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CITIZEN PARTICIPATION IN GENERAL REVENUE SHARING: A RESPONSE TO THE NEW SHIFT IN FISCAL POWER AND POTENTIAL FOR ABUSE

EZEQUIEL GUTIERREZ, JR.* AND M. STEVEN ZEHNER**

As proposed by Walter Heller, Chairman of President Kennedy's Council of Economic Advisors, revenue sharing was viewed as a way of shifting some of the tax burden for certain services generally provided by state and local government away from low income taxpayers to those better able to pay.¹ The concept of revenue sharing gained support in the sixties as more and more state and local governments faced the choice of increasing already high taxes or cutting back on services provided to the public. The allocation of federal funds to state and local governments with "no strings" had three very appealing features: (1) support for general governmental functions instead of the specific programs required by federal categorical grants; (2) greater exercise of state and local initiative in determining where the money was to be spent; and (3) reduction of federal direction in the determination of how federal funds were to be spent at the local level.²

Revenue sharing became the cornerstone of President Nixon's "New Federalism," because of its compatibility with Nixon's ultimate goal of reducing the size of the federal bureaucracy and returning a greater degree of autonomy to the state and local governments. Nixon also hoped that the new source of revenue would confer a new sense of responsibility on local officials.³ General revenue sharing was only the initial action by the Nixon Administration in changing the way federal assistance

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1. W. Heller, *NEW DIMENSIONS OF POLITICAL ECONOMY* (1966), at 151-154.

2. See *Hearings on Revenue Sharing by House Comm. on Ways and Means*, 92d Cong., 1st Sess. pt. 1 (testimony of Walter Heller) (1971).

3. Statement on signing of the State and Local Fiscal Assistance Act of 1972 by Richard M. Nixon, *WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS* (Oct. 23, 1972), at 1535.

reached local jurisdictions. The first step would serve as a model for proposed "special" revenue sharing programs to replace the existing categorical grant system. Paramount emphasis was placed on building popular acceptance of general revenue sharing programs.⁴ President Ford has continued this policy with some modifications.⁵

I. THE REVENUE SHARING LAW IN OPERATION

Sufficient evidence of discrimination and general inequity in the use of revenue sharing funds exists to sustain the concern of civil rights groups to the impact of general revenue sharing. Problems of discrimination in the use of general revenue sharing funds have become more of an issue as the program has developed. The increasing identification of discrimination raises the question of whether the revenue sharing approach to the distribution of federal funds actually tends to promote unequal and inequitable services.

A close examination of discrimination with respect to general revenue sharing is important because of the subtlety of such discrimination, the multiplicity of services provided, and the huge quantity of money involved. The complexity of the budget process and the opportunity for local jurisdictions to juggle expenditure accounts should alert civil rights adherents to the potential for discrimination. The State and Local Fiscal Assistance Act of 1972 (hereinafter referred to as the Act)⁶ places few restrictions on how recipients may spend their allotments,⁷ and many jurisdictions may seek to allocate their funds to existing or new discriminatory programs.⁸ The potential harm is magnified by the amount of the general revenue sharing allocation, \$30.5 billion.⁹

4. Statement by John Erlichman, *New Federalism: Theory, Practice, Problems*, NAT'L J. (1973).

5. President's Message on Extension and Revision of the General Revenue Sharing Program, U.S. CODE CONG. AND ADMIN. NEWS, 94th Cong., 1st Sess., at 477-480 (1975).

6. P.L. 92-512. 31 U.S.C. § 1222 *et seq.*

7. 31 U.S.C. § 1222 limits the use of funds by local governments to the following priority expenditures: (1) ordinary and necessary maintenance and operating expenses for (a) public safety (including law enforcement, fire protection, and building code enforcement), (b) environmental protection (including sewage disposal, sanitation, and pollution abatement), (c) public transportation (including transit systems, streets and roads), (d) health, (e) recreation, (f) libraries, (g) social services for the poor and aged, and (h) financial administration; and (2) ordinary and necessary capital expenditures authorized by law. In addition, 31 U.S.C. § 1223 prohibits the use by the states of revenue sharing funds to qualify for matching federal categorical grant funds.

8. Brown & Medoff, *Revenue Sharing: The Share of the Poor*, 22 PUB. 169 (1974). Based on previous levels of local expenditures most localities will not substitute general revenue sharing funds to support programs formerly funded through categorical grant.

9. 31 U.S.C. § 105(b).

A. *Nondiscrimination Provision*

The Act contains a general nondiscrimination provision, Section 122, which states: "No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part . . ." with revenue funds.¹⁰ The Treasury Department is charged with the administration of the Act and its administrative regulations list a series of specifically prohibited discriminatory acts,¹¹ including prohibitions against criteria or methods of administration which have the effect of discrimination¹² and the selection of locations or facilities which effectively exclude certain groups from their benefits.¹³

The regulations also extend the prohibition to any program or activity of a recipient government whether administered by that government "directly or through contractual or other arrangements."¹⁴ Thus, the nondiscrimination provisions of the Act also apply to secondary recipients, that is, other governmental units, private contractors or organizations which receive revenue sharing funds from the primary recipient. A violation by a secondary recipient constitutes a violation by the primary recipient.

The scope of the nondiscrimination provision, however, extends only to those activities funded either "in whole or in part" with revenue sharing money, so those activities not funded at all with revenue sharing dollars are not subject to the Act's sanctions. But programs and activities which are only partially funded by revenue sharing must, nevertheless, be in complete compliance. This constraint has its foundation partly from administrative practice under Title VI of the 1964 Civil Rights Act.¹⁵

The process of submitting a complaint to the Treasury Department for administrative action is itself relatively easy. No form or format is required for filing a complaint; it is not necessary that the complaint be notarized, nor is the complainant required to appear in person before the Treasury Department.¹⁶

10. 31 U.S.C. § 1242.

11. 31 C.F.R. § 51.32(b). A general prohibition against discrimination with definitions is contained in 31 C.F.R. § 51.32(a).

12. 31 C.F.R. § 51.32(b)(2).

13. 31 C.F.R. § 51.32(b)(3). Other specific types of discrimination expressly prohibited include any denial of service or benefit, provision of different service or benefit, segregated or separate facilities, restriction of any privileges or advantages, differential treatment in determining eligibility for a service or benefit, and denial of employment opportunities.

14. 31 C.F.R. §§ 51.32(b)(1) and 51.5.

15. 42 U.S.C. § 1242(b).

16. Office of Revenue Sharing, Dept. of the Treasury, *General Revenue Sharing and Civil Rights*, at 5-6, 7 (1974). See also Office of Revenue Sharing,

The complainant need only supply a written explanation detailing the nature of the alleged violation with such supporting documentation as can be obtained.¹⁷ However, Treasury will not investigate a complaint concerning the allegation that revenue sharing funds could have been used better by a recipient government, as long as the money was used in accordance with the requirement of the Act and regulations.

Upon receipt of the complaint, the Treasury Department may initiate an investigation of the validity of the complaint.¹⁸ Treasury determines that a recipient is not in compliance with the nondiscrimination provision. If such a determination is made, it must notify the chief executive officer of the recipient jurisdiction and the governor of the state in which the jurisdiction is located, and secure compliance.¹⁹ Then if compliance is not secured within sixty days, there are three sanctions available to the Treasury Department: (1) The matter may be turned over to the Justice Department for civil action; (2) Future payments may be terminated by the Secretary of the Treasury pursuant to Title VI of the 1964 Civil Rights Act; and (3) Any other action provided by law may be taken.²⁰ The Act on its face makes no provision for repayment of funds used in violation of Section 122,²¹ but such a sanction is provided in the administrative regulations.²²

There is no explicit statutory provision for the Treasury Department to actively monitor recipients to be sure that there is compliance with the nondiscrimination provision of the Act. President Ford ignored this aspect of the program in his message to Congress on revenue sharing.²³ The regulations merely require that the executive officer of a recipient jurisdiction make assurances that the jurisdiction is in compliance with all nondiscrimination requirements.²⁴ Despite the absence of concise procedures to monitor any discriminatory application of funds, Presi-

DEPT. OF THE TREASURY, *Getting Involved: Your Guide to General Revenue Sharing*, at 17-18 (1974).

17. *Id.* at 7.

18. 31 C.F.R. § 51.32(d).

19. 31 U.S.C. § 1242(b).

20. 31 U.S.C. § 1242(b). The Treasury Department must make additional efforts within a ten-day period to secure voluntary compliance. 31 C.F.R. § 51.32(f)(2). If voluntary compliance cannot be achieved, a hearing is held to formally determine noncompliance. 31 C.F.R. § 51.32(f)(3)(ii). If termination of payments is decided, the Treasury Department must then file a written report with appropriate congressional committees and wait 30 days before terminating payments. 31 C.F.R. § 51.32(f)(3)(iv).

21. *Cf.* 31 U.S.C. § 1243(a)(3) creating a penalty for expenditures in violation of 31 U.S.C. § 1222. 31 U.S.C. § 1242(c) does, however, authorize the Attorney General to bring a civil action "for such relief as may be appropriate, including injunctive relief."

22. 31 C.F.R. § 51.32(f)(3)(v).

23. *See* note 5, *supra*.

24. 31 C.F.R. § 51.32(c).

dent Ford's most recent statement implied a "wait and see" attitude:

If we tinker with the formula, or if we try to undermine it in any other way, it would be my fear, and it should be yours, that the whole program would not be extended.²⁵

B. *Compliance Efforts*

Several problems have been recognized which contribute to greater potential for discrimination under revenue sharing than under the existing categorical grant structure. The most critical problems are related to the inadequacy of the federal government's compliance effort.

Established within the Office of the Secretary of the Treasury, the Office of Revenue Sharing (hereinafter referred to as ORS) is charged with federal responsibilities derived from the Act, and must accept the major portion of the blame for an ineffective federal compliance effort. The staffing level of ORS is anything but conducive to a responsible government monitoring system. There are currently only four professionals for checking the compliance of approximately 38,000 revenue sharing recipients.²⁶ These four employees are not limited to nondiscrimination compliance. They must also monitor compliance with the prohibition against using revenue sharing funds for securing matching federal grants, and requirements that contractors comply with the Davis-Bacon minimum wage act.²⁷

The smallness of ORS's staff indicates that it will not be taking an aggressive role in monitoring nondiscrimination compliance. To date, efforts have been limited to asking representatives of 103 recipients if they were capable of enforcing the civil rights provision.²⁸ Because government staffing is so grossly inadequate, it is unlikely that any but the most blatant cases of illegal use of revenue sharing money will be uncovered by the ORS.

A second criticism of the federal government's compliance effort is its apparent unwillingness to invoke available sanctions, even when clearly documented cases of discrimination are called to its attention. After employment practices of the Chicago Police

25. Irwin, *Ford Hopeful On Revenue Sharing*, Los Angeles Times, July 11, 1975, at 8, pt. 1.

26. *Making Civil Rights Sense Out of Revenue Sharing Dollars*, U.S. Comm. on Civil Rights Clearinghouse Publication 50 (1975), at 62.

27. Statement by Graham Watt, Director of the Office of Revenue Sharing, at meeting with civil rights groups (1973).

28. See note 26, *supra* at 62-63. These 103 governments, including all 50 state governments, receive slightly more than one-half of all revenue sharing funds. See also DEPARTMENT OF TREASURY, GENERAL REVENUE SHARING, COMPLIANCE BY STATES AND LARGE URBAN JURISDICTIONS—INITIAL REPORT (Washington, D.C., Govt. Printing Office, 1973).

