

NLWJC - Kagan

Counsel - Box 036 - Folder 014

Privatization

And John Hyatt

637-5000

if Ken Apfel says it's OK.

* Call to agencies -
 HHS } straight forward analysis
 USDA } → legal requirements

NEXT WEEK

Table w/ Marvin - DOL -
 asst ideas too -
 anything to do asst Phil?

LABOR ISSUES

If you don't allow priv. in FS,
 This will discourage priv in AFDC.

I. Administrative Issues

- Privatization of Food Stamps and Medicaid program administration

including eligibility determinations. (??)

-- The welfare reform bill removes the merit system protections and State administration requirements under AFDC and gives States complete flexibility to contract out TANF administration. This degree of flexibility is not provided under Food Stamps. → We could waive

TANF -
 no limits at all?

Food stamps -

what's waivable?
 Should we waive?

TX - want to keep whole thing w/ too.

Situation in Medicaid?

II. Legislative Fixes - union with-hold

- Stronger anti-displacement protections and grievance procedures
 - Partial displacement and appeal rights
- Union comment or concurrence on work assignments (WRA of 1994)
 - Under WRA, labor organizations representing employees in work similar to WORK assignments must be allowed to comment on the WORK proposal, and must be notified 30 days in advance prior to when a participant is brought on.
- Strengthening employment rights for workfare participants
 - Under WRA, WORK participants would generally enjoy the same benefits, working conditions, and rights as other employees in the same type of work with similar tenure.

Gov has to ensure merit systems protections } There are not waivable
 hiring/firing protections.

III. Welfare-To-Work Jobs Initiative

- Ensuring jobs are "new work"
- Placements should be treated under same terms and conditions as other employees
- Union comment or concurrence on work assignments

Run Hill

Can be killed out - many functions
No need for waiver.

Eligibility determination -
need to be made by state EE?

Merit systems -

- What can be done w/out a waiver?

- what can be done w/ a waiver?



Meza

- what just can't be done?

~~Steve Hejlsch
434-51174~~

THE WALL STREET JOURNAL THURSDAY, NOVEMBER 21, 1996

You Can't Win (in Louisiana) If You Don't Play

By TYLER BRIDGES

In Louisiana, where the legalization of gambling has already begun filling the jails with crooked politicians, Woody Jenkins's claim that gambling interests stole his Senate election seems plausible enough. Mr. Jenkins, a conservative Republican and outspoken gambling critic, charges that gambling interests acted illegally to get their voters to the polls on Nov. 5, when the state voted whether to keep riverboat gambling, video poker and a New Orleans casino. (Mr. Jenkins, who is challenging the election results, trails Democrat Mary Landrieu by 5,788 votes out of the 1.7 million ballots cast.)

But the story from Louisiana is not so simple. Yes, Ms. Landrieu owes her victory to gambling interests, but not for the reasons cited by Mr. Jenkins, who has not provided proof of wrongdoing. Ms. Landrieu won because the voters turned out by gambling companies supported her as well. Ironically, the Democratic Ms. Landrieu owes a large debt to the Republican Gov. Mike Foster, who backed Mr. Jenkins. It was Gov. Foster who agreed to hold the gambling vote on Nov. 5, the date gambling interests favored because President Clinton would also be on the ballot.

Hooked on Gambling

Gov. Foster's action reflects a curious, bipartisan development in Louisiana politics: The state's elected officials—including professed gambling opponents like Gov. Foster—have become hooked on gambling money. Gov. Foster was elected last year by campaigning as a plain-spoken businessman who wanted to crack down on gambling. Instead, he has bent over backward to help the gambling interests. Gambling opponents wanted the Legislature this year to repeal all three forms of gambling. With the backing of the popular governor, the Legislature would have repealed video poker and put the riverboats and the land casino up for separate statewide votes, says state Senate president Randy Ewing, a Foster ally.

