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TITLE V OF THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT: LOCAL COMMUNITIES OFTEN BLINDED BY THE RIGHT

I. INTRODUCTION

Over the course of a year, approximately 3.5 million people, 1.35 million of them children, are likely to experience homelessness¹ across the United States.² After staying on the sidelines for years, the federal government finally took legislative action and laid the foundation for eradicating and ameliorating the effects of the crisis of homelessness.³ In 1987, Congress enacted the McKinney Act which provided a

1. Over the years, “homelessness” has been defined in a variety of ways. Martha R. Burt, *Chronic Homelessness: Emergence of a Public Policy*, 30 *FORDHAM URB. L.J.* 1267, 1269 (2003). In the United States, federal policy in recent decades has been guided by the definition provided by the Stewart B. McKinney Homeless Assistance Act (“McKinney Act”). *Id.* The McKinney Act defines a homeless individual as:

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is—
 - (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
 - (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or
 - (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

42 U.S.C. § 11302(a) (2004). While the McKinney Act provides a codified definition, in reality its definition “is often translated into the narrowest of working definitions—having been without housing *last night*, or expecting to be without housing *tonight*.” Burt, *supra* at 1269.

2. NAT’L COALITION FOR THE HOMELESS, HOW MANY PEOPLE EXPERIENCE HOMELESSNESS? (2005), <http://www.nationalhomeless.org/howmany.pdf> (citing The Urban Institute, *A New Look at Homelessness* (2000), <http://www.urban.org/urlprint.cfm?ID=7476>); see also *The Federal Property Asset Management Reform Act and the Federal Asset Management Act: Hearing on H.R. 3285 Before the Subcomm. on Government Management, Information and Technology*, 106th Cong. 6–8 (2000) [hereinafter *Foscarinis Testimony*] (statement of Maria Foscarinis, Executive Director National Law Center on Homelessness and Poverty); MARTHA R. BURT, THE URBAN INSTITUTE, WHAT WILL IT TAKE TO END HOMELESSNESS? (2001), http://www.urban.org/UploadedPDF/end_homelessness.pdf. Because of the “methodological and financial constraints, most studies are limited to counting people who are in shelters or on the streets” when attempting to come up with the size of the homeless population. NAT’L COALITION FOR THE HOMELESS, *supra*. However, this approach is vulnerable to underestimating the magnitude of the homelessness problem primarily because “[m]any people who lack a stable, permanent residence have few shelter options because shelters are filled to capacity or are unavailable.” *Id.* Homelessness in the U.S. can best be described as a “revolving-door” crisis in which “[m]any people exit homelessness quickly, but many more individuals became homeless every day.” BURT, *supra*.

3. McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301–412 (2004).

comprehensive statutory program to fund and promote the struggle against homelessness.⁴

Title V of the McKinney Act (“Title V”) specifically addresses “an immediate and unprecedented . . . lack of shelter for a growing number of individuals and families” by establishing a statutory framework for the use of unutilized and underutilized federal property to assist the homeless.⁵ Title V essentially provides homeless organizations with “first dibs” on surplus federal property deemed suitable for use to assist the homeless.⁶ However, in its current form, Title V operates in a vacuum by excluding the concerns and plans of the local community from consideration when evaluating the application of a homeless organization for surplus federal property.⁷ A battle over a piece of surplus property in the heart of downtown St. Louis, Missouri provides a recent illustration of the tension created when Title V operates in isolation from the development efforts of the local community.⁸ Title V’s framework pitted a local homeless services provider against overwhelming local community support for the continued revitalization of downtown St. Louis.⁹ While Title V provides homeless organizations with cost-effective access to land and buildings,¹⁰

4. *Id.*

5. § 11301(a)(1). *See also* § 11411.

6. § 11411.

7. 45 C.F.R. § 12a.9(e)(2)(i)-(v) (2005).

8. *See* Aisha Sultan, *Rice Warns City Not to Block Plan for Homeless Shelter*, ST. LOUIS POST-DISPATCH, Jan. 11, 2004, at E3.

9. *See* Editorial, *Kiel Soap Opera*, ST. LOUIS POST-DISPATCH, Jan. 11, 2004, at B2.

