

Whereas Brian Fahey of Rescue Company 4, a 14-year veteran of the department and resident of East Rockaway, and a husband and father of 3, lost his life in the fire; and

Whereas Harry Ford of Rescue Company 4, a 27-year veteran of the department from Long Beach, and a husband and father of 3, lost his life in the fire: Now, therefore, be it

*Resolved*, That the Senate—

(1) honors John J. Downing, Brian Fahey, and Harry Ford, who lost their lives in the course of duty as firefighters, and recognizes them for their bravery and sacrifice;

(2) extends its deepest sympathies to the families of these 3 brave heroes; and

(3) pledges its support and to continue to work on behalf of all of the Nation's firefighters who risk their lives every day to ensure the safety of all Americans.

#### A CALL FOR ACTION

Mr. LEVIN. Mr. President, a new poll conducted by the Opinion Research Corporation International and released by the Brady Campaign to Prevent Gun Violence confirms once again that the American people support sensible gun safety legislation. Eighty-three percent of those polled said they support criminal background checks on all gun purchases at gun shows. Nearly four out of five respondents voiced support for preventing gun dealers from selling guns to anyone who has not passed a background check, even if it takes more than 3 days to complete the check. And more than 8 out of every 10 people polled believe that all guns should be sold with childproof safety locks.

The message here is clear. People are fed up with the reports of gun violence that dominate the front page and the evening news. America wants action.

The Brady Campaign's poll and countless other studies demonstrate our mandate. The incidents of gun violence that plague our neighborhoods and endanger our children confirm our moral obligation.

We should ignore neither. We cannot let another Congress go by without action. Let's close the loopholes in our gun laws and remember the 107th Congress as a time when we made America a safer place for our children and our grandchildren.

#### GENERAL ACCOUNTING OFFICE REPORT ON DISADVANTAGED BUSINESS ENTERPRISES PROGRAM

Mr. McCONNELL. Mr. President, when the 105th Congress passed the Transportation Equity Act for the 21st Century, TEA-21, there was a vigorous and close debate about whether to convert the Disadvantaged Business Enterprise Program into a race neutral program helping all small disadvantaged businesses. It troubled many members of both Houses that we lacked basic information about the characteristics of DBEs and non-DBEs and about alleged discrimination in the transportation industry. Consequently, I introduced, with widespread bi-partisan support, an amendment to TEA-21, requiring the

GAO to gather the information Congress was missing that is essential to understanding the DBE program. As Congressman SHUSTER, Chair of the House Committee on Transportation and Infrastructure and the floor manager for the transportation bill, emphasized during the House debate, the Act "also requires a GAO study that would examine whether there is continued evidence of discrimination against small business owned and controlled by socially and economically disadvantaged individuals. I believe such a study will lay the groundwork for future reform."

Three years later, the GAO has produced a comprehensive report on the questions Congress asked it to investigate. This objective, impartial report entitled, "Disadvantaged Business Enterprises: Critical Information is needed to Understand Program Impact," GAO Report GAO-01-586, June 2001, is highly significant to the continuing legislative and judicial debate over the DBE program. Professor George R. La Noue, one of the distinguished scholars in this field, has analyzed the GAO's report. He notes that the "DBE program has been continuously subject to litigation during its almost two decades of existence." Professor La Noue concludes that "the picture of the DBE program that emerges from the GAO report is one of essential information that is missing, or if available, does not support any finding of a national pattern of discrimination against DBEs." I am pleased to provide Professor La Noue's analysis of the GAO report, and I request that it be printed in the RECORD.

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

#### AN ANALYSIS OF "DISADVANTAGED BUSINESS ENTERPRISES: CRITICAL INFORMATION IS NEEDED TO UNDERSTAND PROGRAM IMPACT"

GAO Report [GAO-01-586 June 2001]

(By George R. La Noue, Professor of Political Science)

DIRECTOR, PROJECT ON CIVIL RIGHTS AND PUBLIC CONTRACTS, UNIVERSITY OF MARYLAND, BALTIMORE COUNTY

During the 1998 consideration of the Transportation Equity Act for the 21st Century (TEA-21), there was extensive debate in both Houses about whether to make the DBE program race-neutral. In the end, a compromise was reached to retain a race conscious DBE program, while requiring the General Accounting Office to make a three year study of the characteristics of the DBEs and non-DBEs participating in federal transportation programs and to gather existing evidence of discrimination against DBEs. Such information was intended to provide a solid basis of facts for courts, legislators, and others grappling with the complex issues of the constitutionality of the DBE program.

The GAO study now has been released and its conclusions are highly significant. GAO performed its three year study by obtaining data from 52 state DOT recipients (including the District of Columbia and Puerto Rico) and 31 of the largest (accounting for two-thirds of transit grant funds obligated in 1999) transportation districts in the country. In addition GAO staff interviewed representatives of interest groups on both sides of the

DBE question and analyzed the results of 14 transportation related disparity studies.