But Gov. Foster instead chose a parish-by-parish election on each form of gambling: a vote by New Orleans alone on the land-based casino, a vote by each of the 64 parishes on video poker and a vote in each of the six parishes with riverboats. Gov. Foster also agreed to permit most gambling enterprises re-

jected by voters to remain in operation until at least mid-1999. The gambling companies preferred the parish-by-parish election because it assured them that even if the vote statewide was not in their favor, they would stay in business in every parish they won.

The strategy worked. Voters knocked out video poker in 33 parishes but kept it in most of the big-population parishes, along with the riverboats and the New Orleans casino. In his own defense, Gov. Foster

points out that he cut a TV ad for antigambling forces and contributed \$1,000 to their campaign. But the \$1,000 contribution was a pittance for a man of his wealth: he is a millionaire many times over. Also, Gov. Foster's ad barely aired, because gambling opponents had little money, and he refused requests to gain free publicity for the cause by touring the state. In contrast, Ohio Gov. George Voinovich raised hundreds of thousands of dollars and stumped the state to help defeat a Nov. 5 measure that would have legalized eight dockside casinos in Ohio.

Three years after legalized gambling began in Louisiana, gambling interests already accounted for one of out of every three dollars donated to state legislators.

A key test of Gov. Foster's sentiments will be whether he grants concessions needed to reopen the bankrupt New Orleans casino. The lead operator, Memphis-based Harrah's Entertainment Corp., abruptly closed the casino at 3:45 a.m. on the day before Thanksgiving last year because its business was one-third of projections; some 3,000 workers lost their jobs. Harrah's says it will not reopen the casino unless the state lowers its taxes. Harrah's has already won the concessions it needs from New Orleans Mayor Marc Morial, who demonstrates gambling's influence on elected officials even more than Gov. Foster does.

As a state senator in 1992, Mr. Morial spoke eloquently against the proposed New Orleans casino, which was narrowly approved by the Legislature. As mayor this year, he was the casino's biggest cheerleader. Six days before the election Mr. Morial even hosted a salute to Harrah's senior vice president Colin Reed. The casino, Mr. Morial said, meant eco-

nom ic development, and would provide the city about \$27 million a year in revenue, 5% of its budget. (Gambling revenue likewise accounts for about 5% of the state budget.)

A parade of elected officials in Jefferson Parish, a New Orleans suburb with two riverboats and 1,600 video poker machines, also backed gambling. Sheriff Harry Lee, parish president Tim Coulon and the mayors of the parish's two largest cities, Kenner and Gretna, campaigned

for video poker because a portion of video poker taxes are dedicated for a new parish jail. Mr. Lee spent \$80,000 in taxpayer money for pro-video poker ads and enlisted his sheriffs' deputies in the campaign. Meanwhile, Jefferson Parish schools superintendent Elton Lagasse and school board member Libby Moran appeared in a TV advertisement for the Boomtown riverboat casino, which pledged to donate \$50,000 a year to parish schools.

Elected officials turned a deaf ear to arguments that gambling's social and economic costs far outweigh its benefits. Three years after legalized gambling began in Louisiana, the New Orleans Times-Picayune reported last year, gambling interests already accounted for one of out of every three dollars donated to state legislators—surpassing the state's traditional big donors, the petroleum and sugar industries. Gambling costs a community \$3 for every \$1 in taxes it generates because of the increase in crime and bankruptcies caused by compulsive gambling, according to John Kindt, a professor of commerce and legal policy at the University of Illinois. Casinos and video poker outlets that rely on local gamblers devastate such existing businesses as restaurants, shoe stores and movie theaters, says William Thompson, a professor of public administration at the University of Nevada at Las Vegas.

For a time this year, it appeared that a series of failed promises and political scandals could spell doom for gambling in

Louisiana. Video poker has produced one scandal that landed a state representative, Buster Guzzardo, and 20 mobsters in jail, and another in which two former powerful state senators, Larry Bankston and B.B. "Sixty" Rayburn, have been indicted for kickbacks.

To remain in business, gambling interests spent at least \$8 million on this year's campaigns in Louisiana, outspending their opponents more than 100 to 1. They directed a disproportionate share of their money at African-American voters, who, polls showed, overwhelmingly believed the campaign argument that gambling meant more jobs and lower taxes. One Baton Rouge riverboat casino, for example, broadcast a radio ad in which Doug Williams, the first black quarterback of a Super Bowl victor, touted gambling's benefits. That casino sponsors Mr. Williams's annual golf tournament for sickle-cell anemia research.

