

Opportunities for Too Few? Oversight of Federal Employment Programs for Persons with Disabilities

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Testimony

Mr. Chairman, and Members of the Committee:

My name is James Gashel. I am Executive Director for Strategic Initiatives for the National Federation of the Blind. My address is 1800 Johnson Street, Baltimore, Maryland, 21230; telephone (410) 659-9314, extension 2227. You have asked me to testify today on employment opportunities for blind persons and for persons with disabilities under the Randolph-Sheppard Act and the Javits-Wagner-O'Day Act. Thank you for this opportunity. Both of these programs are an important part of our nation's efforts to assist blind persons and persons with disabilities to enter the workforce, support themselves and their families, live productive lives, and pay taxes. This oversight hearing can do a great deal to insure that these goals are achieved.

Mr. Chairman, I am appearing here today on behalf of the National Federation of the Blind (NFB). In case it is not obvious, we often say that "of" is perhaps the most important word in our name. All of our elected leaders and the vast majority of our members are blind. With 700 local chapters, an affiliate in every state, and more than 50,000 members nationwide, the NFB is widely recognized as the "Voice of the Nation's Blind." Therefore, I welcome the opportunity of this hearing to present our views on implementation of both the Randolph-Sheppard Act and the Javits-Wagner-O'Day Act as these two laws affect employment prospects for blind people in the United States.

I will begin this discussion by contrasting the purposes of the Randolph-Sheppard Act on the one hand, and the Javits-Wagner-O'Day Act on the other. As the Randolph-Sheppard Act declares in its opening sentence, the mission of this law is: "...providing blind persons with remunerative employment, enlarging the economic opportunities of the blind, and stimulating the blind to greater efforts in striving to make themselves self-supporting..." The word we use today to describe this purpose is "entrepreneurial." The goal of the Randolph-Sheppard Act was and still is to make arrangements for blind people to operate small business enterprises on federal and other public property. Program success is measured in part by whether a blind individual is set up in a business. The amount of net earnings for blind persons from the businesses they operate is the other key measure of program success.

By contrast to the Randolph-Sheppard Act emphasis on individual entrepreneurship, the Javits-Wagner-O'Day Act focuses on direct labor jobs for blind and disabled people. Under this law the number of jobs is the relevant success factor. These jobs are promoted

by reserving certain products and services for exclusive procurement from nonprofit agencies. It is the agencies, not blind or disabled entrepreneurs, who qualify to receive government contracts. These agencies can qualify to receive noncompetitive government contracts as long as blind or disabled people perform 75 percent of the agency's direct labor hours.

Javits-Wagner-O'Day contracts are not conditioned on employment of blind or disabled people in management or supervision. Also, the amount of wages paid to blind or disabled employees is not a measure of program success under Javits-Wagner-O'Day contracts. The average wage is far below industry standard for comparable work and may often be well below the minimum wage. The law allows any wage below the minimum wage to be paid.

In fiscal year 2004, the latest year for which data are available, gross receipts reported by blind Randolph-Sheppard vendors were \$488.5 million, with net profits to the blind of approximately \$103.6 million. This shows a program-wide profit margin of about 22 percent, all of which is received by the blind vendors, and none of which is received by a management agency. A profit margin of 22 percent is consistent with the industry-wide net profit standard in food service.

By contrast, sales to the government under Javits-Wagner-O'Day contracts were about \$2.05 billion during fiscal year 2004, with about \$326.2 million paid out to the blind and disabled direct labor employees. This is about 18 percent of gross sales, when the industry standard for labor costs in light manufacturing and assembly work is more like 23 percent. It should also be noted that during fiscal year 2004, the government paid approximately \$82 million to two central non-profit coordinating agencies – National Industries for the Blind (NIB) and NISH. The amount they receive on each contract is included in the price paid by the government. The price, which is not a competitive bid price, is set by a federal agency known as the Committee for Purchase from People who are Blind or Severely Disabled, which oversees the Javits-Wagner-O'Day program.

