June 28, 2001

CONGRESSIONAL RECORD—SENATE 12367

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.

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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”**


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

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

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. The study was intended to provide a solid basis of facts for courts, legislators, and others grappling with the complex issues 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.

...the studies reviewed did not sufficiently address such problems or disclose their limitations... Without explicit guidance on what would be a reliable study, USDOT provided no guidance on what would be a reliable study. GAO then detailed disparity study problems, particularly in calculating DBE availability. These problems are important not only because of the quality 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 disparity studies to set annual goals and to determine the level of discrimination these goals purportedly are remedying. GAO found that about 70 percent of the recipients surveyed used disparity studies to set their fy 2000 goals. (p. 29)

...the studies did not have information on firm qualifications or capabilities; they failed to analyze both the dollar amounts and types of 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 contracts. MBEs/WBEs may appear to be underutilized when the focus remains on prime contracts. (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 subcontracts awarded. 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 we identified above. Without explicit guidance on what makes a disparity study reliable, states and transit districts that base their goals on such studies 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.

**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 this 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. 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 legislative 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 analysis that was no longer available. Consequently we can not verify the number cited during the debate (p.37)

**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. (p. 52-55) Only about a third of the agencies could report data on the personal characteristics of owners, although TEA-21 regulations require that such owners net worth not exceed $75,000. Only about 40% of the respondents could report data on the gross revenues or owner net worth characteristics of non-DBE firms. (p. 68) While 79 respondents could report data on minority and women owned business participation, only 28 respondents could report similar data for non-DBEs. That means that most respondents did not regard comparing DBE and non-DBE participation meaningful in setting goals or in determining whether discrimination exists.
Nor are respondents acquiring relevant information not contained in a study determining if awarding prime or subcontracts to DBEs affects contract costs; 67.5% no study on discrimination against DBEs; 84.2% no study of discrimination against DBEs in government procurement programs; 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 bids 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. Ms. 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 STORY.

This legislation would accelerate efforts at the U.S. Department of Transportation to address the issue of railroad safety by requiring the Secretary of Transportation to issue specific regulations to control 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 bids list, although the regulations require such.

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