Heavy Contributions

The gambling companies—with the exception of Harrah's—contributed heavily to black political organizations that get out the vote on Election Day. "Gaming interests increased the get-out-the-vote effort by 200%," says Bill Schultz, a New Orleans political operative who was working to re-elect Democratic District Attorney Harry Connick Sr.

Ms. Landrieu herself has been ambivalent about gambling. She voted against video poker and riverboat casinos in Baton Rouge, where she lives, but she did not campaign against gambling. In the U.S. Senate, Ms. Landrieu will grapple with such questions as whether to give states more control over Indian casinos, and how to ensure that a national commission created this year to study the effects of gambling doesn't become a tool of gambling interests. It will be interesting to see whether she eludes the same web that has ensnared so many politicians before her.



Mary Landrieu

Mr. Bridges, a Miami Herald reporter, has written extensively about gambling in Louisiana.

Welfare Reformers vs. Public-Sector Unions

By E.S. SAVAS

As poor Americans move from welfare to work, it seems likely that many will end up in public-sector jobs. For the taxpayer, it's a win-win proposition, as government realizes savings not only by cutting the welfare rolls but also by replacing overpaid unionized civil servants.

Not surprisingly, public-employee unions are up in arms about the prospect—and nowhere more so than in New York City, where Mayor Rudolph W. Giuliani has already placed about 35,000 welfare recipients in his Work Experience Program. Dubbed "WEPs," they work for the city at minimum wage for enough hours a week to earn their welfare stipend. These workers are saving the city some \$600 million a year compared with what it would pay union members in equivalent positions. No union members have been laid off; the city is relying entirely on attrition. Nonetheless, the municipal unions' position is that WEPs should not take over jobs previously held by their members.

The kind of jobs the WEPs perform require only minimal skills, chiefly the ability to show up on time and to follow instructions. Indeed, many mundane public-service jobs could be handled by welfare workers: cleaning streets, parks, schools, hospitals, housing projects and other public buildings; collecting trash, shoveling snow from crosswalks, digging the streets to repair water mains and sewer lines and performing low-skill clerical chores. These tasks are labor intensive, capable of absorbing many welfare recipients entering the work force. And the workers wouldn't necessarily have to be employed by government. The functions could be privatized, with

the contractors hiring ex-welfare recipients.

No make-work jobs should be created. If excess workers are available under welfare, then the level of public services could be increased, giving taxpayers more for their money: Schools that are now cleaned only once a week could be cleaned two or more times a week; welfare workers could patrol the streets to find and fix potholes before they get bigger. The basic municipal work forces in many fields could be comprised primarily of welfare workers. And these wouldn't have to be dead-end jobs: Like any good employer, public agencies should provide training to prepare workers for higher-level jobs. Of course, regular employees would supervise and instruct the welfare workers.

It's a great deal for all concerned—except the public-sector unions and the non-profit groups that depend on a large poverty population to get funding and sympathy. These two interest groups are particularly powerful in New York and that don't shy away from demagogic rhetoric in resisting reform. Liz Kreuger of the Community Food Resource Center, a welfare-advocacy group, likens welfare to "slave labor." James Butler, president of the Municipal Hospital Workers Union Local 420, says, "Because these workers are filling these jobs under the threat of the loss of their welfare benefits, they are, in effect, indentured servants."

The unions demand that welfare workers ultimately be made regular unionized employees. They're encouraging New York's WEPs to organize for higher pay, vacations and fringe benefits. And the battle is being joined in Washington as well: Charles Loveless, legislative director of

the American Federation of State, County and Municipal Employees, has said his union plans to ask Congress to rewrite the welfare law to bar states and localities from replacing union members with nonunionized welfare workers.