Department, the major expender of Chicago's revenue sharing allotment, resulted in a civil suit by the Justice Department, it was the subject of an administrative complaint with the ORS.²⁹ After delaying for five weeks, ORS decided to conduct its own investigation of each of the charges in the complaint, permitting Chicago to qualify for a quarterly payment of some \$25 million.³⁰

Such slowness in acting, while reflecting the federal government's lack of commitment to a truly equitable program, has other important implications. Local officials, knowing that ORS is not going to be quick to censure inequitable uses of revenue sharing allotments, are not likely to give the same degree of consideration to nondiscriminatory expenditures as they would if ORS maintained a vigorous compliance effort. Furthermore, ORS's perfunctory approach to civil rights enforcement is likely to discourage complaints, even when violations of the nondiscrimination provision are found. Local groups are going to be unwilling to undertake major monitoring efforts if it appears that complaints filed with ORS are going to be ineffective and not truly remedial.³¹

The administrative regulations contain a provision which permits the Secretary of the Treasury to ask officials of other federal departments or agencies to undertake some of the civil rights

29. In August, 1972, the Law Enforcement Assistance Admin. (LEAA) released a report which found clear evidence of employment discrimination by the Chicago Police Department. On August 14, 1973, after completing its own investigation, the Department of Justice filed suit against the Chicago Police Department, *United States v. City of Chicago*, No. 73-C-2080 (E.D. Ill., filed Aug. 14, 1973), because the Department refused to alter its practices. Using the documentation of LEAA and Justice, several civil rights groups filed an administrative complaint with the Office of Revenue Sharing requesting that revenue sharing funds allocated to the Chicago Police Department be terminated if the Department refused to change its employment policies. See *Robinson v. City of Chicago* (Before the United States Treasury Department, Office of Revenue Sharing, filed September 1973). ORS refused to take immediate action in reliance upon the two other government investigations.

30. Since Chicago had used over \$135 million in revenue sharing funds in violation of the Act's nondiscrimination provisions, a federal district court in Illinois ordered the continuation of a preliminary injunction barring additional revenue sharing payments to the city until the issues of discrimination in the Chicago Police Department were finally decided. The preliminary injunction had been issued in one of the consolidated cases, see *Robinson v. Schultz*, Civil No. 74-248 (D.D.C., Orders of April 4, 1974 and December 18, 1974), prior to the transfer of the case from the U.S. District Court for the District of Columbia to the Illinois Court. The Court also ordered the city to comply with a prior agreement and court order to hire by June 2, 1975, a number of patrol officers on racial and sex quota bases. See also *U.S. v. City of Chicago, et al.* No. 73-C-2080; *Renault Robinson, et al. v. James B. Conlisk, Jr. et al.*; No. 70-C-2220; *Tadeo Robert Camacho, et al. v. James B. Conlisk, Jr. et al.*, No. 73-C-1252; *Renault Robinson, et al. v. William E. Simon, et al.*, No. 75-C-79 (April 21, 1975).

31. In October, 1974, an intragovernment agreement provided ORS with monitoring support from the Equal Employment Opportunity Commission. EEOC will also make available to ORS on a confidential basis the employment statistics required to be filed with EEOC by all government units with more than 99 employees. In return, ORS will help EEOC to determine whether all government units with 15 to 100 employees have kept minority records as required by law.

enforcement responsibilities.³² ORS's failure to use other federal resources to compel adherence to civil rights laws has been a third source of criticism. Justice Department personnel have been utilized only infrequently.³³ A recent agreement with the Equal Employment Opportunity Commission (hereinafter referred to as EEOC), to bolster the small enforcement effort is limited by that agency's own impotence.³⁴ Complainants to the EEOC discover insufficient guarantees against employer reprisal, lack the money and job opportunities to endure the litigation process, or are discouraged from filing a complaint by the tedious process.³⁵ No further attempt has been made to delegate compliance responsibility.

This unwillingness to invoke sanctions and delegate enforcement responsibilities seems to be inherently deleterious to those groups most dependent on vigorous civil rights enforcement. Without a potent federal enforcement commitment, private monitoring efforts may lack the resources to be effective. Local officials, cognizant of a deemphasis in federal civil rights activism, might neglect the requirement of an equitable application of revenue sharing funds. Coupled with the massive shift in the way federal funds are spent at the local level, the victims would be those traditionally excluded from the benefits derived from local government.

C. *Cutbacks in Categorical Grants*

Before general revenue sharing was passed by the Congress, the Nixon Administration made assurances that revenue sharing funds would not "be taken from any existing programs."³⁶ But concomitant with the disbursement of general revenue sharing funds has been a retrenchment of dollars going to existing federal

32. 31 C.F.R. § 51.32(g): "The Secretary may . . . assign to . . . officials of other department or agencies of the Government . . . responsibilities in connection with the effectuation of the purposes of this section . . . in the implementation of Title VI of the Civil Rights Act of 1964."

33. See note 26, *supra* at 67.

34. 42 U.S.C. § 2000(e)(5)(g). The time between the filing of a complaint and actual resolution or adjudication, if necessary, is quite long. Sixty days prior to filing his complaint with the EEOC the applicant must exhaust all state and local remedies. The Commission must receive the charge within thirty (30) days after the deference period. An investigation must be made as to reasonable cause and a copy of the complaint served on the respondent. If cause exists conciliation is the first objective. If successful the parties in conflict sign an agreement whereby the employer agrees to abolish unfair practices in return for the injured party's promise not to sue. Failure to conciliate enables the charging party to file a civil action suit in the proper federal court which may grant an injunction, order reinstatement, back-pay, etc.

35. See note 26, *supra* at 60.

36. Statement by Secretary of Treasury John B. Connally, *Hearings before the Committee on Ways and Means*, 92d Cong., 1st Sess., pt. 1, at 116 (1971).

poverty programs.³⁷ The cutback in federal categorical grant programs has serious implications for civil rights interests. In establishing these programs, the federal government originally assumed that state and local governments needed some incentive to ameliorate social problems.³⁸ The impetus was accessibility to federal monies. By removing local motivation to curb social inequities, the federal government is, in effect, permitting local jurisdictions to keep minorities and the poor in their traditionally disadvantaged position.

Current categorical grant programs are subject to much stricter nondiscrimination enforcement than is general revenue sharing.³⁹ These programs, designed to provide services not normally provided by local jurisdictions, have done much to aid the disadvantaged. Thus, the substitution of categorical grant funding with revenue sharing will mean a reduction of services provided to the poor and minorities.

D. *Present Uses of Revenue Sharing Funds*

In a statement submitted with the Revenue Sharing Act, President Nixon suggested that it was intended as the basis for a new partnership between the federal government and other units of government, "a partnership in which we entrust States and other localities with a larger share of the Nation's responsibilities . . ."⁴⁰ President Ford has adopted this rationale⁴¹ in order to provide the flexibility and resources for state and local officials to exercise leadership in solving their most pressing problems. The Office of Revenue Sharing has followed Administration policy faithfully and has characterized the program as ". . . an expression of confidence in the ability of state and local officials to execute their responsibilities wisely and effectively."⁴²

Implicit in this self-help theory was the premise that the more

37. *Governors Lose Enthusiasm for Nixon's Revenue Sharing Programs*, NAT'L J., at 939 (1973).

38. L. Schneiderman, *Racism and Revenue Sharing*, SOCIAL WORK (May 1972), at 49.

39. *E.g.* The categorical assistance programs of the Social Security Act are structured to facilitate the accounting and auditing of fund use, enabling the Secretary of Health, Education and Welfare to more accurately trace funds applied in a discriminatory fashion, and to more rapidly suspend or limit payments to noncomplying recipient state programs. 42 U.S.C. § 604(a) (Supp. V, 1969).

40. *Hearings before the Committee on Ways and Means*, 92d Cong., 1st Sess., pt. 1, at 116 (1971) (letter from Richard M. Nixon to Carl Albert, dated February 9, 1971).

41. See note 5, *supra*.

42. G.W. Watt, *Legal Policies for the Administration of General Revenue Sharing*, 7 URBAN LAWYER 319, at 323. Mr. Watt was the Director of the Office of Revenue Sharing. The referenced article was adopted from a speech before the Local Government Section of the American Bar Association, Honolulu, Hawaii, August 14, 1974.

urgent social problems, involving the poor and minorities, would be addressed with revenue sharing funds. However, current recipients do not appear to be committed to this end. Although within the legal provisions of the Act, the application of revenue sharing funds by local governments, though not illegal, appears inconsistent with its spirit. Corpus Christi, Texas, spent \$100,000 on tennis courts and \$100,000 to landscape a golf course.⁴³ Burlington, Vermont, spent \$160,000 on an ice rink and a bath house and \$300,000 on uniforms for the municipal band.⁴⁴ Pasadena, California, spent \$498,000 to resurface and light some tennis courts.⁴⁵ Aurora, Colorado, spent \$536,000 on a golf course.⁴⁶ Mississippi's governor had to be stopped by that state's legislature from using the state's entire allocation to construct an amusement park.⁴⁷ Indianapolis, Indiana, allocated \$4,400,000 to aid in the construction of a sports arena.⁴⁸ St. Louis County, Missouri, planned to use \$6,000,000 to fund golf course construction.⁴⁹

These examples, though isolated, reflect the approach that most recipients have taken with revenue sharing funds. In a survey prepared for ORS, 57 percent of the local governments surveyed placed "public safety" among their top priorities, while only 8 percent placed "social services to the poor and aged" as a top priority.⁵⁰ Such an application of funds runs contrary to the express intent of Congress to encourage local solutions to poverty and discrimination. Jurisdictions need not be afraid to commit revenue sharing funds to activities which will only benefit minorities and the poor because the administrative regulations explicitly permit recipients to overcome the effects of past discrimination.⁵¹

The State Office of Economic Opportunity in California recently released a report⁵² on the uses to which revenue sharing funds have been spent by the 58 county governments in the state. The statistics in the report raise serious questions concerning the

43. *Coalition for Human Needs and Priorities*, NAT'L PRIORITIES ALERT (July 12, 1973).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *The Reasoner Report*, AMERICAN BROADCASTING Co., July 21, 1973.

49. *Id.*

50. PRELIMINARY SURVEY OF GENERAL REVENUE SHARING RECIPIENT GOVERNMENTS (June 19, 1973), at 10. Prepared for ORS by Technology Management, Inc., Washington, D.C.

51. 31 C.F.R. § 51.32(b)(4). See also *Hawkins v. Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971).

52. California State Office of Economic Opportunity, *California County Revenue Sharing: An Analysis of the Actual Use Report of the Fifty-Eight California Counties for the Period of 7-1-74 to 6-30-75*, prepared by Willie M. Bramfield and David A. Pollard, October 1975.

value systems employed in revenue sharing expenditures.⁵³ The percentage of total expenditures that went to "human services," meaning health, social services for the poor and aged, education, and housing and community development, amounted to only 22.35 percent of the total.⁵⁴ In contrast, 51 percent was spent for multi-purpose government and public safety operations.⁵⁵ One county with the highest percentage of low-income residents spent nothing at all in the area of social services for the poor and aged,⁵⁶ indicating at least ". . . the possibility of the lack of awareness of existing conditions within that jurisdiction . . ." ⁵⁷ Also, smaller counties invested less for social services than larger counties.⁵⁸ It is interesting to note, however, that counties with the highest percentages of low-income population expended the greatest amount of revenue sharing dollars in the areas of health,⁵⁹ education,⁶⁰ and social development.⁶¹

The State OEO also studied how much the counties expended for minority groups. The percentages here were strikingly low. Only .22 percent of the statewide total, .13 percent of all money available for expenditure, went to minority programs.⁶² Specifically, Black constituents received only .12 percent of the total dollars spent statewide, .07 percent of all money available and 54.44 percent of all dollars identified for minority programs.⁶³ Spanish-surnamed constituents received even less, .07 percent of the total expended statewide, .04 percent of funds available and 29.11 percent of the total funds identified for minorities.⁶⁴ Native American constituents received still smaller sums, .02 percent of statewide expenditures, .01 percent of funds available and 10.91 percent of all minority spending.⁶⁵ Other minority groups combined received .01 percent of statewide

53. *Id.* at 1-2.

