



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

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The Honorable Ernest F. Hollings
Chairman
Subcommittee on Commerce, Justice,
State and the Judiciary
Committee on Appropriations
United States Senate
Washington, D.C. 20510-6025

Dear Mr. Chairman:

Thank you for your letter to the Attorney General concerning correspondence you recently received from the National Federation of the Blind ("NFB") expressing concern for the Department's alleged failure to comply with congressional reporting requirements in several recent Randolph-Sheppard Act cases.

In the Randolph-Sheppard Act cases discussed in NFB's letter -- United States v. Mississippi Vocational Rehabilitation for the Blind, C.A. No. S90-0494 (S.D. Miss. Oct. 1, 1990), Dennis Groshel v. Mary Corley, et al., No. 3-93 Civil 177 (D. Minn.), and State of Minnesota v. Richard Riley, et al., C.A. No. 4-91-815 (D. Minn.) -- state licensing agencies argued that aspects of the arbitration decisions at issue in these cases were final and binding on the respective federal agencies and thus could not be challenged in federal court. The Department's Civil Division took the position, in response, that the provisions of the Act dealing with arbitration between state and federal agencies violated both the Appointments Clause, Art. II, § 2, cl. 2, and the President's Article II executive powers. Consistent with its reporting obligations, the Department fully intended to notify Congress of the constitutional arguments made in each of these cases, and had drafted letters to that effect. However, because of the manner in which the arbitration issue arose in each of these cases, the matter was adjudicated by the court or otherwise disposed of before the Department had an opportunity to report to Congress. To my knowledge, the issue of the constitutionality of the Randolph-Sheppard Act's arbitration provisions is not currently being litigated in any court. If this issue again arises, and we decide to raise the constitutional issue as a defense, we will promptly notify Congress.

Let me again assure you that all components of this Department are committed to full compliance with their reporting obligations, and will report instances in which we assert that a statute is unconstitutional. Please let me know if we may be of further assistance to you with regard to this or any other matter.

Sincerely,

Sheila F. Anthony
Assistant Attorney General

cc: ✓ Michael Davidson, Esq.
Senate Legal Counsel
United States Senate

Charles Tiefer, Esq.
Acting General Counsel
United States House
of Representatives

Mr. James Gashel
Director of Governmental Affairs
National Federation of the Blind