The unions, of course, are looking out for their own interests. But so should taxpayers: They should vigorously oppose such efforts. How much should a public employee be paid? As much as necessary to hire a qualified worker—and not a dollar more. Public employees should be compensated at market rates; there is no reason for taxpayers to pay more than that. Why in the world should this particular group of workers be subsidized by taxpayers? Once, public employees received relatively low wages in return for the security of civil service. But now, thanks to collective bargaining, they get higher wages than the market will bear—and they still have virtual lifetime tenure.

Necessary public services should be provided as efficiently and effectively as possible, using public or private providers, and the money saved should be used for other public purposes or left in the hands of taxpayers—it's their money, after all. There are better uses for taxpayer funds than overpaying for public services. If these services can be provided satisfactorily at minimum wage by welfare workers, they should be. The workers are better off because they are working at real jobs rather than languishing on the dole, and the public is better off because it is getting more value for its money.

Mr. Savas directs the Privatization Research Organization at Baruch College of the City University of New York.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Oct-1996 01:16pm

TO: (See Below)

FROM: Jeremy D. Benami
 Domestic Policy Council

SUBJECT: Welfare privatization

There is a brief meeting in Carol's office on Wednesday October 30 from 10:00 to 10:30 on the issue of privatization of welfare/food stamps/Medicaid functions within states. The new law will have some impact on this, obviously, and many of us are getting calls both from agencies and outside groups on the issue.

This will be a small meeting and quick - with no agency staff.

I thought it would be helpful to get together very briefly so that we can share information about the impact of the new law in this area and some of the issues that are being raised. After that, we should think about how to work with the agencies on the issue. Ken has indicated that his staff will put together some rough and preliminary info on the issue for the meeting.

If you have any questions, please call. I am sorry if there was any confusion around this meeting.

Distribution:

TO: Carol H. Rasco
TO: Bruce N. Reed
TO: Kenneth S. Apfel
TO: Elena Kagan
TO: Jennifer M. O'Connor
TO: Emily Bromberg
TO: Diana M. Fortuna

CC: Deborah F. Kramer
CC: Cathy R. Mays
CC: Dorothy K. Craft
CC: Jill Pizzuto
CC: Elizabeth E. Drye

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Oct-1996 01:10pm

TO: (See Below)

FROM: Jeremy D. Benami
 Domestic Policy Council

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

29-Oct-1996 12:31pm

TO: (See Below)

FROM: Jill Pizzuto
 Domestic Policy Council

SUBJECT: Welfare Privatization meeting

Due to scheduling conflicts with some folks, the welfare privatization meeting originally scheduled tomorrow at 10:00am has been changed to tomorrow at 1:00pm. Meeting will still be held in Carol Rasco's office.

If there are any questions, please call Jill Pizzuto at 456-2249.

thank you.

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TO: Carol H. Rasco
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Privatization Issue - 10/30

Call from the (NEC had mtg w/ the - this came up)
Issues arising in context of waivers

accordance with an agreement between the individual and the State. Disputes about plan revisions would be subject to the same review procedures as disputes over the initial plan.

Individuals whose employability plan reflects a need for substance abuse treatment could be required to participate in such treatment. Such individuals could be subject to JOBS sanctions for failure or refusal to accept treatment (whether or not they otherwise qualify for deferral status) and would be so advised.

Within 90 days prior to the end of his or her time limit, the State agency must schedule a meeting with the individual for a progress evaluation, an assessment regarding eligibility for an extension, discussion of job search requirements, and provision of information on registering for the WORK program. JOBS re-assessments within 6 months prior to the end of the time limit could be used to meet this requirement.

No less than 45 days prior to the end of the time limit (and, at State option, as much as 3 months prior), the State must require an individual to participate in job search to the extent consistent with the individual's employability plan. Job search participation would be a prerequisite for receiving a WORK assignment.

References in section 482 to applicants or to actions occurring at the time of application (or the time from which payment is made) would be construed to refer to recipients at the time of redetermination occurring after the effective date in their State.

SEC. 103. AMENDMENTS PERTAINING TO SERVICES AND ACTIVITIES UNDER JOBS PROGRAM.

Subsection (a) repeals a JOBS provision pertaining to informing JOBS participants which is now redundant.