54. *Id.* at 9.

55. *Id.*

56. *Id.* at 13 and 33.

57. *Id.* at 13.

58. *Id.* at 81.

59. *Id.* at 89-90.

60. *Id.* at 90.

61. *Id.* The nationwide statistics regarding expenditures in the social services category were more discouraging. On July 21, 1975, the General Accounting Office reported that 22 local governments it surveyed devoted only 3 percent of their funds to social services for the poor and aged for the entitlement period ending June 30, 1974. See E. Bowman, *Cities Seek Federal Aid to Ease Money Woes*, CONG. Q. (Sep. 27, 1975), at 2055. The WALL STREET JOURNAL reported an expenditure figure of 4 percent for this category. R.G. Shafer, *Revenue Sharing Uses Raise Tempers as Law Comes Up for Renewal*, THE WALL STREET JOURNAL, March 27, 1975, at 14.

62. See note 52, *supra* at 98.

63. *Id.*

64. *Id.*

65. *Id.* at 99.

expenditures, .006 percent of available funds and 5.44 percent of all minority spending.⁶⁶

Expenditures for "migrant programs" were also indicated.⁶⁷ Migrant programs received .001 percent of revenue sharing funds expended statewide, and .00007 percent of the monies available, in dollar terms \$48,889.⁶⁸ This particular citation in the state report serves to focus on two aspects of revenue sharing. The benefits of the program are not limited to citizens alone. Instead, any ". . . person in the United States . . ." is entitled to participate in the revenue disbursement.⁶⁹ Secondly, general revenue sharing is not necessarily an "urban" program, although its enactment has served to replace categorical programs originally aimed at addressing urban problems. The strikingly low expenditures for minority programs again show that jurisdictions are not inclined to spend in this area despite explicit permission under the program to overcome the effects of past discrimination.⁷⁰

The lack of local commitment to solving poverty and discrimination is more exaggerated when one reads that the county jurisdictions had a combined surplus of \$289,237,697 in unexpended revenue sharing funds.⁷¹ A few counties left unspent well over 75 percent of their entitlements.⁷²

Another important finding in the state report is that the majority of local governments are still locked into the initial "hardware" pattern of revenue sharing expenditures.⁷³ Revenue sharing is used to build a new city hall, for example, or to buy fire trucks.

Nationwide, many state jurisdictions are using revenue sharing for tax relief, either in the form of tax reduction, or tax rebates to the taxpayers. Tax reduction is of questionable benefit to revenue sharing recipients, because the "tax effort" of a jurisdiction is one of the elements of the formula used to disburse revenue sharing funds.⁷⁴ A reduced tax effort will have the effect of lowering the recipient's future revenue sharing allotments. Despite this argument against tax reduction, several states have acted to reduce the burden on taxpayers.⁷⁵ Wisconsin with a

66. *Id.*

67. *Id.*

68. *Id.*

69. See note 10, *supra*.

70. See note 61, *supra*.

71. *Id.* at 99.

72. *Id.* at 13.

73. *Id.* at 10.

74. 31 U.S.C. § 1222, §§ 106 and 108.

75. 31 U.S.C. § 1222(a) applies only to funds "received by units of local government." States are not limited to the "priority expenditures" which restrict local jurisdictions in spending revenue sharing dollars. See *Mathews v. Massell*,

\$138.5 million budget surplus used the bulk of its revenue sharing money for property tax relief.⁷⁶ Connecticut had a \$47.4 million budget surplus, pooled its surplus with its revenue sharing allocation, and enacted a tax reform program.⁷⁷ Because such reductions are within the scope of state uses of revenue sharing funds, they are legal, but it seems inequitable to permit tax refunds when the money could be used to alleviate existing social problems.⁷⁸

Jurisdictions are ignoring the needs of the poor almost entirely, despite the fact that the formula used to allocate revenue sharing funds to a jurisdiction considers the percentage of low-income population in that jurisdiction as a factor.⁷⁹ Congress intended that revenue sharing would provide "services," not hardware or golf courses, for the people of a jurisdiction, especially the poor. A statement made by the Congressional Joint Committee on Internal Revenue Taxation illustrates the intent behind Revenue Sharing:

The use of the third factor in the allocation formula, population weighted by the United States per capita income divided by that of the state (stated inversely so that the smaller the per capita income of a state, the greater the weight), recognizes that poorer communities generally have greater difficulty in providing adequate services than rich communities. This is a consequence of the fact that communities that have relatively low per capita incomes generally have a relatively small tax base. In addition, communities with relatively low per capita incomes tend to have additional problems in providing services for their poor inhabitants that are usually not encountered in wealthier communities.⁸⁰

356 F. Supp. 291 (N.D. Ga., Atlanta Div., March 15, 1973) construing the revenue sharing law on this point. In *Mathews*, the court stopped the City of Atlanta, Georgia, from using its revenue sharing funds, albeit in an indirect manner, for tax relief. Atlanta had planned to spend the funds for firemen's salaries, a permissible use, but then to transfer an amount equal to the expenditure which it had then saved from the general fund of the City to its special water and sewer fund, in order to give "tax rebates" to those residents with water and sewer accounts. The court held this was using revenue sharing for tax relief, which was not on the "priority expenditure" list for local governments. The court made reference to a passage in the CONGRESSIONAL RECORD which explained that the expenditure restrictions were to insure that the funds be spent for "social useful purposes." The court did agree, however, that "legitimately freed-up funds", apparently resulting from the constant infusion of revenue sharing monies into local governments, could be used to grant "future tax relief".

76. See note 50, *supra*.

77. *Id.*

78. Indeed, giving tax refunds only to some residents of a recipient jurisdiction could be a denial of equal protection of the law. See *Mathews*, *supra* note 75, at 294 and 302. Although part of plaintiff's original argument, the court did not feel the need to consider the allegation in light of its determination that tax relief by a local government was a use of funds not permitted under the statute.

79. 31 U.S.C. §§ 1225, 1226, 1227.

80. See *Joint Committee on Internal Revenue Taxation, General Explanation of the State and Local Fiscal Assistance Act and the Federal-State Tax Collection of 1972*, H.R. 14370, 92d Cong., P.L. 92-512, February 12, 1973, at 10-11.

The way general revenue sharing is structured permits a jurisdiction to devote the funds it receives for the poor for the purpose of overcoming past discrimination,⁸¹ or ignore the poor completely and be in compliance with the statute. What jurisdictions cannot do is use revenue sharing in a discriminatory manner,⁸² or in connection with discrimination.

A recipient government must practice fair hiring and non-discriminatory promotion policies in its various departments and agencies when revenue sharing is involved.⁸³ If a recipient is purchasing land, or building public facilities with revenue sharing funds, the expenditures should ordinarily provide service to all segments of the community.⁸⁴ Or if streets, alleys, roads, recreation, health facilities or libraries are being improved in some areas of the jurisdiction, other neighborhood areas should receive comparable services because of these expenditures.⁸⁵ An exception to this is when the jurisdiction makes a selective expenditure under 31 C.F.R. § 51.32(b)(4), to ameliorate an imbalance in services or facilities caused by prior discrimination.

Equally shared revenues transferred to private organizations and agencies, or other units of government (e.g. fire districts), are still subject to all of the restrictions on the original recipient, and the original recipient is still responsible for any violation.⁸⁶ Thus, if a recipient is selling or leasing facilities provided by general revenue sharing to private groups, membership in these groups must be open to all segments of the community.⁸⁷ And if a recipient government is paying on contracts for construction projects, goods or services with revenue sharing money, the contracting parties and any unions involved must have non-discriminatory hiring and personnel wage and promotion policies.⁸⁸

Most of the civil rights complaints that have reached ORS have involved smaller towns and counties where physical evidence of discrimination has been relatively easy to verify.⁸⁹ The largely Black populated Peach Orchard neighborhood has complained about the routing of a freeway in Beaumont, Texas, through the

81. See note 51, *supra*. The language of the section is sufficiently broad enough to include the amelioration of both racial and wealth discrimination. Its provisions expressly apply to "any geographic area or specific group of persons within [a] jurisdiction."

82. See notes 11, 12, 13, *supra*.

83. Office of Revenue Sharing, Department of the Treasury, *Getting Involved: Your Guide to General Revenue Sharing* (March 1974), at 11.

84. *Id.*

85. *Id.*

86. Office of Revenue Sharing, Department of the Treasury, *General Revenue Sharing and Civil Rights* (1974), at 20.

87. See note 83, *supra*.

88. *Id.*

89. NATIONAL CLEARINGHOUSE ON REVENUE SHARING, *REVENUE SHARING CLEARINGHOUSE* (May/June 1974), at 7.

neighborhood to serve predominantly Caucasian commuters.⁹⁰ New Bern, North Carolina, was found to be discriminating in its parks construction schedule and in the employment policy of its fire department.⁹¹ Residents of Ouachita Parish, Louisiana, complained that Blacks were being denied equal access to revenue sharing expenditures toward storm drains, traffic controls, sewers and fire protection.⁹² The city of Tallahassee, Florida, was charged in a civil suit brought by the Justice Department with discriminating against Blacks, who numbered about one-fourth of the city's 83,000 population, in virtually all aspects of the city's personnel system.⁹³ The action against Tallahassee focused on eleven city departments which had been allocated revenue sharing funds.⁹⁴

Although state jurisdictions are not subject to the "priority expenditure" restrictions,⁹⁵ they are subject to the non-discrimination provisions of the program.⁹⁶ In the first civil rights complaint filed against a state, the Texas League of Women Voters filed a complaint with both the Department of Justice and ORS, alleging that ethnic, racial minorities and women have been unrepresented, underutilized and underpaid in state agencies funded with revenue sharing dollars.⁹⁷

Any degree of discrimination is enough to curtail the use of general revenue sharing funds.⁹⁸ After \$600,000 had been appropriated to build a new facility for a volunteer fire department, a local chapter of the N.A.A.C.P. brought a complaint to ORS alleging discrimination because the department was all white.⁹⁹ Minorities have since been admitted to membership in the fire company. Compliance with the non-discrimination provisions of revenue sharing was required even though the only revenue sharing expenditure to the fire department had been the payment of fees to the architect who designed the new facility.¹⁰⁰ Compliance was required of another jurisdiction when it was discovered that a county jail had been painted and refurbished with revenue sharing funds and was being operated in a discriminatory manner in that the prisoners were racially segregated.¹⁰¹ Black

90. *Id.*

91. *Id.*

92. *Id.*

93. NATIONAL CLEARINGHOUSE ON REVENUE SHARING, REVENUE SHARING CLEARINGHOUSE (Nov./Dec. 1974), at 3.

94. *Id.*

95. *See* note 75, *supra*.

96. *See* notes 10-13, *supra*.

97. NATIONAL CLEARINGHOUSE ON REVENUE SHARING, REVENUE SHARING CLEARINGHOUSE (April/May 1975), at 13.

98. *See* note 10, *supra*.

99. *See* note 86, *supra* at 15.

