent criminals in the courts of Philadelphia.

It was a real eye-opener for me in many, many ways. The first way was to learn that these people had nobody to represent them in a courtroom. They were faced with two counts of rape, four burglaries, and I was a year and a half out of law school, and I was better than nothing, but barely, under those circumstances; and I saw at that time how people had to volunteer, how the community had to come forward to provide legal assistance to people who needed to have their rights represented in a courtroom. It also did something very profound for me, and that was it opened my eyes to public service and to the criminal courts. I had been there for only a month. Notwithstanding that, I was in a very prominent law firm. It was wall-to-wall life. I soon became an assistant district attorney because I wanted to learn to be a trial lawyer, and I wanted to participate in the public process. And it has all been downhill since then, to district attorney and U.S. Senator. But that was a real experience for me to see the importance of legal representation.

Now we have legal services. The first year I was here in 1981, there was an effort to reduce the funding to $100,000, which would have been grossly inadequate. Senators Rudman, DOMENICI, and a few of us stood up, and my recollection is that we had $261,000 for community legal services in that year. Last year, we had a battle on the floor of the U.S. Senate when there was an effort to limit community legal services from representing people in welfare reform cases, because the community legal services had gotten into a New Jersey case over welfare reform. It seemed to me unthinkable to limit community legal services from participating in representing poor people in challenging Federal or State laws. Now we have just gone through welfare reform in this body, dealing with matters which are tremendously complicated and have raised very many important legal issues. And you have to have representation for the poor in America. It is something we ought to be doing. The amount of money involved, in comparison to the scope of the problem, is minimal.

Senator DOMENICI is the leading expert on the budget. I cite him all the time, and I have great confidence in our glidepath for a balanced budget, because Senator DOMENICI is a man I have seen operate for over 6 years as chairman of the Budget Committee, from 1981 through 1986 and again this year. These dollars for legal services are very, very well spent.

I, frankly, have some concerns about the limitations which are present in this bill. I talked to Senator DOMENICI about them, especially the limitations on the use of non-Federal funds, and I know that this is a compromise to try to get the extra funding, to have some limitations. I have grave reservations about these limitations. But I do know this—even with the money which is left, this is not enough to handle individual cases where individuals need representation on complex legal matters.

I have tried to hold my comments to a few moments in the hope that we may act on this amendment. I do not think any souls are going to be saved or any votes are going to be changed on this amendment on my speech, the speeches before mine, or the speeches going back to about 11 o'clock this morning. We have a lot of other amendments which I hope we can take up. I hope we will move to conclude this amendment. I hope my colleagues will support this amendment because it is important for America.

I yield the floor.

Mr. DOMENICI. Mr. President, I see my friend from Hawaii on the floor. Did he want to say something?

Mr. INOUYE. No.

Mr. DOMENICI. Since there is no business coming before the Senate, I

ask for 6, 7, minutes as in morning business at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

A BALANCED BUDGET

Mr. DOMENICI. Mr. President, I want to talk a little bit about the balanced budget that we have put forth and that we all worked so hard for—at least on this side of the aisle. I am going to put it into the framework of the Secretary of Treasury, Mr. Rubin, talking to the American people and us about that day sometime after October 20, perhaps before November 15, in that timeframe, when the debt limit that we have imposed upon ourselves expires, and in order to borrow additional money, Congress has to act to raise that debt limit. Essentially, that is being discussed with the American people. I am not sure they all quite understand what that means.

I want to, in a sense, respond as I see it to the fear that the Secretary of the Treasury is pushing across this land in terms of that debt limit day.

First of all, Congress has never given up the power to tell the President and those who work for him, like the Secretary of Treasury how much they can borrow. Occasionally, it seemed kind of strange to me because Congress passes all these laws to spend money, and everybody votes on those, and then when it comes time to extend the debt, people say, ''We will not extend the debt.'' But I am beginning to understand that power to control the debt limit is very important, especially in this year and years like this one.

The Secretary of the Treasury is saying to us, ''You'd better agree to extend that debt limit because if you do not, something very ominous might happen.'' Then he talks about such things as default and we will not be able to pay interest on some bonds.

First of all, let me make it very clear from the standpoint of the Senator from New Mexico, who put this budget resolution together, and look at it from my vantage point as to the seriousness of that contention on the part of the Secretary that we had better be prepared to let that go up.