Subsection (b) revises section 482(d) of the Act to require States to include a job search component in their programs.

Subsection (c) revises the definition of the educational activities that States must include in their JOBS programs to emphasize education related to employment.

Subsection (d) adds "programs to prepare for self-employment or to enable individuals to establish a microenterprise" as a new optional JOBS component.

Subsection (e) requires that State JOBS plans describe whether and how their programs will provide training for

individuals to become child care providers. The plans must also describe the steps that the State will take to encourage training and placement of participants in non-traditional fields of employment and to advise them of such opportunities.

Subsection (f) extends the maximum period for work supplementation placements from 9 to 12 months and makes a conforming change.

Subsection (g) makes amendments to current job search provisions to: 1) make job search a mandatory component of JOBS; 2) provide for mandatory job search by individuals, upon approval of their AFDC application, unless they lack a high school diploma (or its equivalent) or minimal work experience; 3) extend the maximum allowed period of job search for applicants; and 4) revise the provision on total amount of job search allowed in a year. Under the latter revision, the period of applicant job search would be considered in the general limit, the 8-week per year general limit would be extended to 4 months, and job search in conjunction with other activities would not be counted.

Subsection (h) gives States the option to use a conciliation process or another procedure which affords the individual an advance notice and a ten-day period for dispute resolution prior to providing an opportunity for a hearing.

Subsection (i) adds adult and vocational education to the list of programs with which JOBS must be coordinated.

Subsection (j) replaces the existing provisions regarding protection for JOBS participants with provisions governing participants in both JOBS and WORK.

First, it makes slight modifications to the JOBS provisions regarding appropriateness of assignments (in light of the individual and family circumstances), reasonable distance, and discrimination and then extends those provisions to the WORK program.

In terms of nondisplacement provisions, for both the JOBS and WORK programs, it would preclude placements which displace (or partially displace) any currently employed workers, infringe upon their promotional opportunities, or impair existing contracts or collective bargaining agreements. It also would preclude employment or filling of a position: 1) vacant because of layoff, strike or lockout; 2) for which another person has recall rights; or 3) from which an individual has been terminated or laid off with the effect of filling the vacancy so created. For positions in State or local agencies, it would preclude the filling of a budgeted vacancy unless the State has been unable to fill it for at least 60 days. For work performed under contract, no participant could be assigned during the first 90 days if the

same or similar work was performed by an employee covered by a collective bargaining agreement under a contract with another employer in the immediately preceding period. For positions in private, nonprofit agencies, it would preclude assignments in activities equivalent to ones regularly carried out by State or local government agencies under any of the above conditions.

If applicable, participants would receive State workers' compensation benefits. Otherwise, they must be provided medical and accident protection for on-site injuries.

Health and safety standards which apply to employees under Federal and State law would extend to program participants.

States must establish grievance procedures for resolving complaints of regular employees or their representatives that the requirements of this section regarding nondisplacement, wages, benefits or working conditions have been violated. Hearings on such grievances must be conducted within 30 days, and a decision reached within 60 days. All grievances must be made within 45 days.

Decisions and failures to make a decision within 60 days could be appealed or submitted to binding arbitration. Arbitrations would be conducted by qualified arbitrators who would be jointly selected and independent. Where agreement is not reached on an arbitrator within 20 days, the parties would select an arbitrator from a list provided by the Federal Mediation and Conciliation Service or the American Arbitration Association. Arbitrations must be held within 45 days of being requested (or within 30 days of the appointment of an arbitrator), and decisions must be made within 30 days of an arbitration proceeding.

In general, costs of arbitration would be evenly divided between the parties. However, if a grievant prevails, the party in violation would pay the full cost (including attorney fees).

Suits to enforce arbitration awards could be filed in district court without regard to money amounts or citizenship.

Potential remedies for violations could include suspension or termination of payments to employers, prohibitions of placements, reinstatement, back pay and benefits, or other actions to correct a violation or make a displaced employee whole.