100. *Id.*

101. *Id.*

and Spanish-surnamed National Guard troops were refused admission to the swimming pool across the National Guard Armory because "their" pool was on the other side of town. A complaint was filed with ORS by the Spanish-surnamed commander. Compliance with revenue sharing provisions was required since the jurisdiction had spent revenue sharing funds in the priority expenditure area of "recreation" to buy park benches.¹⁰²

E. *Tracing the Use of General Revenue Sharing Funds*

The judiciary has shown a willingness to enforce the requirements of the Revenue Sharing Act. It seems determined at least not to permit jurisdictions to side step congressional intent regarding expenditure restrictions merely by commingling revenue sharing funds with locally raised revenues. In *Mathews v. Massell*, the city of Atlanta deliberately juggled its accounts to seemingly use revenue sharing money in conformance with all requirements of the Act, while using "freed-up" local money in a manner contrary to any of the various provisions of the Act.¹⁰³ The court reviewed the way in which the city had shifted money from one account to another and concluded it was done "simply to avoid" the restrictions of the Act,¹⁰⁴ and that local money had not been "legitimately freed-up" for unrestricted use.¹⁰⁵

Although the courts are ready to enforce the Act, the problem is discovering and proving a violation. It was relatively easy to trace the ultimate use of revenue sharing in *Mathews*. Clear and substantial documentation existed on the city's intention for the money and how it was going to achieve its objective. The Board of Alderman, on December 18, 1972, adopted, and Mayor of Atlanta Sam Massell subsequently approved, a "resolution of intention" which provided in part that revenue sharing funds would be applied to the city's fiscal requirements "to provide some form of meaningful tax relief for the citizens of Atlanta."¹⁰⁶ At the same time, two ordinances were adopted. One provided that the entire \$4.5 million revenue sharing allotment for the 1972 entitlement period would be used to pay firemen's salaries. The second provided that \$4.5 million of the federal funds anticipated for 1973 were likewise to be assigned to a "Trust and Agency Fund" for the payment of firemen's salaries, thereby relieving the general fund of this obligation.¹⁰⁷ Then on February 5, 1973, the Board

102. *Id.* at 16.

103. 356 F. Supp. 291 (N.D. Ga. 1973). See note 75, *supra*.

104. *Id.* at 299.

105. *Id.*

106. *Id.* at 293.

107. *Id.*

adopted another ordinance authorizing a reduction of \$4.5 million in water and sewer rates to those having accounts as of a certain date, and authorizing the transfer from the general fund of the city to the water and sewer fund such monies necessary to replace the monetary reduction resulting from the credits to all water and sewer accounts. The Mayor approved this ordinance on February 6, 1973.¹⁰⁸ In effect, it was the \$4.5 million allotment of revenue sharing funds which was to be used to release \$4.5 million in general funds which the city had proposed to disburse in the form of a water and sewer rebate.¹⁰⁹

Discussion of the plan by city officials had been carried in the press.¹¹⁰ In addition, Mayor Massell, in his State of the City Annual Message on January 2, 1973, stated that he intended to return directly to the citizenry of Atlanta \$4.5 million in revenue sharing funds.¹¹¹ On February 12, 1973, the Mayor issued a press release announcing his plan to "create some relief for . . . the average Atlanta householder" through revenue sharing.¹¹² Finally, three members of the Board of Alderman stated in affidavits that the series of ordinances was designed to carry out a plan to return \$4.5 million in revenue sharing to those having water and sewer accounts with Atlanta.¹¹³

One final argument put forth by the defendants in *Mathews* was that the restriction on spending in the Act should have no effect because it will be so difficult to enforce. In support of the argument, the defendants pointed out that since revenue sharing funds would be commingled in fact with other local funds, even if the books of account were kept separately, violations would be extremely difficult to discover and prove.¹¹⁴ The court acknowledged the probability, but rejected the argument¹¹⁵ and observed that in the present case the violation had been "clearly proved . . . in large part by the statements of defendants themselves."¹¹⁶

Some ways do exist to discover and prove a violation of the

108. *Id.*

109. *Id.* at 294.

110. See S. Stewart, Officials to Mull Revenue's Future, and D. Morrison and T. Linthicum, Rebate of Revenue Sharing Funds Wins Aldermanic Panel's Okay, *The Atlantic Constitution*, December 14, 1972; and T. Linthicum, Water Rebate No Problem, Massell Says, *The Atlanta Constitution*, January 24, 1973.

111. See note 109, *supra*.

112. *Id.*

113. *Id.*

114. See note 75, *supra* at 301-302.

115. *Id.* at 302. The court noted "if the defendants were to prevail on their arguments, other statutory restrictions placed on the use of Revenue Sharing funds would likewise become meaningless. Thus the court cannot conclude that Congress intended for its prohibition against the use of the funds in a manner that discriminates on the basis of race, color, national origin or sex (§ 122) to be so easily read out of the Act," at 301.

116. *Id.* at 302.

Act. First of all, a separate trust account must be established for the deposit of revenue sharing money.¹¹⁷ This may be done by opening a separate bank account or by establishing a separate set of accounts on the government's books.¹¹⁸ In the case of a local unit of government, it must use money in the trust fund, including any interest earned thereon while in the fund, only for priority expenditures.¹¹⁹ It must spend the money within a "reasonable period or periods" as provided in the regulations.¹²⁰ In addition, the public can use a jurisdiction's Planned and Actual Use Reports¹²¹ to follow the use of revenue sharing funds, although the use of the reports for this purpose has received criticism.¹²²

There are several techniques available for discovering discrimination. In general, recipients must ensure that all residents share equally from the services provided by revenue sharing funded activities. In this respect, one can start by seeing if any facilities financed by revenue sharing funds have been located in such a manner as to have the obvious effect of discriminating against certain residents,¹²³ and without the justification that it has been done to overcome the effects of past discrimination.¹²⁴ Population parity can also be a gauge in discovering discrimination, especially in the area of public and private employment when connected to revenue sharing expenditures.¹²⁵ In addition, extraordinary expenditures (e.g. in size), frivolous expenditures and expenditures that did not go through regular spending procedures should be suspect.

Particular expenditures can be disclosed by using the methods provided in the regulations.¹²⁶ A recipient government is required to publish its Planned and Actual Use Reports on expenditures in past and future entitlement periods, in one or more newspapers of general circulation and must file the reports with the Secretary of the Treasury.¹²⁷ Concurrently, the jurisdiction must notify the news media, including minority and bilingual

117. 31 U.S.C. § 1243(a)(1).

118. See note 83, *supra* at 16.

119. See note 117, *supra*.

120. *Id.* The regulations are silent on what constitutes a reasonable period or periods.

121. 31 U.S.C. § 1241.

122. Donald Lief, Director of the National Clearinghouse on Revenue Sharing, *Revenue Sharing: A Preliminary Evaluation*, CIVIL RIGHTS DIGEST (Fall, 1974), at 24.

123. 31 C.F.R. § 51.32(b)(3).

124. 31 C.F.R. § 51.32(b)(4).

125. See note 86, *supra* at 3, 13.

126. 31 C.F.R. § 51.13.

127. 31 C.F.R. § 51.11(a)(b). It should be noted that the Planned Use Report contains only proposals on how a jurisdiction intends to use its revenue sharing money. It is not legally obligated to carry out the proposed uses. The Actual Use Reports can serve to check how well a jurisdiction adhered to its published proposals.

news media, of the publication of its reports. The jurisdiction must also make available for public inspection a copy of each of the reports, along with any necessary background or supporting information, at a specified location during normal business hours. It is important to note that a community will be served by more than one level of government. For example, a person residing within an incorporated town will also be entitled to receive services from county and state governments. Thus, the expenditures of each level of government should be followed.

The words "program" and "activity" which appear in the non-discrimination provisions of the statute¹²⁸ and the regulations¹²⁹ may be used interchangeably.¹³⁰ The word "program" is the word to keep in mind when monitoring for discrimination. Some jurisdictions erroneously maintain that if they expend revenue sharing funds for capital items they are free and clear of the non-discrimination provisions. Any expenditure within a particular local program, such as a police department, even for capital items like police cars, will subject the entire program or activity to the regulations. The same applies to the purchase items of a maintenance and operation nature, such as gasoline for the police cars or flashlights for policemen.¹³¹ For example, having used revenue sharing for a particular item, the department would then have to follow revenue sharing regulations in its hiring and promotion practices. Therefore, expenditures for even relatively insignificant budget items should be examined for their use in discriminatory programs. The obvious implication is that the entire expenditures budget will have to be reviewed and the jurisdiction's complete scope of activity, including for example the hiring practices of its contractors, will have to be monitored for discrimination.

II. ADVANTAGES TO REVENUE SHARING

The switch to general revenue sharing can however be looked at as a positive change. Essentially, the prohibitions against discrimination in the use of revenue sharing funds provide a remedy for violations of equal protection by state and local governments.¹³² The non-discrimination provisions of the regulations go even further. In specifically allowing affirmative action by recipi-

128. 31 U.S.C. § 1242(a).

129. 31 C.F.R. § 51.32(a).

130. See note 86, *supra* at 13.

131. *Id.*

132. Taylor, *Civil Rights is not a 'String'*, NATIONAL CLEARINGHOUSE ON REVENUE SHARING (April/May 1975), at 14. Excerpts from a speech to the National League of Cities Congressional Conference, March, 1975.

ent jurisdictions to combat the effects of past discrimination,¹³³ the regulations provide a tool to implement earlier gains in civil rights.¹³⁴ The sweeping nature of the prohibitions are, unfortunately, almost unknown.¹³⁵

The program reinforces and goes beyond Titles VI and VII of the Civil Rights Act of 1964. It bars sex discrimination while Title VI does not. It prohibits discrimination in the provision of services and facilities,¹³⁶ many of which had never received federal assistance and therefore were not covered. The non-discrimination provisions of general revenue sharing apply to all recipient governments, regardless of size or number of employees. Title VII prohibits employment discrimination based on race, color, religion, sex or national origin. The Equal Employment Opportunity Act of 1972 amended Title VII to include state and local governments having 15 or more employees, thus applying only to approximately 10,000 of the almost 38,000 governments receiving revenue sharing funds.¹³⁷ However, in some 28,000 units of government not protected by Title VII, "persons" living within a jurisdiction have been afforded protection from employment discrimination in revenue sharing funded activities through Section 122(a) of the Act.¹³⁸ Further, the program's restrictions also include all secondary recipients of revenue sharing funds, such as private suppliers and contractors, regardless of their total work force or the amount of revenue sharing funds involved.

Moreover, it must be remembered that the Revenue Sharing Act and the regulations extend the protections and benefits of the program to all persons within the United States.¹³⁹ This is highly important, for example, to those concerned with the welfare of Mexican migrant workers living in the Southwestern United States. The California OEO report¹⁴⁰ noted that a scant .0001 percent of revenue sharing funds expended statewide and .00007 percent of all money available went to migrant programs.¹⁴¹ It would appear

133. 31 C.F.R. § 51.32(b)(4). The case of *Hawkins v. Town of Shaw*, 437 F.2d 1286 (5th Cir. 1971), *aff'd* 461 F.2d 1171 (5th Cir. 1972) (en banc), established that a city will violate the equal protection clause of the 14th amendment if it provides unequal municipal services and facilities to its residents on the basis of race. Initially, the case did not involve revenue sharing. However, what makes the case important is that the town was ordered to use revenue sharing funds to remedy the earlier acts of discrimination. *Hawkins v. Town of Shaw*, Civil No. DC-6737 (N.D. Miss., July 2, 1973), at 8-9, *on remand from* 437 F.2d 1286.

134. See note 132, *supra*.

135. See note 122, *supra* at 25.

136. 31 C.F.R. § 51.32(b).

137. See note 86, *supra* at 3.

138. 31 U.S.C. § 1242(a). 31 C.F.R. § 51.32.

139. 31 U.S.C. § 1242(a). 31 C.F.R. § 51.32(a).

140. See note 52, *supra* at 99.

141. See note 68, *supra*.

that this particular discrepancy between what the program provides and what has actually been done has the potential for generating considerable action by concerned people.

The way the nondiscrimination provisions read, the program has created leverage for civil rights advocates in a variety of ways. The fact that discrimination is prohibited in "any program or activity funded in whole or in part" with revenue sharing funds creates a great deal of leverage. The Department of Justice has sued the State of Michigan and the Ferndale School District for violating the nondiscrimination requirements of the revenue sharing program.¹⁴² Michigan had used its revenue sharing dollars to pay for a teachers pension plan. Ferndale, Michigan, found by a 1971 court ruling to be operating a resegregated school system, was an indirect recipient of the state's revenue sharing money. The argument is that the state is in violation of the anti-discrimination provisions of the program which prohibit discrimination in any revenue sharing funded program or activity. The suit, therefore, is asking the court to require Ferndale school officials to develop a plan for school desegregation and to prohibit the states from discriminating in any program financed with revenue sharing funds.