Following are GAO's major conclusions.

#### 1. DISCRIMINATION COMPLAINTS

GAO conducted a survey of discrimination complaints received by USDOT and recipients. GAO found that, while USDOT sometimes receives written complaints of discrimination, the agency does not compile or analyze the information in those complaints. GAO could not supply information on the number of complaints filed, investigations launched, or their outcomes. (p. 33) GAO also asked state and local transit recipients about complaints they received and they had better data. During 1999 and 2000, 81 percent of the recipients had no complaints, while a total of 31 complaints were received by the other recipients. Of these, 29 were investigated and findings of discrimination were made only 4 times across the nation.

The report concluded: Other factors may also limit the ability of DBEs to compete for USDOT-state assisted contracts. The majority of states and transit districts we surveyed had not conducted any kind of analysis to identify these factors. Using anecdotal information, we identified a number of factors, or barriers, such as a lack of working capital and limited access to bonding, that may limit DBEs' ability to compete for contracts. However, there was little agreement among the officials we contacted on whether these factors were attributable to discrimination. (p.7)

In fact GAO reported there were few if any studies by government agencies or industry groups regarding barriers to DBE contracting. "USDOT officials, however, stated that they believe contract bundling is one of the largest barriers for DBEs in competing for transportation contracts." (p. 35) That, of course, is not a problem caused by discrimination.

#### 2. DISPARITY STUDIES

GAO also reviewed 14 transportation-specific disparity studies completed between 1996 and 2000. GAO examined these studies because they might be a source of evidence about discrimination against DBEs and because USDOT permits recipients to use disparity studies to set annual goals and to determine the level of discrimination these goals purportedly are remedying. GAO found that about 30 percent of the recipients surveyed used disparity studies to set their fy 2000 goals. (p. 29)

GAO found that: the limited data used to calculate disparities, compounded by the methodological weaknesses, create uncertainties about the studies findings. . . . While not all studies suffered from every problem, each suffered enough problems to make its findings questionable. We recognize there are difficulties inherent in conducting disparity studies and that such limitations are common to social science research; however, the studies we reviewed did not sufficiently address such problems or disclose their limitations. (p.29)

GAO then detailed disparity study problems, particularly in calculating DBE availability. These problems are important not only because they undermine the validity of the disparity studies involved, but because these same problems exist in the regulations USDOT issued regarding annual goal setting. USDOT as a practical matter permits recipients to use a wide variety of sources to measure availability on which goals are then based.

GAO made other specific criticisms of the studies. For example, the studies did not have information on firm qualifications or capacities; they failed to analyze both the dollars and contracts awarded and sometimes did not have subcontracting data. This

was important: Because MBE/WBEs are more likely to be awarded subcontracts than prime contracts, MBEs/WBEs may appear to be underutilized when the focus remains on prime contractor data. Furthermore, although some studies did include calculations based on the number of contracts, all but two based their determination of disparities on only the dollar amounts of the contracts. Because MBEs/WBEs tend to be smaller than non-MBEs/WBEs, they often are unable to perform on larger contracts. Therefore, it would appear that they were awarded a disproportionately smaller amount of contract dollars. (p. 32) (see data on contracting awards on p. 51)

GAO's conclusion here is significant because the USDOT regulations measure utilization only in dollars, not contracts, and annual goals are set based on total dollars rather than on the DBE share of subcontracting dollars.

Finally GAO notes that although USDOT advised recipients that disparity studies should be "reliable," USDOT provided no guidance on what would be a reliable study. GAO concluded that: USDOT's guidance does not, for example, caution against using studies that contain the types of data and methodological problems that we identified above. Without explicit guidance on what makes a disparity study reliable, states and transit authorities risk using studies that may not provide accurate information in setting DBE goals. (p. 32)

GAO's finding about the unreliability of disparity studies is consistent with the findings of every court that has examined the merits of such studies after discovery and trial.

### 3. DISCONTINUING PROGRAMS

One of the arguments used in the TEA-21 debates and defendant's trial briefs is the assertion, often anecdotal, that without goals, DBE participation would decline precipitously. The difficulty with that assertion, even if true, is that the decline in DBE participation may be the result of previous overutilization caused by goals set too high or because when a program is struck down DBEs may have little incentive to seek or maintain certification.