Since the Randolph-Sheppard Act is entrepreneurial, blind people who operate the businesses are the principle beneficiaries in terms of remuneration. The same cannot be said of the Javits-Wagner-O'Day program. Neither the Javits-Wagner-O'Day Act nor the Javits-Wagner-O'Day Committee requires NIB or NISH to hire disabled employees in management or otherwise, and in practice most managers or supervisors are not blind or disabled. The same is true in the management of the agencies that receive contracts through NIB and NISH. This means that most of the responsible and better-paying jobs resulting from the Javits-Wagner-O'Day program are held by non-blind and non-disabled people. This is a shocking and little known fact of how this program is being operated.

Mr. Chairman, I am aware that the Randolph-Sheppard program has been criticized for failing to employ greater numbers of blind or disabled people. I will have more to say on that point in a few minutes. However, it is important to know that blind people, rather than those who are neither blind nor disabled, receive all of the proceeds, pay all of the bills, and retain all of the profits resulting from businesses created through the Randolph-

Sheppard program. According to the data, average net earnings for blind vendors during fiscal year 2004 were about \$39,800 as compared to estimated average annual wages of \$8,083 for blind and disabled employees working under Javits-Wagner-O'Day contracts during the same period. I should also note that the 45,300 employees in the Javits-Wagner-O'Day program worked fewer than 41,000 hours, or approximately 900 hours for each employee during the year. This is less than half-time employment as compared to the full-time work and full-time responsibility involved in running a business under the Randolph-Sheppard program.

This brings me to the question of whether the Randolph-Sheppard program leads to too few jobs for blind and disabled people. Mr. Chairman, as long as most blind people continue to receive public benefits, either Social Security Disability Insurance or Supplemental Security Income, as their primary means of support, every effort, including the Randolph-Sheppard program, is not enough. The national unemployment rate of blind persons is not even compiled by the Bureau of Labor Statistics because doing so is neither a political nor an economic imperative. The best we can do is to estimate that more than 70 percent of employable blind persons are either unemployed or significantly underemployed to the point that they receive public benefits. I wish I were making this up, but these estimates are widely believed to be true.

The National Federation of the Blind believes that too few employment opportunities are available through the Randolph-Sheppard Act. We are concerned that the number of blind vendors operating businesses in the Randolph-Sheppard program continues to decline each year. We are pleased that the overall quality of the businesses has significantly improved. Better businesses lead to better earnings for the vendors, but significantly more opportunities should be available.

In 1974 Congress overhauled the Randolph-Sheppard Act with the expectation that the number of vending facilities in the program could double within five years. In 1975, one year after the amendments, there were 3,810 blind people operating vending facilities in the Randolph-Sheppard program. Although the law was changed to increase this number, the expansion has not occurred. Today, in fact, there are 1,230 fewer blind vendors than there were in 1975. I think I know some of the reasons for this decline, but lack of interest among blind people in becoming entrepreneurs is not one of them.

Mr. Chairman, the blind men and women who operate businesses made possible through the Randolph-Sheppard Act are taxpaying Americans. They honor the legacy of Jennings Randolph and those in Congress who supported him. They provide needed services to public employees. Poor performance by the vendors is not a reason for their numbers to decline.

The law as amended in 1974 places primary responsibility for program expansion in the hands of the Rehabilitation Services Administration (RSA), now administered under the Assistant Secretary for Special Education and Rehabilitative Services in the U. S. Department of Education. According to the law, this agency is supposed to lead the federal government's effort to establish one or more vending facilities for operation by

licensed blind persons on all federal property. Is this happening? The answer is “no.” All of us who care, and especially members of Congress who write the laws, need to know why.

Before the law was amended in 1974, RSA had three fulltime equivalent positions devoted to administration of the Randolph-Sheppard program. With the new statutory designation of RSA as the lead Randolph-Sheppard federal agency, Congress directed that ten additional positions should be established in the Office for the Blind and Visually Impaired under RSA. This means that there should have been 13 full-time equivalent positions at RSA exclusively devoted to developing new business opportunities for blind people and administering the Randolph-Sheppard program for the past 31 years. The law expressly requires RSA to conduct surveys to identify new employment opportunities for blind vendors and other blind persons. Have the personnel been hired? Have the surveys been conducted? The answer to both questions is “no.” All of us who care and especially members of Congress who write the laws need to know why.