The scope of the terminology "program or activity" is still unlimited. Arguably, a jurisdiction's whole budget could be seen as a governmental "activity." This would extend the program's civil rights requirements to the entire fiscal operations of a recipient government. The definition of "program or activity" provided by the regulations is equally broad.¹⁴³ The definition reads ". . . any *function* conducted by an identifiable administrative unit of the recipient government . . ."¹⁴⁴ Along this line, the United States Civil Rights Commission has called for a determination by the Attorney General on whether the federal government has authority to require civil rights compliance to remedy the problem of shifting funds by local governments for the purpose of avoiding the anti-discrimination provisions in all of a recipient's programs and activities as a precondition for the receipt of revenue sharing funds.¹⁴⁵ Likewise, Comptroller General Elmer B. Staats, in testimony before the Joint Economic Committee of the Congress on June 20, 1975, recommended that because the actual uses of revenue sharing are so difficult to trace, recipients should be prohibited from discrimination in all of their programs.¹⁴⁶

142. See note 97, *supra*.

143. 31 C.F.R. § 51.32(a).

144. *Id.* [Emphasis added]

145. See U.S. Civil Rights Commission Report, *To Provide Fiscal Assistance*, Volume IV of *The Federal Civil Rights Enforcement Effort: 1974*, reported in *supra* note 97 at 12.

146. Aawemann, *Federal-State Report: Last Minute Extension of Revenue Sharing Expected*, NATIONAL JOURNAL REPORTS (August 9, 1975), at 1144.

Apart from the broad language of the Act and the regulations, the infusion of general revenue sharing money into local treasuries has had the effect in some cases of creating a dependency on the federal assistance. The possibility that federal assistance could be cut-off has created additional leverage for civil rights enforcement efforts. In debates over the continuation of the program, city spokesmen have claimed that revenue sharing helped solve the "financial dilemma" of many cities and to eliminate the program now would break a number of cities.¹⁴⁷ Likewise, the states claim that they could not stand a "cold-turkey cutoff" of revenue sharing now that it is in place.¹⁴⁸ The same disruptive effect could take place if funds were cut off for noncompliance. The Chicago line of cases has shown that the courts at least are willing to order the indefinite suspension of substantial sums of revenue sharing money where a violation of the nondiscrimination requirements has been established.¹⁴⁹

Bringing legal action against a discriminatory use of funds, be it in a law suit, or in an administrative complaint, has been simplified by the provisions of the Act and regulations. As the law stands now, complainant does not have to show a pattern and practice of discrimination by the recipient, or secondary recipient of revenue sharing money, to establish a violation of the nondiscrimination provisions.¹⁵⁰ By detailing specific discriminatory actions which are prohibited,¹⁵¹ the regulations have simplified problems of proof encountered when bringing challenges based on violations of the Constitution.

ORS has stated a strong position along this line in the area of public employment discrimination.¹⁵² It maintains that all recipient governments must be conscious of the percentage of minorities and women in their work force as compared to the percentage of minorities and women in their population.¹⁵³ Where a

147. THE WALL STREET JOURNAL, *supra* note 61, at 1.

148. *Id.*

149. *See* note 29, *supra*.

150. 31 U.S.C. § 1242. 31 C.F.R. § 51.32.

151. 31 C.F.R. § 51.32.

152. *See* note 86, *supra* at 3-4.

153. *Id.* *See also*, Alvarez-Ugarte v. City of New York, 391 F. Supp. 1223 (S.D.N.Y., 1975), involving an employment discrimination complaint brought under the 14th amendment to the United States Constitution, 42 U.S.C. §§ 1981 and 1983, the Equal Educational Opportunity Act of 1974, § 204(d), Executive Order 11246 and its regulations, and 31 U.S.C. § 1242(a), the nondiscrimination provision of the Revenue Sharing Act. The court applied the "adverse racial impact" theory of *Griggs v. Duke Power Co.*, 401 U.S. 424 (1970), a Title VII suit charging a violation of the Civil Rights Act of 1964, to the case at bar, *id.* at 1227. It noted that the courts have held where a plaintiff can show that at least one of several alternative criteria for hiring or promotion has disparate impact on a minority group, he has established a prima facie case and the burden then shifts to the defendant to justify such criteria, citing *Griggs, id.* The court then cited one of the alternate criterion used to hire applicants for the job which plain-

recipient government determines that its work force is not reflective of its population,¹⁵⁴ ORS instructs that it should take affirmative action to correct the imbalance through active recruiting, and, where necessary implement an affirmative action plan for the hiring of qualified minorities and women. Furthermore, if it is found that a recipient government has unlawfully discriminated, ORS may require the government to adopt goals and timetables for the hiring of qualified minority and female employees to overcome the effects of past and present discrimination.¹⁵⁵ The position of ORS, however, is not as strong as that shown by the judiciary which is to postpone the receipt of funds until the employment discrimination is corrected,¹⁵⁶ but it does show a willingness by ORS to require, or at least encourage, corrective action. This is important since administrative remedies must be sought first.

Actions brought against governments which violate the Act or regulations can result in speedy compliance. A law suit brought by the Justice Department against the city of Tallahassee, Florida, charging discrimination by the city in various departments funded with revenue sharing funds, resulted in a consent decree. The consent decree required the city to achieve a goal of employment of Blacks for each job classification in proportion to the percentage of Blacks in the Tallahassee labor force, with an interim goal of filling approximately 50 percent of the vacancies within the following year with qualified Black applicants.¹⁵⁷ A similar complaint filed against Lake County, Indiana, resulted in a negotiated agreement between county officials and ORS with the county agreeing, *inter alia*, to institute an affirmative action plan to bring the county's work force up to approximately the 27 percent minority population in the area, and to break down projects into smaller contracts so that minority contractors could be required bonding to bid on projects.¹⁵⁸

tiff was seeking and found that while the minority group of which plaintiff was a member comprised 13 percent of the local population, only .5 percent of those people who could meet the particular criteria were from plaintiff's minority group, *id.* In addition, plaintiff himself could not meet the criteria, *id.* at 1225.

154. One should determine if there is a state and/or local agency responsible for civil rights enforcement by the recipient, or civil rights investigations. ORS is now willing to rely on the findings of state or local agencies as the basis for its own administrative action in dealing with civil rights complaints. See NATIONAL CLEARINGHOUSE ON REVENUE SHARING, REVENUE SHARING CLEARINGHOUSE, (July/August, 1974), at 6. In the first such report relied upon, ORS adopted the findings of an investigation conducted by New Jersey's State Civil Rights Division that the town of Montclair had discriminated in hiring and promotion practices in both its police and fire department. The investigation had discovered that only 3 of 89 officers in the fire department were Black, and 15 of 104 police officers were Black, in contrast to a minority population in Montclair of 27.2 percent.

155. See note 152, *supra*.

156. See note 149, *supra*.

157. See note 97, *supra* at 12.

158. *Id.* at 13.

The most positive aspect of general revenue sharing is its potential for aiding minorities and the poor. One way is through local spending on "social services for the poor and aged," a priority expenditure.¹⁵⁹ The Office of Revenue Sharing has established criteria to aid local governments in determining uses for their revenue sharing funds for social services.¹⁶⁰ Among the ORS examples of allowable expenditures are operating expenses of neighborhood social centers and other neighborhood facilities which benefit the poor and aged, to the extent that they are used by these groups; administrative expenses incurred in programs for the poor and aged conducted by community organizations such as a neighborhood council; operation and maintenance of public housing for the poor and aged; payment of a portion of a poor tenant's rent if the money goes to the landlord and not the tenant since direct welfare payments to the poor and aged are not permitted by the Act; interest-free loans to aid welfare recipients in securing jobs; youth development programs which aid the poor or disadvantaged youth; and youth employment programs which either directly hire poor or disadvantaged youth or assist them to secure jobs.¹⁶¹ A recipient's spending does not have to be limited to the social services category to benefit minorities and the poor; for example, the purchase of new library books for older libraries in the poor section of town,¹⁶² or the construction of a new library in that location.¹⁶³ Again, the regulations provide plenty of incentive for local spending on behalf of disadvantaged groups.¹⁶⁴ But given the questionable values so far displayed by local officials,¹⁶⁵ and the passive stance taken by state officials in getting local governments to use their revenue sharing money differently,¹⁶⁶ expenditures more beneficial to minorities and the poor will have a chance of occurring only through appropriate citizen action and influence.

III. CITIZEN PARTICIPATION IN REVENUE SHARING

Although an unlawful application of revenue sharing funds can be legally challenged; for instance, if a recipient local govern-

159. 31 U.S.C. § 1222(a)(1)(6).

160. See note 83, *supra* at 19-20. See also note 89, *supra* at 3.

161. *Id.*

162. 31 U.S.C. § 1222(a)(1)(f).

163. 31 U.S.C. § 1222(a)(2).

164. 31 C.F.R. § 51.32(b)(4).

165. See note 52, *supra* at 1.

166. Blubaugh, OEO Report: Revenue Sharing No Help to Poor, The Sacramento Bee, February 1, 1976, p. A-10. According to the article, the State Office of Economic Opportunity does not plan to attempt "pressuring" local governments to spend differently, it only "hopes" that local officials will read the state report and change their priorities accordingly.

ment does not spend its allotment in a priority area,¹⁶⁷ or if a recipient or secondary recipient violates the nondiscrimination provisions of the program,¹⁶⁸ an inequitable or wasteful use of revenue sharing cannot be legally challenged. This same limitation applies to administrative complaints. ORS has adopted the position that no complaint will be investigated concerning the allegation that revenue sharing funds could have been used "better" by a state or local recipient, as long as the money was used in accordance with the requirements of the Act.¹⁶⁹ It suggests that this is a matter which should be dealt with at the local policy making level.¹⁷⁰ Thus, since there is neither an administrative nor a legal complaint process for making revenue sharing decisions more responsive to the needs of the community, individual citizens and citizen groups dissatisfied with local spending will have to participate directly in local decision making, as ORS has suggested.

There are no express requirements in the present Revenue Sharing Act for citizen participation, nor in the regulations; the latter is probably because ORS does not want to practice "bureaucratic overkill" in the administration of the Revenue Sharing Act.¹⁷¹ However, a requirement for citizen participation, like requirements for nondiscrimination, should not be considered as just some more bureaucratic "red tape," since it involves the basic right to have a voice and to participate in the formulation of governmental decisions.¹⁷² If the program of general revenue sharing is truly going to return "power to the people," as declared by President Nixon, rather than merely create a vehicle for federal withdrawal from urban problems, some form of increased participation by the public will have to be adopted.

A. *Citizen Participation is Implied in the Act*

Although President Nixon stated in his 1974 State of the Union Message that revenue sharing was intended "to let people themselves make their own decisions for their own communities," this expressed intention was not sustained by any provision of the law to require public involvement in decisions on how to use funds. The program, however, does require that residents of a

167. 31 U.S.C. § 1222(a).

168. 31 U.S.C. § 1242. 31 C.F.R. § 51.32.

169. See note 86, *supra* at 7.

170. *Id.*

171. See note 27, *supra*. ORS does not seem inclined to adopt regulations requiring local officials to seek input from their constituents, since ORS seems to believe as a matter of general governmental policy that ". . . it is the residents of the community who have the responsibility to inform their elected officials of their needs and desires." See also note 86, *supra* at ii.