(For first-time versus subsequent placements) local labor organizations representing employees engaged in similar work would be notified at least 30 days prior to the date when an employer expects to bring on a participant. These organizations could object that program protections have been violated and may

file a complaint for an expedited grievance procedure. The expedited procedures would be similar to the binding arbitration procedures, except: 1) request for arbitration must be filed within 30 days of the receipt of notice; 2) the arbitrator must be selected within 10 days (or 15 days where initial agreement cannot be reached); 3) the proceeding must be held and a decision reached within 30 days. Any placement would be stayed pending a decision.

JOB participants would retain other existing protections in current law, related to reasonableness of conditions, consideration of their proficiency and child care and supportive services needs, and other factors.

Assignments to WORK positions would be subject to the following additional rules: 1) all WORK registrants must be eligible for such assignments; 2) participation in WORK must not result in the loss of income to any family below AFDC levels (unless sanctioned or working less than the assigned hours); 3) families of all participants would be considered AFDC recipients for Medicaid purposes; 4) where a labor organization represents a substantial number of employees in work similar to expected WORK assignments, that organization would be provided an opportunity to comment on the WORK proposal; and 5) WORK participants must be paid according to applicable law, but no less than the highest of: a) Federal minimum wage; b) applicable State or local minimum wage; and c) the prevailing wage rate for similar work by employees of similar tenure.

WORK participants would generally enjoy the same benefits, working conditions and rights as other employees in the same type of work and with similar tenure. They would also enjoy the same health benefits unless the State agency concludes that such a requirement would impose an undue financial burden on both the employer and the State.

JOB and WORK funds could not be used to assist, promote or deter union organizing.

Provisions of this section would also apply to work-related programs authorized in connection with the AFDC program under section 1115 of the Act.

SEC. 104. TWENTY-FOUR MONTH LIMIT.

This section moves the existing section 417 (related to the designation of the Assistant Secretary for Family Support) to section 419 and creates a new section 417 to set forth the rules governing time limits for AFDC benefits.

Subsection (a) specifies that, for individuals subject to the time limit and their children living at home, AFDC would not

October 30, 1996

MEMORANDUM FOR CAROL RASCO
BRUCE REED
JEREMY BENAMI
DIANA FORTUNA
EMILY BROMBERG
KEN APFEL
ELENA KAGAN

FROM: JENNIFER O'CONNOR

SUBJECT: WELFARE REFORM LEGAL ISSUES

My memory failed me miserably. The letter I'd seen is attached. It is from Morty Bahr to Harold and it describes a review process Morty believes is underway at the Department of Labor to review whether states can privatize job search and employment services. Morty says in his letter that the Secretary has said he won't authorize such privatization until after his Department finishes the review -- but I haven't seen any letter from the Secretary confirming this. As Morty notes, his concern is the Texas request to privatize these services.

Communications
Workers of America
AFL-CIO, CLC

501 Third Street, N.W.
Washington, D.C. 20001-2797
202/434-1110 Fax 202/434-1139

Morton Bahr
President

10/30 copy
to Sen O'C

October 28, 1996

Mr. Harold Ickes, Assistant to the President
and Deputy Chief of Staff for Political Affairs
The White House
First Floor, West Wing
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

Dear Mr. Ickes *Harold -*

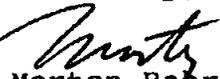
I am writing to let you know how important I consider the outcome of a current review that is underway at the Department of Labor concerning whether or not states can deliver through private vendors job search and employment service authorized under the 1933 Wagner-Peyser Act.

The review was begun at our request in response to waivers requested by the State of Texas to operate its job search and employment service through private contractors. Currently, 4,000 public employees provide these functions. Secretary Reich has indicated that until the review is completed, the Department will not authorize the provision of these services through private vendors.

The outcome of the review has serious implications for the future of workforce development programs in every state. I anticipate that the review will conclude that contracting out of employment services authorized under the Wagner-Peyser Act is not only a violation of the law, it is also bad policy. Public administration is essential to ensure accountability, equity, and confidentiality of this most important and sensitive governmental function.

Thank you for your assistance in this matter.

Sincerely,


Morton Bahr
President