

in recent federal civil rights litigation—I read with concern the October 27 letter to you from the Speaker of the House of Representatives. I believe the Speaker has been misinformed about many of the facts set out in that letter, and therefore the conclusions he reaches about Mr. Lee's fitness for public office, and in particular for the position of Assistant Attorney General for Civil Rights, are unwarranted.

The Speaker's letter begins by asserting that Mr. Lee "attempted to force through a consent decree mandating racial and gender preferences in the Los Angeles Police Department." This assertion is erroneous. In the course of representing the City of Los Angeles, I have for the past seventeen years monitored the City's compliance with consent decrees affecting the hiring, promotion, advancement, and assignment of sworn police officers. I have negotiated on the City's behalf two of those decrees. Of those two, Mr. Lee was opposing counsel on the first, and was associated with opposing counsel on the second. None of these decrees mandates the use of racial or gender preferences. In fact, each of them contains provisions forbidding the use of such preferences.

For the same reasons, the Speaker's statement that the use of racial and gender preferences "would have been a back-door thwarting of the will of the people of California with regard to Proposition 209 (the California Civil Rights Initiative)" is inapposite. Because the decrees with which Mr. Lee was associated do not call for racial or gender preferences, and in fact forbid them, these decrees do not violate the requirements or the intent of Proposition 209.

Of particular concern to me is the Speaker's reference to "the allegation that Mr. Lee apparently employed dubious means to try to circumscribe the will of the judge in the case." This allegation is wholly untrue. The case being referred to is presently in litigation in the district court. Mr. Lee was not at any time a named counsel in the case, but was associated with opposing counsel because of his involvement in the negotiation of a related consent decree. Neither Mr. Lee nor any opposing counsel attempted in any fashion to thwart the will of the judge supervising the litigation. The matter had been referred by the court to a magistrate judge appointed by the court to assist in the resolution of the case. Each counsel had advised the district judge at all points about the progress of the matter. Upon reconsideration, the district judge elected to assert direct control over the litigation. Nothing in Mr. Lee's conduct reflected any violation of the court's rules, either in fact or by appearance.

Bill Lann Lee and I have sat on opposite sides of the negotiating table over the course of several years. Although we have disagreed profoundly on many issues, I have throughout the time I have known him respected Bill's candor, his thorough preparation, his sense of ethical behavior, and his ability to bring persons holding diverse views into agreement. He would, in my view, be an outstanding public servant and a worthy addition to the Department of Justice.

Very truly yours,

ROBERT CRAMER,
Assistant City Attorney.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ANALYSIS OF DOMENICI-CHAFEE "DEAR COLLEAGUE" LETTER REGARDING ISTE A REAUTHORIZATION

Mr. BYRD. Mr. President, earlier this week, Senators received a "Dear Colleague" letter and accompanying material from my friends and colleagues, Senators CHAFEE and DOMENICI. This letter included several representations regarding the substance and effect of the Byrd-Gramm-Baucus-Warner amendment in comparison to that of the Chafee-Domenici amendment to S. 1173, the ISTE A reauthorization bill.

I have already addressed a number of these issues on the floor over the last two days. However, I thought it would be valuable for Senators to review a memorandum that evaluates in detail the representations made by Senators CHAFEE and DOMENICI in their "Dear Colleague" letter. This analysis was prepared by Dr. William Buechner, Director of Economics and Research at the American Road and Transportation Builders Association.

I therefore ask unanimous consent that Dr. Buechner's analysis be printed in the RECORD at this point, and I hope all Members will carefully review this material and become cosponsors of the Byrd-Gramm-Baucus-Warner amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Memorandum

To: Senate Transportation & Budget LA's
From: Dr. William Buechner, Director of Economics & Research American Road & Transportation Builders Association
Date: October 29, 1997

Re: Dear Colleague by Senators Domenici and Chafee on Byrd-Gramm-Baucus-Warner Amendment to S. 1173 (ISTERA II)

Yesterday, you received a dear colleague letter from Senators Domenici and Chafee claiming that forty-three states would lose highway money under the Byrd-Gramm-Baucus-Warner Amendment to S. 1173. This claim was made on the basis of tables and charts prepared by the U.S. Department of Transportation under instructions from the Environment and Public Works Committee. A front page article on this memorandum appeared in the October 28 edition of Congress Daily A.M., which gives the Domenici-Chafee analysis the illusion of accuracy and authority.