172. See note 132, *supra* at 14.

recipient jurisdiction be informed of planned and actual uses of revenue sharing through the publication of reports,¹⁷³ but there is no express requirement or provisions for input by the public once so informed. Congress, in enacting the program, if not ORS in administering it, may have contemplated input from the public since it legislated that the money was to become part of a recipient's own budget and as such decisions on its expenditure would be subject to proposals and criticisms from the public during the course of public hearings on the budget.

The idea of citizen participation comports with the theory of general revenue sharing that decisions affecting localities are best made at the local level. If local officials do know better it is by reason of closer contact with the citizenry. The best way of ensuring this closer contact is through strong citizen participation in the identification of needs and formulation of programs. However, the logical extension of the theory is that the "people themselves" know even better than do local officials. And since the problems of the community are best understood by the members of the community, they are in the best position to devise solutions.

The right of citizens to be informed and to participate in local decisions concerning revenue sharing funds was implied in the Act. Throughout the Congressional debates on revenue sharing one finds that whenever the question of accountability was raised about the proposed program, which would be neither subject to the annual appropriation process, nor subject to the usual checks that exist when the same government that spends the money is responsible for raising it, the answer given by proponents of revenue sharing was that citizens would exercise continuing oversight.¹⁷⁴ They would be informed about proposed expenditures, would have a voice in the decision making process and an opportunity to evaluate the results.¹⁷⁵ The Revenue Sharing Act and the ORS regulations do contain certain provisions intended to make local officials publicly accountable for the expenditure of revenue sharing funds. Examples of these provisions are: (1) the requirement for public audit of expenditures;¹⁷⁶ (2) the requirement for publication of planned use reports;¹⁷⁷ (3) the requirement for publication of actual use reports;¹⁷⁸ and (4) the

173. See notes 121 and 127, *supra*.

174. See note 132, *supra*.

175. *Id.*

176. 31 U.S.C. § 1243(c).

177. 31 U.S.C. § 1241(b) and (c).

178. 31 U.S.C. § 1241(a) and (c). See also, the Report to Congress by the Comptroller General of the United States, dated August 2, 1973, and titled *Revenue Sharing: Its Use by and Impact on State Governments*, at page 8, paragraph 4. It states that "[t]hese reports must be made available to local and other news media so that the public can be kept informed."

requirement that state and local governments must spend revenue sharing funds only in accordance with the laws and procedures applicable to the expenditure of its own revenues.¹⁷⁹ A plan for citizen participation, in essence, puts these provisions for public information and notification to work. They obtain operational meaning through a system for the expression of community needs and program development in accordance with those expressed needs. Citizen input in revenue sharing decisions is implied, if not required, by these provisions since the program to decentralize decision making can achieve the highest results when the public, so informed, can have a direct voice in the expenditures. Moreover, it runs counter to the spirit of the Revenue Sharing Act to allow only for public knowledge of governmental spending decisions without the opportunity to affect those decisions.

In its report surveying revenue sharing uses by local governments,¹⁸⁰ the General Accounting Office concluded that although a few of the local governments it surveyed attempted to include public participation in revenue sharing expenditure decisions, the program generally had no meaningful impact on participation. It concluded that "[p]articipation remained at about the same generally low level which existed prior to revenue sharing."¹⁸¹ Such a result is extremely unfortunate since citizen participation can encourage a better use of funds, uses which are more publicly beneficial rather than politically inspired. In fact, the need for citizen participation is often imperative to guard against civil rights violations.

Complaints of discrimination are often not submitted to ORS because of the difficulty of proof, the length of time and effort required for remedial action, or unawareness that a legal remedy is available, rather than because there is an absence of discrimination.¹⁸² This makes a program of citizen participation even more compelling. Citizen participation in this context would be the only mechanism available to assure an equitable and nondiscrim-

179. 31 U.S.C. 1243(a)(4). The plaintiff in *State ex rel. Kelly v. Moore*, 197 S.E.2d 106 (Supreme Court of Appeals of West Virginia, 1973), brought a mandamus action to compel the transfer of funds to him within his capacity as state treasurer when the Governor of West Virginia deposited the state's entire 1972 allotment into the accounts payable only under his authorization. His rationale was that since he was responsible for assuring that the funds are spent in accordance with the Act, he must be allowed to maintain some degree of control over the funds. The court held that the Act requires funds to be administered only in accordance with procedures established by local law for the management of all local funds. Since West Virginia law requires all state officials authorized to accept money on behalf of the state to promptly deposit such funds with the treasurer, the court ordered the Governor to turn the revenue sharing funds over to the Treasurer's control.

180. See note 61, *supra* 2057.

181. *Id.*

182. See note 93, *supra* at 6.

inatory use of funds. ORS has stated that its practice is to use "those systems already in place" for civil rights compliance.¹⁸³ Not only does ORS depend on other federal agencies for enforcement, but it also relies on the resources of citizen and civil rights organizations.¹⁸⁴ For example, nearly one half of the civil rights complaints filed during the first six months of ORS' operation were generated by the National Association for the Advancement of Colored People (NAACP).¹⁸⁵ Given such a heavy reliance by the ORS, viable and effective citizen involvement in local expenditure decisions seems the only way to ensure fairness in the use of revenue sharing funds.¹⁸⁶

In part, citizen participation has been poor because the information base for citizen involvement has been poor.¹⁸⁷ The planned and actual use reports are the only federally mandated forms of public information on general revenue sharing. They are less than satisfactory vehicles of information for several reasons.¹⁸⁸ The reports are usually placed with the legal notices, often reduced in size. Even if seen, planned use reports often bear little relation to actual use reports, with no evident reason for changes. Reporting categories, corresponding to the priority expenditure classifications, are too general to be meaningful.¹⁸⁹ In addition, media coverage of local revenue sharing decision making has been spotty. The minority, foreign language and neighborhood presses have all but ignored revenue sharing.¹⁹⁰ However, improvements in public information can be made, for instance, by local governments publishing newspaper articles on revenue sharing explaining permitted and alternative uses for the money,¹⁹¹ and sending special notices of revenue sharing budget hearings to all residents.

183. See note 86, *supra* at 11.

184. *Id.*

185. *Id.*

186. In statements made upon reliance of the California State OEO report on revenue sharing, the acting Director of the State OEO, Roberto Rabago, observed: "I believe it is fair to conclude that block grants do not meet the needs of the silent minorities." This indicates a repeated lack of representation of minorities in expenditure decisions. See note 166, *supra*. Rabago said a number of the counties surveyed failed to properly involve any local citizen groups in determining how to spend the revenue sharing money. *Id.* He did note two counties that involved the local citizenry, which accordingly spent higher percentages of their funding on programs for the poor and aged.

187. A report on the preliminary findings of the National Revenue Sharing Project, sponsored by the League of Women Voters, the National Urban Coalition, the Center for Community Change and the Center for National Policy Review, *supra* note 93, at 4-8. The findings are entitled *General Revenue Sharing in American Cities: First Impressions*, copies of which are available from the National Clearinghouse on Revenue Sharing, Washington, D.C.

188. *Id.* at 5.

189. *Id.*

190. *Id.*

191. One objective of the California revenue sharing study was to provide in-

When citizen participation in revenue sharing does take place, it has the potential of creating participation on a broader scale than possible with categorical programs. Citizens sometimes have been able to use the existence of revenue sharing to promote attention to social needs, to increase citizen interest in the general budget and, in a few cases, to open the political processes of local government to citizen participation.¹⁹² In such cases, citizen participation in revenue sharing spending provides the initial stepping stone for citizen participation in public affairs.

In contrast to citizen participation in the urban renewal and Model Cities Program,¹⁹³ citizen participation in general revenue sharing would not be restricted to a particular area of town such as the redevelopment project area of an urban renewal program. When general revenue sharing funds come into a jurisdiction they can be applied anywhere, rather than, for example, in one neighborhood selected for renewal, and can be applied in any of a number of permitted expenditure categories.¹⁹⁴ Providing there is sufficient citizen influence in spending decisions,¹⁹⁵ general revenue sharing can provide a more flexible approach for addressing the needs of the poor than possible with the fixed project area programs. Again, since it is not exclusively an urban program, revenue sharing can also promote citizen participation in rural areas and at state and county as well as local levels of government.

B. Procedure for Participation

Since the revenue sharing law states that governments

formation for local governments and community groups with the hope that "... improved patterns of usage of revenue sharing monies will occur in the future," *supra*, note 52, at 3.

192. See note 93, *supra* at 8.

193. Citizen participation in these programs came from federal statutory and administrative mandates. In urban renewal, the organized citizens' group was the Project Area Committee, in Model Cities, it was a Citizens' Component. See National Housing and Economic Development Law Project, *Handbook on Housing Law: Guide to Federal Housing, Redevelopment and Planning Programs* (1970), ch. III, PT. III, *The Model Cities Program and Urban Renewal*, ch. III, pt. I, for a discussion of both formal legal relationships between these groups and local officials and their actual roles in practice. For an example of state requirements for citizen participation in redevelopment project areas, see the California Community Redevelopment Law, sections 33385-33388 of the state Health and Safety Code.

194. 31 U.S.C. § 1222(a).

195. Some have felt that without a built-in requirement for citizen participation in revenue sharing it is not likely to happen. See LeGates and Morgan, *The Perils of Special Revenue Sharing for Community Development*, JOURNAL OF THE AMERICAN INSTITUTE OF PLANNERS (July, 1973), at 254, 260. The article is a review of proposed legislation and called for the inclusion of strong citizen participation requirements in the community development program. It points out that citizen participation is not likely to exist in the citywide budget arena and that citizen participation in the categorical programs of the past was a function of federal mandates and prodding of local governments which broadly resisted the idea altogether. Provisions for citizen participation were eventually written into special revenue sharing for community development. See note 200, *infra*.

receiving the federal money must use it in accordance with the same rules and procedures that regulate the expenditure of its own revenues,¹⁹⁶ community groups should learn a recipient government's procedure for preparing and approving its budget, what role the budget plays in determining local priorities, and discover where involvement can be most effective. Local law can afford advantages not specified in the program. For example, if state or local governments require public hearings for a jurisdiction's proposed budget before its own monies can be appropriated, then consideration of uses proposed for revenue sharing funds also must be included in public hearings.¹⁹⁷ However, this provision can work but two ways. If state and local law prohibit local spending for the operation of an ambulance service, it could not use revenue sharing funds to run an ambulance service, even though such a project would fall into the priority category of "health."¹⁹⁸ Worse still, local statutes in some areas do not permit spending "social services," or public funding of non-governmental agencies such as community service organizations.¹⁹⁹ However, local law could be modified by ordinance or resolution, at least for purposes of revenue sharing expenditures, to provide for citizen participation; that is, a government could adopt provisions for the special publication of revenue sharing matters and for public hearings.²⁰⁰ Some jurisdictions have adopted a system of special budget hearings on revenue sharing funds.²⁰¹ Other possibilities for public hearings include forums held in the various neighborhoods of the jurisdiction to provide a platform for citizens who do not normally attend meetings at city hall, or early pre-budget hearings to get citizen input and enable local officials to have

196. See note 179, *supra*.

197. If there is an infraction of local law, one does not have to go to federal court to enforce compliance since state courts have jurisdiction to determine compliance with local law. See *Mackey v. McDonald*, 504 S.W.2d 726 (Supreme Court of Arkansas, 1974), at 732.

198. See note 83, *supra* at 15.

199. See note 192, *supra*.

200. Considering the provisions for public information on revenue sharing under 31 U.S.C. § 1241, some sort of public hearings seem to be contemplated under the law and implied by § 1243(a)(4). The Housing and Community Development Act of 1974, 42 U.S.C. § 5301 *et seq.*, mandates somewhat more than general revenue sharing in terms of citizen input and, perhaps, can provide suggestions for local ordinances creating citizen participation in general revenue sharing. Communities are required to provide citizens an "adequate opportunity to participate in the locality's application for these special revenue sharing funds, 42 U.S.C. § 5304(a)(6). This requires communities, *inter alia*, to provide information on available funding, eligible activities and program requirements, and requires that public hearings be held to obtain input on housing and community development needs. See Fishman, *Title I of the Housing and Community Development Act of 1974: New Federal and Local Dynamic in Community Development*, 7 URBAN LAWYER 189 (Spring, 1975), for a discussion of this special revenue sharing program.