But is the basic assertion true? It turned out that 10 of 12 recipients with discontinued programs did not know what the DBE participation result was. For instance, although Michigan was cited by DBE proponents in the TEA-21 debate as an example of DBE utilization decline after Michigan Road Builders Assn. v. Millikin (1987) struck down the state highway MBE program, GAO reports: Michigan could not provide us with minority and women owned business participation data in state highway contracting for the years immediately before and after it discontinued its program. Furthermore, Michigan officials stated that the analysis showing the decline that is often cited was a one-time-only analysis and that analysis is no longer available. Consequently we can not verify the number cited during the debate (p.37)

### 4. MISSING INFORMATION

Much of the above criticisms GAO cast in terms of a lack of information, but there were other key items missing as well. GAO had planned to survey all transit authorities receiving federal funds, but FTA does not have a complete list. (p. 74) When the 83 state and transit recipients were surveyed, only 40% or less of the respondents could report the gross revenues of the DBEs that won contracts. Less than 25% of the respondents could report the gross revenues of the DBEs that did not win contracts. (pp. 52-55) Only about a third of the agencies could report data on the personal net worth of DBE owners, although TEA-21 regulations require

that such owners net worth not exceed \$750,000.

Only a handful of respondents could report data on the gross revenues or owner net worth characteristics of non-DBE firms. (p. 64) While 79 respondents could report data about subcontracts awarded DBEs, only 28 respondents could report similar data for non-DBEs. That means that most respondents did not regard comparing DBE and non-DBE subcontractor utilization relevant in setting goals or in determining whether discrimination exists.

Nor are respondents acquiring relevant information: 98.8% have not conducted any study determining if awarding prime or subcontracts to DBEs affects contract costs; 67.5% no study on discrimination against DBE firms; 84.2% no study of discrimination against DBEs by financial credit, insurance or bond markets; 79.5% no study of factors making it difficult for DBEs to compete; and 92.8% no study on the impact of the DBE program on competition and the creation of jobs. (pp. 66-68). Only 26.5% of the respondents have developed and implemented use of a bidders list, although the regulations require such.

The DBE program has been continuously subject to litigation during its almost two decades of existence. Overall, the picture of the DBE program that emerges from the GAO report is one of essential information that is missing, or if available, does not support any finding of a national pattern of discrimination against DBEs.

## LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of this year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred April 18, 1998 in New York City. A man who used anti-gay epithets allegedly slashed a gay man in the face with a knife. Eric Rodriguez, 22, was charged with attempted murder, assault, and criminal possession of a weapon.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation, we can change hearts and minds as well.

## RAILROAD CROSSING DELAY REDUCTION ACT

Mr. DURBIN. Mr. President, earlier this month I introduced the Railroad Crossing Delay Reduction Act, S. 1015, with my colleagues, Senators LEVIN and STABENOW.

This legislation would accelerate efforts at the U.S. Department of Transportation to address the issue of rail safety by requiring the Secretary of Transportation to issue specific regulations regarding trains that block automobile traffic at railroad crossings. Currently, there are no Federal limits

on how long trains can block crossings. The Railroad Crossing Delay Reduction Act would simply minimize automobile traffic delay caused by trains blocking traffic at railroad grade crossings.

In northeastern Illinois, there are frequent blockages at rail crossings. These blocked crossings prevent emergency vehicles, such as fire trucks, police cars, ambulances, and other related vehicles from getting to their destinations during the times of need. This is a serious problem and one I hope to address by passage of this important legislation.

Blocked rail crossings also delay drivers by preventing them from getting to their destinations. Motorists, knowing they will have to wait for a train to move at blocked crossings, sometimes try to beat the train or ignore signals completely. This is a threat to public safety, and one that must stop. Motorists must act responsibly, but we can reduce the temptation by reducing delays.

Trains stopped for long periods of time also tempt pedestrians to cross between the train cars. I've heard from local mayors in my State that children, in order to get home from school, cross between the rail cars. This is a terrible invitation to tragedy.

Trains blocking crossings cause traffic problems, congestion, and delay. These issues are very real. They are serious. And more importantly, they are a threat to public safety. To address these problems, I've introduced with my colleagues the Railroad Crossing Delay Reduction Act. I'm hopeful this legislation will provide for a safer Illinois and a safer Nation. I urge my colleagues to join the effort to reduce blocked rail-grade crossings by cosponsoring and supporting S. 1015.

## THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, June 27, 2001, the Federal debt stood at \$5,655,167,264,852.88, Five trillion, six hundred fifty-five billion, one hundred sixty-seven million, two hundred sixty-four thousand, eight hundred fifty-two dollars and eighty-eight cents.

One year ago, June 27, 2000, the Federal debt stood at \$5,650,720,000,000, Five trillion, six hundred fifty billion, seven hundred twenty million.

Five years ago, June 27, 1996, the Federal debt stood at \$5,118,104,000,000, Five trillion, one hundred eighteen billion, one hundred four million.

Ten years ago, June 27, 1991, the Federal debt stood at \$3,502,028,000,000, Three trillion, five hundred two billion, twenty-eight million.

Fifteen years ago, June 27, 1986, the Federal debt stood at \$2,040,977,000,000, Two trillion, forty billion, nine hundred seventy-seven million, which reflects a debt increase of more than \$3.5 trillion, \$3,614,190,264,852.88, Three trillion, six hundred fourteen billion, one hundred ninety million, two hundred