DON'T BE MISLED

The purpose of the Domenici-Chafee dear colleague letter is to obscure the fact that the Byrd-Gramm-Baucus-Warner amendment will provide \$28 billion more for highways during the next five years than ISTE A II as reported, while the proposed Domenici-Chafee amendment will not. Nonetheless, the letter suggests that it is appropriate to compare the two proposals as though both provide the same amount of funding. This creates the impression that some states would receive less under Byrd-Gramm-Baucus-Warner than under Domenici-Chafee. Here are the facts:

The Byrd-Gramm-Baucus-Warner amendment authorizes an increase in formula fund-

ing for highway programs of about \$28 billion over the five-year period FY 1999-2003, to be distributed among the states based on the precise distribution formula in the committee bill. Since the program authorization levels in ISTE A II will put an upper limit on the amount Congress can spend on highway during the next six years, the only way to increase highway spending is to increase the amounts authorized in ISTE A II, which is precisely what the Byrd-Gramm-Baucus-Warner amendment does. The implication of the Domenici-Chafee dear colleague letter that the Byrd-Gramm-Baucus-Warner amendment provides no more funding than ISTE A II as reported is simply wrong and completely misrepresents the intent of the amendment.

The Domenici-Chafee approach would lock the highway program into the inadequate authorization levels currently specified in ISTE A II in exchange for a procedure by which Congress could add more money at some future time if it so wishes. This pig-in-a-poke asks the American people to give up the higher authorizations for highways provided in Byrd-Gramm-Baucus-Warner for the hope that Congress might deliver the equivalent at some future date. Of course, Congress will still have to pass higher obligation limitations and appropriations under either approach, but the Byrd-Gramm-Baucus-Warner amendment lets us lock in the necessary authorization level today.

The Byrd-Gramm-Baucus-Warner amendment also authorizes additional spending for the Appalachian Highway Development System and changes most of the funding for the Border Corridor program from a general fund authorization into contract authority. The Environment and Public Works Committee-directed table assumes that funds for these initiatives would be paid "off the top" and implies that states would have to give up money from other highway programs no matter what level is appropriated for the highway program. In fact, the authorization for these programs in the Byrd-Gramm-Baucus-Warner amendment are fully subject to any annual obligation limitation as are other highway programs. Moreover, these programs would be funded in the same proportion as other programs in the bill.

In truth, the Byrd-Gramm-Baucus-Warner amendment provides an increase in authorization for all of the highway programs in ISTE A II in the same proportion as provided for in the underlying bill. As the annual level of appropriations rise, the funds available for all states will rise with it. You cannot compare the state-by-state allocations under Byrd-Gramm-Baucus-Warner versus Domenici-Chafee at the same level of spending, as the dear colleague letter attempts, because the two do not provide the same level of spending. Instead, the appropriate comparison would pit the fully-funded Byrd-Gramm-Baucus-Warner against the anemic level of funding under Domenici-Chafee, in which case every state wins and wins big under the Byrd-Gramm-Baucus-Warner amendment. The Byrd-Gramm-Baucus-Warner amendment will make it possible to use the revenues from the recent transfer of the 4.3 cents per gallon of the Federal gasoline tax previously used for deficit reduction into the Highway Trust Fund to provide authorization for more than \$5 billion per year in new funds to allocate among all the states for highway investment.

In truth, every state stands to receive substantially more under the Byrd-Gramm-Baucus-Warner amendment than under ISTE A II as reported. These additional funds are critical to meet our nation's transportation needs.

I would be happy to discuss this with you if you have questions. I can be reached at 202-289-4434.