On October 1, 2005, a new organization plan was put into effect for RSA. Under this plan the Division (formerly the Office) for the Blind and Visually Impaired has been abolished. The vending facilities branch, with personnel exclusively responsible for the Randolph-Sheppard program, has been abolished. The ten regional offices, which have had personnel responsible for oversight of the Randolph-Sheppard program within each federal region, have been abolished. The positions held by all of the personnel in the RSA regional offices have been abolished. Most of the remaining RSA employees assigned to the Washington, D.C., central office have general responsibilities. Only a few have anything whatsoever to do with administering the Randolph-Sheppard Act as part of their work. This is far short of the staffing level directed by Congress in 1974. Somehow the 13 positions designated by Congress for Randolph-Sheppard expansion have evaporated. All of us who care and especially members of Congress who write the laws need to know why.

Even before this most recent round of retrenchment at RSA, the position of Director of the Vending Facilities Branch was left vacant for about 18 months from early 2003 until August 2004. The position was then filled in about three weeks after I went over the head of the assistant Secretary and met with the Deputy Secretary of Education. The problem is not a failure of the law, Mr. Chairman. It is not a failure of the remaining personnel assigned in part to the Randolph-Sheppard program. In general, the problem is not a failure of the state licensing agencies to do their part on behalf of blind vendors. Nor has there been a failure of the blind vendors themselves to uphold their responsibilities. By far the most vexing problem is an attitude of callous indifference toward the Randolph-Sheppard program at the management level in the Department of Education and in the Office of Special Education and Rehabilitative Services. Does the assistant Secretary in charge of this Office have a plan to achieve the goals for the Randolph-Sheppard program that Congress established in 1974? The answer is “no.” All of us who care and especially members of Congress who write the laws need to know why.

The final section of the Randolph-Sheppard Act provides an authorization of

appropriations for such sums as may be necessary. No administration in over 31 years has asked Congress for funds to carry out the Randolph-Sheppard Act pursuant to this section. If the National Federation of the Blind has any responsibility for this failure, I will accept it, but we are not charged with implementing the law. The current administration should be asked if funds will be sought for the Randolph-Sheppard program as part of its fiscal year 2007 budget request to be submitted early next year. If the answer is "no," all of us who care and especially members of Congress who must approve the budget need to know why.

Absent a specific appropriation to implement the Randolph-Sheppard Act, state licensing agencies are expected to fund all of their efforts for this program primarily from the allotment they receive under section 110 of the Rehabilitation Act of 1973, as amended. Combined with the state match, the amount spent to carry out the Randolph-Sheppard program in fiscal year 2004 was about \$10.3 million. This represented an investment of less than one-half of one percent of the total amount available for vocational rehabilitation that year. Most of this spending was just to keep the lights on. Even if all of it was devoted to developing new opportunities, what business could grow with spending of only one-half of one percent devoted to business expansion each year?

Aside from leadership indifference at the Department of Education, the Randolph-Sheppard program is still blocked by most of the obstacles to growth that Congress identified in 1974. The Postal Service, for example, has a policy that vending route contracts are not subject to the priority for blind vendors. This is a substantial limitation since most postal buildings will not support an entire vending facility business for a single blind vendor. The Department of Veterans Affairs refuses to apply the Randolph-Sheppard priority in awarding contracts for vending machines and other services at its VA hospitals in spite of an unambiguous ruling from the U. S. Court of Appeals for the 8th Circuit to the contrary. Also, the Bureau of Prisons continues to resist awarding vending facility contracts under the Randolph-Sheppard Act.