Now, I see it this way. I think there are two major events that are coming together in the month of November. One is described by the Secretary of the Treasury with all of those ominous tones about what will happen; the other is whether we are going to get a balanced budget—no smoke and mirrors—and entitlement reform.

Frankly, many people are now experts on this Federal budget. Interest rates out there on bonds affect our standard of living because it affects interest rates on many things. Those who look at that know precisely what is a balanced budget and what is not a balanced budget.

Mr. President, we know precisely what the big ingredient in a balanced budget is. The big one is reforming the entitlement programs that are out of control—Medicare, Medicaid. I did not say cut them, I said reform them. In addition, we must look at commodity price supports and a whole list of programs that are on automatic pilot.

If we do not stop them and change them, they just spin, some at a 10-percent increase a year, some 12. We had Medicaid in some States, increasing as much as 19 percent a year. I think we had as high as a 28-percent increase in one year in Medicaid—28 percent, automatic. Experts on the Federal budget know if you do not fix those and if your assumptions are not honest, then you have a budget that is smoke and mirrors, and ineffective.

Now, what I am saying to Members on the other side and others who will listen is do not jump to the conclusion that the most serious event is the day that we do not extend the debt limit when it needs to be extended.

Actually, an equally important day is coming when the President of the United States has to decide whether he wants to help us get a real—no smoke and mirrors—entitlement reform budget. Both of them are important events.

I will not place one above the other because I believe we must do everything we can this year—not next year, that is an election year; not 2 years from now; right now, this year. We have to get a balanced budget, with no assumptions that are too optimistic, and one that changes entitlement programs to reduce their ever dramatic increases.

Now, I cannot put it any better than that. I am not suggesting I am for a default. I am suggesting that is an important event. I believe we have to put the other event right up there alongside it. We have to serve notice on the Secretary of the Treasury and the President that we are not just going to run out on this balanced budget. We think we have done a job. We think it is positive. We think it is right.

Let me close by saying the reason that this is a big event is because for the first time in 31 years, elected officials are saying, ''We care about the future. It is not about today only. It is about the future. And we care about our children, not ourselves. We care about those yet unborn as much as ourselves.'' If we really believe that, we cannot continue to spend at what is currently, believe it or not, $482 million a day—a day. That is the amount we are adding to the debt every day—$482 million. That is a lot.

Who will pay it? If we are standing up saying we do not care, well, somebody is going to pay it. Do you know who is going to? The next generation, with a lost standard of living, because too much of the income has to come back up here and pay for our profligacy.

That is not right. That is a big event for adult leaders. It is just as big an event as the event that is closing upon us on whether we increase the debt limit, to let us borrow more or not.

I do not think the Secretary or the President should read anything more into my statement than what I have said. It is pretty clear that I am not running off in some kind of trepidation because we are being told about this need to extend the debt limit. For those who wonder about that debt limit extension, let me suggest—none of which I advocate—but there are a number of ways the Secretary of the Treasury can pay some bills out there after that debt limit is extended, without extending it. They know it. The Secretary knows it.

There are at least four. A couple of them have serious political ramifications. A couple of them they could use. It may be they do not want to do that, even when push comess to shove. But we do not want to abandon our balanced budget. And I am repeating, the kind of balanced budget we are talking about involves no optimistic economic assumptions, no smoke and mirrors. It is entitlement reform that is consistent with what is happening to the budget under current entitlement programs which, run unabated, have no relationship to what we can afford, just merrily run along, causing the debt to increase at $428 million a day.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE BUDGET AND SPENDING

Mr. HOLLINGS. Mr. President, while we are trying to arrange a vote here on this important amendment, I would just revisit what our distinguished chairman of the Budget Committee was talking about: the budget and spending.

Mr. President, the present budget for the fiscal year is $1.518 trillion, in other words, one trillion five hundred eighteen billion dollars. The budget under consideration, of which this State, Justice, Commerce appropriation is a part thereof, is $1.602 trillion. So, one trillion six hundred two billion dollars means spending is going up $84 billion.

Which reminds me of my distinguished chairman of the subcommittee, the Senator from Texas, always talking about those in the wagon who are going to have to get outside the wagon and start pulling it. The funny thing, like Pogo, ''We have met the enemy,'' we have met those in the wagon, ''and it is us.'' We have been spending literally hundreds of billions more than we are taking in each year. While the budget itself increases some $84 billion, interest costs increase $348 billion, or $1 billion a day, as has just been referred to by the distinguished chairman of the Budget Committee.