201. See note 132, *supra* at 15.

knowledge of community priorities in advance of the preparation of the proposed budget, followed up with a second hearing for adoption of the final budget.

Short of an officially adopted citizen participation process, input from the public can take a variety of forms. Individual citizens can meet with local officials, participate regularly in council or commission meetings, or serve on appointed advisory groups, while community groups can be established for the express purpose of influencing expenditures regarding revenue sharing funds. The departments, agencies or individuals responsible for determining and coordinating the spending priority process of the recipient government should be determined initially, and whether any department normally considers community group requests prior to submitting their annual budget requests. A jurisdiction's timetable for preparing and adopting its budget should also be determined, especially whether the holding of public hearings are required before the budget is adopted.

Whatever method is used, experience has shown that earlier involvement in the annual budget cycle means more impact on revenue sharing decisions.²⁰² Ideally, citizens should get involved in the planning of expenditures, perhaps even in the preparation of the planned use reports. Once expenditures have been planned it may be too late to change them. The objective should be to get a proposal on the budget first, then when public hearings are held on the various parts of the proposed budget, community groups and individuals will have the opportunity to formally express their opinions about the proposal and advocate for its adoption.

IV. PENDING LEGISLATION

Since the present general revenue sharing program will expire at the end of 1976, Congress is presently reviewing proposed legislation to extend it. Concerns by social action and civil rights groups for active citizen participation, publication of meaningful planned and actual use reports, effective nondiscrimination provisions and tougher compliance enforcement by the Office of Revenue Sharing lacking in the present act have found their way into proposed legislation. A bill recently passed by the House of Representatives on June 10, 1976, would extend revenue sharing another three and three-quarter years and would distribute nearly \$25 billion from January 1, 1977, through September 30, 1980, to more than 38,000 local governments.²⁰³

202. See note 89, *supra* at 5-6.

203. "Fiscal Assistance Amendments of 1976," H.R. 13367, 94th Cong., 2d

Important advances in citizen participation not realized by the present act are offered by the proposed bill.²⁰⁴ The first two sections of the bill's citizen participation provisions contain requirements for the publication of proposed and actual use reports.²⁰⁵ Under the proposed legislation, these reports will provide the backdrop for citizen participation efforts in general revenue sharing decision making. The reporting requirements of the proposed legislation are considerably more detailed than those under the present law.²⁰⁶ Proposed is that each state and local government expecting to receive funds submit a report to the Secretary of the Treasury setting forth amounts and purposes for which it proposes to use the funds for a given entitlement period as compared to the use of funds made during the two immediately preceding entitlement periods. The report shall also include a comparison of the proposed, current and past uses to relevant functional items in the recipient's official budget and shall specify whether the proposed use is for a completely new activity, or for tax stabilization or reduction.²⁰⁷ The report and a narrative summary on the pro-

Sess. (1976), reported by the *House Committee on Government Operations* on May 15, 1976. The House agreed to resolve itself into the Committee of the Whole for consideration of the bill on June 9, 1976. See 122 CONG. REC. H5460-H5491 (daily ed. June 9, 1976) and 122 CONG. REC. H5593-H5662 (daily ed. June 10, 1976). The bill now goes to the *Senate Finance Committee* whose chairman, Russell B. Long (D-La.), favors extension of the program in its present form. The *Finance Committee* was awaiting House action before considering S.1625, a bill favored by the Ford Administration which would make few changes in the current program.

204. "Fiscal Assistance Amendments of 1976", H.R. 13367, Section 8(a), amending, *inter alia*, Section 121 of the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. § 1241, see 122 CONG. REC. H5604-5607 (daily ed. June 10, 1976). All references herein will be to the final version of H.R. 13367 as amended and passed by the House, *Id.* The bill reported on the *House Committee on Government Operations*, see generally 122 CONG. REC. H5460-H5491 (daily ed. June 9, 1976), was subsequently modified by an amendment, essentially a substitute to the bill offered by L.H. Fountain (D-N.C.), 122 CONG. REC. H5604-5607 (daily ed. June 10, 1976). This amendment was in turn modified by two minor amendments offered by William J. Randall (D-Mo.) and Robert F. Drinan (D-Mass.), *Id.* at H5640 and H5654, respectively.

205. "Fiscal Assistance Amendments of 1976", H.R. 13367, Section 8(a), 122 CONG. REC. H5604-H5605 (daily ed. June 10, 1976).

206. *Cf.*, 31 U.S.C. § 1241.

207. *Supra*, note 205. The use of funds for tax relief is contemplated and allowed by the proposed legislation. It also eliminates the priority expenditure categories contained in the original legislation, probably in part to allow tax relief, given judicial construction of permitted uses under existing law to exclude tax relief. See, *Mathews v. Massell*, 356 F. Supp. 291 (N.D. Ga., 1973). Hence, Section 3(a) of the bill amends subtitle A of Title I of the State and Local Assistance Act of 1972 by striking out sections 103 and 123(a)(3) on priority expenditures, 31 U.S.C. § 1222 and 1243(a)(3), respectively, see 122 CONG. REC. H5604 (daily ed. June 10, 1976). This amendment may pass the Senate since when revenue sharing was originally enacted it was the House, as opposed to the Senate, which insisted upon expenditure restrictions. However, given the broad nature of the expense categories, especially that allowing spending for social services for the poor and aged, 31 U.S.C. § 1222(a)(1)(g), their elimination may not be of much consequence to groups representing poverty and civil rights interest. The net effect of all this, however, may be to require more vigorous advocacy of these particular interests at the local level.

posed official budget are to be published in a newspaper and made available, along with the official budget, for public inspection and reproduction thirty days before the public hearing required to take place before adoption of the recipient's official budget.²⁰⁸

The next report submitted to Treasury is to occur after a recipient government has received and used its revenue sharing funds.²⁰⁹ The report shall set forth the amounts and purposes for which funds were appropriated, spent or obligated and show the relationship of those funds to the relevant functional items of the recipient's budget. It shall also explain any differences between actual uses and proposed uses reported earlier. This report, along with a narrative summary on the official budget, shall also be available to the public for inspection and reproduction.²¹⁰

The vehicles provided by the bill for citizen participation consist of two required public hearings, occurring at strategic times in the revenue sharing process.²¹¹ The first of such hearings is called the "Pre-Report Hearing."²¹² This hearing is to take place at least seven days before the recipient government submits its proposed use report to Treasury for the particular entitlement period.²¹³ Adequate public notice of the hearing must be given and a recipient can have more than one such hearing. At the hearing, citizens must be offered the opportunity to provide "written and oral comment on possible uses" of the expected revenue sharing funds.²¹⁴ This is extremely important since here the community will have a chance to propose alternative uses for the funds. Making provisions for "written comment" creates the opportunity for citizens to submit serious and detailed written proposals developed over time rather than merely oral opinion on a predetermined budget.

The second required public hearing is the "Pre-Budget Hearing."²¹⁵ This hearing is to occur at least seven days before adoption of a recipient's budget, as such adoption is provided for under state and local law. Adequate public notice must be given with at least thirty-days notice of the time and place of the hearing.²¹⁶ Again, citizens must be given the opportunity at the hearing for "written and oral comment on the possible uses" of the

208. *Supra* note 205 at H5605. The two required public hearings are discussed *infra*.

209. *Supra* note 205 at H5605.

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. A comparable thirty-day notice requirement of this type is not present in the proposed legislation for the Pre-Report Hearing, *see Id.*

revenue sharing funds.²¹⁷ The same opportunity is present here for proposing alternative uses, perhaps with refinements on proposals made at the Pre-Report Hearing. In addition, the bill requires that senior citizens be given an adequate voice at this and all public hearings on the uses of revenue sharing funds.²¹⁸

A recipient must, within thirty days after adoption of its budget, publish in a newspaper a narrative summary of its official budget and the relationship of revenue sharing funds to the relevant functional items of the budget. It must also make the summary available for public inspection and reproduction.²¹⁹

The proposed legislation sets forth conditions which allow the waiver or modification of citizen participation and reporting requirements. The provisions on Pre-Report Hearings can be waived, in accordance with Treasury regulations, if the cost of meeting such a requirement would be "unreasonably burdensome."²²⁰ The provisions on Pre-Budget Hearings can be waived, in accordance with Treasury regulations, if the budget process required under state or local laws or charter provisions assure the opportunity for public attendance and participation as contemplated by the proposed law and if a portion of such process includes a hearing on proposed uses in relation to the entire budget.²²¹

The requirements for publication of the proposed use report and the narrative summary on the official budget can be waived either if the cost of such publication would be "unreasonable burdensome" or where such publication is "otherwise impractical or infeasible."²²² In addition, the thirty day notice requirement for Pre-Budget Hearings may be "modified to the maximum extent necessary to comply with state and local law" once Treasury is satisfied that citizens in the jurisdiction will receive "adequate notification" of the uses proposed for the revenue sharing funds, consistent with the intent of the proposed legislation.²²³

217. Two contrasting sections on the "Pre-Budget Hearing" have been printed in the CONGRESSIONAL RECORD for the final version of the bill, *see* note 205 *supra* at H5605. The other section is identical to that first proposed by the House Committee on Government Operations, *see* note 204 *supra*. The main difference between the section reviewed here and the contrasting section is that the latter creates "the opportunity to provide written and oral comment to the body responsible for enacting the budget, and to have answered questions concerning the budget and the relation to it of funds made available . . ." There is no provision for comment on possible uses.

218. This is an amendment to the proposed bill adopted by voice vote and offered by William J. Randall (D-Mo.), *see* 122 CONG. REC. H5640 (daily ed. June 10, 1976).

219. *Supra* note 209.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

The provisions on waiver and modification, as well as the provisions in the section on Pre-Budget Hearings which allow adoption of budgets as provided under state and local law, reflect the same deference to the state and local law found in the present revenue sharing law.²²⁴ In addition, the requirement in the present law that funds be spent only in accordance with local law and procedures governing expenditure of locally raised revenues has been left unamended by the new bill.²²⁵ Thus, a familiarity with local laws and procedures will continue to remain important for those seeking to influence revenue sharing expenditures. However, because of the sizeable deference paid to local law, much opportunity exists to make improvements on the provisions of the proposed legislation through local law. For example, community groups could push for the enactment of local ordinances creating public hearings in addition to the two required by the bill, or perhaps, decentralizing where public hearings take place. This possibility, in combination with the opportunity for written comment on proposed uses, could lead to significant changes in expenditure priorities of a particular jurisdiction receiving revenue sharing funds.

The nondiscrimination provision of the proposed legislation contains a series of advances regarding protected persons, the proving of discrimination and enforcement of nondiscrimination measures.²²⁶ Most of the operative language of the nondiscrimination prohibition of the present revenue sharing statute has been left intact. The protection still covers "persons," rather than citizens per se of a recipient jurisdiction.²²⁷ In addition, discrimination on account of "age, or handicapped status" is now precluded.²²⁸ The language of the nondiscrimination prohibition is to be interpreted in accordance with applicable provisions of the Civil Rights Acts of 1964 and 1968, the Education Amendments of 1972, the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975.²²⁹

Under the present revenue sharing law, citizens or groups

224. 31 U.S.C. § 1243. In addition, the elimination of the priority expenditure requirements, *supra* note 207, allows even greater local discretion on use of funds.

225. See Section 3(b) of the bill in 122 CONG. REC. H5604 (daily ed. June 10, 1976). Hence, local restrictions on expenditure of fund in certain areas still will apply even though under the bill the "priority expenditures" restriction has been eliminated, *supra* note 207.