The prospects for growth in the Randolph-Sheppard program would be poor enough if these were the only obstacles, but they are not. In recent years both NISH and the Javits-Wagner-O'Day Committee have teamed up to block blind vendors from receiving military troop dining contracts. The military food service businesses are much larger than the typical federal office-building snack bar. Having contracts with military installations to feed the troops represents a wonderful growth opportunity for the Randolph-Sheppard program, but NISH and the Javits-Wagner-O'Day Committee have claimed that the Randolph-Sheppard Act does not apply to these contracts. Failing to maintain this position in the federal courts, they brought their case to Congress to remove the Randolph-Sheppard program from military troop dining altogether. To date they have won only a limited exemption, which has been included in two annual defense authorization bills.

Combined with the Department of Education's leadership indifference and the other forces working to limit the Randolph-Sheppard program, opposition from NISH and the Javits-Wagner-O'Day Committee is nothing short of shameful. According to the

WWW.JWOD.GOV Web site, NISH has already been awarded 105 troop dining service contracts but still wants the 39 more being performed by blind vendors. For all I know, NISH will not be satisfied until they have received all of the military dining service contracts available in the U. S., and the Randolph-Sheppard program has none. This on top of the 8,375 products and 3,256 services that have already been reserved for mandatory source procurement through NIB and NISH.

Mr. Chairman, the Randolph-Sheppard Act places a priority for the blind on only one service – vending facilities as defined in the law. Although NISH wants it to be otherwise, military dining halls are cafeterias, subject to the priority of the Randolph-Sheppard Act. Surely it is enough for NISH and the Javits-Wagoner-O'Day program to have a mandatory source opportunity to supply 11,633 different products and services to the federal government without also claiming an exclusive right to food service – the only service provided by blind vendors under the Randolph-Sheppard Act. How much is enough for NISH?

Critics have said that a few blind vendors are earning too much money from these larger size military dining contracts. However, entrepreneurship implies earnings without artificial or arbitrary restrictions. Besides, applying the NISH alternative means that a few nondisabled managers at NISH and its affiliates are enriched while the disabled workers earn an average of \$8,083 a year. If blind vendors are displaced, NISH itself would receive several million dollars more on top of the \$8.4 million it now receives each year from military dining contracts. How much is enough for NISH?

Military dining contracts are consistent with the expressed goal of the Randolph-Sheppard Act – to enable blind people to achieve “their maximum vocational potential.” With the food service now being provided by blind vendors at 39 military bases, there is a clear track record of success that lifts expectations for all blind people. As a blind person myself, I am proud to live in a country where people who are blind can be given the responsibility for feeding our armed forces. I don't believe there is anywhere else in the world but the United States where the skills of qualified blind people are so recognized and respected.

This brings me to the most important point about the Randolph-Sheppard Program – what it says and what it means to all of us who are blind. I know there are not enough opportunities being created through the Randolph-Sheppard program, but the program is not a failure. I have never worked a day in my life as a blind vendor, but I along with all other blind people have received enormous benefits from this program. Watching blind men and women conduct business on a par with others, I learned that it is respectable to be blind. Although the Randolph-Sheppard program directly creates high-quality business opportunities only for those licensed to operate vending facilities, the benefits of the program go far beyond the licensees. Whenever you belong to a minority, Mr. Chairman, you learn the truth in the statement that “all of us are lifted when one of us is lifted.” No one counts the jobs for blind people that result from Jennings Randolph's wisdom of having blind entrepreneurs responsible for food services in public buildings. However, the spin-off effect is real. The statistical reports do not tell you about the lives of those of

us who are blind who are enriched and more successful because of successful blind vendors who are seen as role models. These are the unreported benefits of the Randolph-Sheppard Act.

An explanation of why the Randolph-Sheppard Act targets blind people for business opportunities is in order. I knew Senator Randolph. He was a sensitive and caring legislator. He was chairman of the Subcommittee on Handicapped Workers – later the Subcommittee on the Handicapped, and still later the Subcommittee on Disability Policy – under this full Committee, then called the Committee on Labor and Public Welfare. As chairman of the Subcommittee on the Handicapped, Senator Randolph led the effort to create many programs especially designed to address the unique needs of people with diverse disabling conditions.

Senator Randolph demonstrated the understanding that disabilities are specific not generic. Different disabilities impose unique limitations, which require unique solutions. Consequently, Senator Randolph led the way with legislation in the following areas:

- to remove architectural♣ barriers for people who use wheelchairs,
- to create training and service♣ opportunities for people with developmental disabilities,
- to establish♣ education programs especially designed for people who are deaf,
- and more.♣

For people who are blind, Senator Randolph said that opportunities to serve the public would help to overcome the isolation of stereotyped jobs in sheltered settings. He knew that lack of public acceptance and misunderstanding were greater problems for the blind than loss of eyesight. Providing a priority for blind people to meet a public need by having businesses in public spaces was his unique way of exploding the myth that the blind could only work in menial, repetitive, and sheltered jobs.

As a blind person growing up in the era when Jennings Randolph served in the Senate, I remember wondering what would become of me. I knew there were blind people staying at home or working in small shops weaving rugs. These were the only blind role models available to me. Isolation of this kind can be overpowering, but I was fortunate to discover other opportunities. This happened in part by witnessing the success of blind entrepreneurs who became my role models.

If the Randolph-Sheppard program for the blind had been a generic program for the disabled, it would not have provided a relevant example for me. It may be convenient to write generic laws as a matter of public policy, but I thank God that Jennings Randolph had a different understanding. In my mind, people with disabilities should have support for entrepreneurial opportunities. Bills such as the one proposed by Senator Roberts and Senator Kennedy could help to do this. Contracting arrangements made possible under the Javits-Wagner-O'Day Act could also be used to promote entrepreneurship for people with disabilities. The last time I proposed this, NIB, NISH, and the Javits-Wagner-O'Day Committee opposed it. That was several years ago, so I hope they would take a different point of view today. Expanding the Javits-Wagner-O'Day Act to promote entrepreneurship through federal contracts would be better than diminishing opportunities

for the blind under the Randolph-Sheppard Act.

I have heard it said that the Javits-Wagner-O'Day program is more effective than the Randolph-Sheppard program because it results in more employment opportunities for more disabled people. NISH has said this in trying to remove Randolph-Sheppard vendors from military dining contracts. However, this claim expresses a single-minded preference for raw jobs over high quality business opportunities. Jobs are important, but running a business on your own is also a part of the American dream. Contracts, which net more to blind vendors than you and I make, are not wrong. The alternative is that entrepreneurs who can see will have the earnings. People in business try to make money; that's what entrepreneurship is all about.

Should blind people hire more disabled people when they have jobs available? The answer is "yes," but the same can be said of any corporation in America. The record of blind vendors in hiring blind and disabled employees is far better than the record of NISH in hiring blind people in management positions. Non-blind and non-disabled executives of NISH affiliates are paid in excess of \$500,000 in some reported cases, while their direct labor workers who are blind or disabled receive an average of \$8,083 annually. According to the values I have, this is wrong. Creating low-wage jobs for people with disabilities is not a better outcome than entrepreneurship.

Mr. Chairman, speaking for those who care about the health and prosperity of the Randolph-Sheppard program, I hope this hearing will be the beginning of a renewed commitment to the course of action and promises made by Congress when the 1974 amendments to the Act were passed. Congress did its part in 1974, and the law that was passed at that time is still sound. This law is elastic so the program can respond to changes over time. Securing effective and committed administration is the present challenge. How can administrative indifference be overcome? If the Department of Education is either unable or unwilling to fulfill its responsibilities, perhaps it is time for the Department of Commerce or the Small Business Administration to assume the stewardship responsibility for the Randolph-Sheppard program from a business-friendly perspective. This is not necessarily a suggestion to change the law, but administration of the program must be improved. Beyond that, the priority for blind people to operate vending facility businesses "on all federal property" must be honored and preserved. I hope this hearing will help to achieve these goals. On behalf of the National Federation of the Blind, I thank you.