226. "Fiscal Assistance Amendments of 1976", H.R. 13367, Section 9(a), amending section 122 of the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. § 1242, see 122 CONG. REC. H5605-H5606 (daily ed. June 10, 1976).

227. *Id.* at H5605.

228. *Id.*

229. *Id.*

alleging discrimination have the burden of proof for the charge.²³⁰ However, under the proposed legislation, the burden has been shifted to the recipient government. A unit of government charged with discrimination must prove "by clear and convincing evidence that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part, directly or indirectly with funds made available under . . ." the revenue sharing program.²³¹

The language in the amended nondiscrimination prohibition appears to extend the scope of coverage greatly beyond that in the original prohibition. Presently, state and local governments are prohibited from "discrimination under any program or activity *funded* in whole or in part with funds made available under . . ." the revenue sharing program.²³² The language of the nondiscrimination prohibition of the proposed legislation prohibits "discrimination under *any* program or activity of a State government or unit of local government, which government or unit receives funds made available under . . ." the revenue sharing program.²³³ The qualifications as to which "program or activity" will be subject to the nondiscrimination prohibition, limiting coverage to those programs or activities receiving revenue sharing in any amount, appears to have been eliminated. Thus, the entire budget and the entire operations of the recipient "government or unit" seems to be subject to this provision. However, the companion section in the bill creating the new burden of proof holds that the provisions of the nondiscrimination prohibition "shall not apply" where a recipient proves "that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part, directly or indirectly with funds made available under . . ." the revenue sharing program.²³⁴ This latter provision seems to reduce the scope of the prohibition back to its present level of coverage apparently after the prohibition was intentionally enlarged. If enacted into law as proposed in the bill, these two provisions could be the source of much confusion and litigation and may, eventually, have to be harmonized by the judiciary.

The proposed amendments to the Revenue Sharing Act include changes in the provisions authorizing the Secretary of the Treasury to bring administrative action enforcing the nondiscrimination prohibition.²³⁵ Under the proposed amendments, whenever there has been (1) receipt of notice of a finding from a state

230. *Supra* note 150.

231. *Supra* note 227.

232. 31 U.S.C.A. § 1242(a), emphasis added; see also 31 C.F.R. § 51.32(a).

233. *Supra* note 227, emphasis added.

234. 122 CONG. REC. H5606 (daily ed. June 10, 1976).

or federal court (but not in a proceeding brought by the United States Attorney General) or administrative agency, which gave notice and opportunity for a hearing, to the effect that there has been "a pattern or practice of discrimination" and (2) a determination of noncompliance by the Secretary, upon investigation by the Secretary and an opportunity for the recipient government to make a documentary submission regarding the allegation of discrimination or the funding of the program or activity with revenue sharing funds, the Secretary shall within ten days of such occurrence notify the Governor of the affected state, and the chief executive officer of any affected unit of local government, that the recipient government is presumed not to be in compliance and shall request those parties to secure voluntary compliance within ninety days.²³⁶ If compliance is secured, the terms and conditions of compliance agreed to by Treasury shall be set forth in writing and a copy sent to each complainant.²³⁷ In addition, semiannual reports shall be filed with the Secretary detailing steps taken to comply with the agreed terms and conditions, a copy of which shall be sent by the Secretary to each complainant within fifteen days.²³⁸

If voluntary compliance is not secured within ninety days, then the Secretary shall suspend further payment of revenue sharing funds but not for more than one-hundred twenty days.²³⁹ At the end of that period, the Secretary shall make "a finding of compliance or noncompliance." If noncompliance is found, the Secretary shall (1) notify the United States Attorney General for civil action, (2) terminate payment of funds and (3) seek repayment of funds if appropriate. If compliance is found, payment of the suspended funds shall resume.²⁴⁰

However, a jurisdiction can request a "compliance hearing" anytime after receiving the above notification from the Secretary, but before the one-hundred twenty day period ends.²⁴¹ The Secretary shall initiate the hearing within thirty days of such request. The funds will be suspended pending the finding of

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* The Secretary shall also suspend further payment of funds whenever the U.S. Attorney General has filed a civil action alleging "a pattern or practice of discriminatory conduct" and the conduct is violative of the nondiscrimination provisions and neither party within forty-five days after such filing has been granted such ordinary relief with regard to the suspension or payment of funds as may otherwise be available by law. Suspension will continue until such time as the court orders resumption of payment. *Id.*

240. *Id.* Payment of suspended funds shall also resume if the recipient complies fully with the final order or judgment of a federal or state court and the order or judgment covers all matters raised by the Secretary in the notification to the jurisdiction, or if the recipient is found to be in compliance. *Id.*

241. *Id.*

compliance or noncompliance by the Secretary and such finding must take place not more than thirty days after the compliance hearing.²⁴²

The last alternative in the proposed amendment would be for the jurisdiction to request, within the ninety day voluntary compliance period, a "preliminary hearing" to determine whether it is "likely" that the jurisdiction would prevail on the merits on the issue of the alleged noncompliance.²⁴³ If such a determination is made then the suspension of funds will be deferred pending a finding of noncompliance at the conclusion of the compliance hearing.²⁴⁴

The proposed amendments also authorize the United States Attorney General to bring a civil action in Federal district court whenever he has reason to believe that a recipient has engaged or is engaging in "a pattern or practice" in violation of the nondiscrimination provisions.²⁴⁵ The relief granted by the court can include "any temporary restraining order, preliminary or permanent injunction" order.²⁴⁶

The proposed amendments expressly allow the institution of civil action by any "aggrieved" person in federal district court or a state court of general jurisdiction whenever a recipient has engaged or is engaging in "any act or practice prohibited" by the Revenue Sharing Act, as amended, provided that administrative remedies have been exhausted.²⁴⁷ The relief can include "a temporary restraining order, preliminary or permanent injunctions or other order."²⁴⁷ The Attorney General may intervene in any action instituted by an aggrieved person, upon timely application, if he certifies that the action is of "general public importance," and would be entitled to the same relief.²⁴⁹ The sponsor of the final version to the bill insisted upon the provision requiring exhaustion of administrative remedies since otherwise, he felt, private civil action could be used to "harass smaller local governments that are in full compliance with the law, or are making a genuine effort to comply, but do not have the financial resources to cope with protracted litigation and the suspension of funds."²⁵⁰

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

247. "Fiscal Assistance Amendments of 1976," H.R. 13367, Section 9(b), amending Subtitle B of Title I of the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. § 1243, by adding at the end thereof, *inter alia*, Section 125 "Private Civil Actions", see 122 CONG. REC. H5606 (daily ed. June 10, 1976).

248. *Id.*

249. *Id.*

250. He used this same rationale to also eliminate the awarding of attorney fees to prevailing plaintiffs as provided in the original version of the bill. See

However, an amendment to the final bill was passed providing that after the expiration of sixty days it shall be deemed that the administrative remedies have been exhausted, unless within the period there has been a determination by the agency on the merits of the complaint, in which case administrative remedies will be deemed exhausted when the determination becomes final.²⁵¹ This was added since the provision for exhaustion of administrative remedies might have the effect of precluding private civil actions by forcing an endless round of appearances before local and federal agencies.²⁵²

The proposed amendments to the revenue sharing program may also contain a major change in the operation of the nondiscrimination provisions and their enforcement. Under the present law, a complainant does not have to show a "pattern or practice" of discrimination by the recipient of revenue sharing, or its secondary recipient, to show a violation of the nondiscrimination provisions.²⁵³ A single act of discrimination will be sufficient to establish a violation. However, the proposed amendments to the nondiscrimination prohibition and the provisions for nondiscrimination enforcement appear to indicate that a "pattern or practice" of discrimination may have to be shown by anyone seeking to enforce the nondiscrimination provisions.²⁵⁴ It is clear that both the Secretary of the Treasury and the Attorney General must find a "pattern or practice" of discrimination before they are authorized to bring action.²⁵⁵ However, it is not clear that private civil actions are conditioned on such an occurrence since a private litigant can maintain an action alleging violation of "any act or practice prohibited"²⁵⁶ including discrimination as set forth in the nondiscrimination prohibition.²⁵⁷ The language of the nondiscrimination prohibition itself does not contain any such limitation.²⁵⁸ A "pattern or practice" may then have to exist only to involve the authority of the Secretary of the Treasury or the Attorney General. However, the nondiscrimination prohibition refers for interpretation of its terms to laws which have employed the "pattern or practice" test as the standard for a finding of unlawful

remarks by L.H. Fountain (D-N.C.) explaining his proposed amendment in 122 CONG. REC. H5607 (daily ed. June 10, 1976).

251. A section sponsored by Robert F. Drinan (D-Mass.) which was added to the bill entitled "Definition of Exhaustion of Administrative Remedies," see 122 CONG. REC. H5654 (daily ed. June 10, 1976).

252. *House Passes Revenue Sharing Extension*, CONGRESSIONAL QUARTERLY, June 12, 1976, page 1541.

253. *Supra* note 150.

254. See generally, notes 234, 244, and 246, *supra*.

255. *Supra* notes 234 and 244, respectively.

256. *Supra* note 246.

257. *Supra* note 226.

258. *Id.*

discrimination.²⁵⁹ If that finding must be made also in the case of revenue sharing, then considerable leverage against discrimination afforded by the program would have been lost by the proposed amendments.

CONCLUSION

The new system of revenue sharing represents a significant change in the federal government's approach to urban problems. Large sums of money have been appropriated for revenue sharing while at the same time cutbacks in categorical grant programs have taken place.

Viewed in its best light, revenue sharing was designed to decentralize decision making. The objective of this was to bring decision making closer to the people since they are in the best position to judge social needs in the community and devise proper solutions to those needs. It was presumed that the more urgent social problems, involving minorities and the poor, would be addressed with revenue sharing funds. Allocations made under this program, in fact, give preference to those jurisdictions having a higher proportion of poor in their population.

However, in the hands of local officials, revenue sharing has not done that which it set out to do. Local officials have demonstrated, repeatedly, unwise and wasteful expenditures and an insensitivity to the needs of minorities and the poor. At the same time, the federal government, through the Office of Revenue Sharing within the Treasury Department, has been totally lax and indifferent toward the misuse of revenue sharing money. ORS has been reluctant, unable and even unwilling in some cases, to vigorously enforce the nondiscrimination provisions of the program.

The nature of discrimination with revenue sharing is especially troublesome. It can often be subtle and when funds are commingled with locally raised revenues their ultimate use is practically impossible to trace. Furthermore, funds will have been spent illegally only when discrimination is shown. A recipient government can spend its allotment unfairly and inequitably, with complete disregard for its poor people, and still be in compliance with the program.

But while revenue sharing has been used abusively and unfairly in the past, it does have a potential for benefiting disadvantaged groups. The legislation and its implementing regulations contain sweeping protective language going as far as allowing a jurisdiction to apply to its entire entitlement to overcome the

259. *Supra* note 229.

effects of past discrimination. Any use of funds by a locality can subject an entire expenditure program, maybe even its entire budget, to the nondiscrimination requirements. A dependency developed by local government on revenue sharing can thus create leverage for local groups concerned with civil rights compliance and affirmative action by the locality.

However, changes in the way revenue sharing is used will take place only when the people themselves get involved in the process; citizen participation can take many forms and can take place at various levels of government. Ongoing participation by the public will be required if continued attention to the needs of the community is to be seen. Some form of citizen participation may have been contemplated or presumed by the present Revenue Sharing Act, considering the requirements for informing the public. However, if the public hearing provisions proposed by the House of Representatives' bill are enacted into law by the senate, a process for citizen participation will have been created. In any event, the nature of the general revenue sharing itself in decentralizing decision making, coupled with the poor showing thus far by local government compels citizen involvement in the process if we again are to see meaningful attention given to the needs of minorities and the poor.