10. *Foscarinis Testimony*, *supra* note 2. In her testimony, Foscarinis strongly opposed the proposed legislation that would reform the government’s approach to property management by exempting from Title V those properties leased or sold to a third party if the landholding agency utilized the revenue to acquire capital assets or to replace the disposed property. Foscarinis pointed out that in a given year, more than 140,000 homeless people will be served on property made available to non-profits under Title V of the McKinney Act. *Id.* Foscarinis further noted the following salient point:

As our economy has prospered, the cost of land has risen. Not only has this contributed to homelessness, it has also placed growing burdens on the organizations that provide services to help homeless persons become self-sufficient, making their purchase or lease of property in which to operate their programs prohibitively expensive. . . . [S]ince the passage of Title V of the Stewart B. McKinney Act Homeless Assistance, the surplus property program has provided an important resource that has allowed non-profit organizations, as well as cash-strapped local governments, to provide services they otherwise could not.

Id. The importance of a statutory framework that provides access to real property should not be understated. Several research efforts, authorized by the McKinney Act and producing results during the mid to late 1990s, “consistently found that *if housing was supplied*, people would come in from the streets and remain stably housed.” Burt, *supra* note 1, at 1271 (citations omitted). However, “[w]ithout the housing component . . . no amount of other services affected levels of homelessness.” *Id.* The results of the 1990s studies sent a clear message regarding the solution to homelessness: housing is a crucial component; services alone are not enough. *Id.* Thus, providing access to inexpensive housing is critical in the fight against homelessness and should be a major component in any effective statutory

it operates in isolation from the realities of the competing interests of the local community's development efforts, engendering hostility between the two sides, instead of fostering compassion towards the plight of the homeless through collaborative efforts.

This Note explains the history of the McKinney Act, which remains the only comprehensive federal legislation aimed at providing resources to assist the fight against homelessness.¹¹ This Note then focuses on Title V of the McKinney Act, which provides the homeless access to surplus federal property by empowering homeless organizations with the equivalent of a right of first refusal for properties deemed suitable for use to provide assistance to the homeless.¹² Next, this Note examines the function of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (the "Base Closure Act") to demonstrate that Congress recognized Title V's negative effect on local community redevelopment efforts in the context of military base installations.¹³ Next, this Note examines conflicts arising as a result of Title V's operation in cities where the local community seeks to put the federal property to an alternative use but faces the roadblock of a homeless organization's claim to the property under the authority of Title V.¹⁴ This Note then examines the impact of Title V's current statutory framework.¹⁵ This Note concludes by offering a proposal to amend Title V to recognize the needs of both the homeless and the local community in an effort to encourage a collaborative approach that increases sensitivity to the plight of the homeless.¹⁶

II. HISTORY

A. *Federal Legislative Response to the Nationwide Crisis of Homelessness in America*

1. *The McKinney Act*

The McKinney Act represents the federal government's only legislative response to the widespread crisis of homelessness plaguing cities across

framework.

11. *See infra* Part II.A.

12. *Id.*

13. *Id.*

14. *See infra* Part II.B.

15. *See infra* Part III.

16. *See infra* Parts IV–V.

the United States.¹⁷ In the early 1980s, state and local governments funded and administered most of the programs that addressed homelessness. The Reagan administration viewed homelessness as a primarily local issue that did not warrant federal intervention.¹⁸ After pressure mounted by advocates across the country, President Reagan reluctantly signed the McKinney Act into law on July 22, 1987.¹⁹ In passing the McKinney Act, Congress found that the Nation faced an unprecedented crisis in homelessness.²⁰ The McKinney Act contains several programs that

17. NAT'L COALITION FOR THE HOMELESS, THE MCKINNEY/VENTO ACT: NCH FACT SHEET #18 (2005), <http://www.nationalhomeless.org/mckinneyfacts.html> [hereinafter *Fact Sheet*].

18. See Kevin Fagan, *Ronald Reagan, 1911–1984; Amid Tributes, Activists Lament Reagan's Failure on Homelessness*, THE SAN FRANCISCO CHRONICLE, June 10, 2004, at A16. Fagan notes that Reagan slashed HUD's budget by seventy-five percent. *Id.* Fagan also quoted the co-founder of the National Coalition for the Homeless in Washington D.C. as saying the former President was "a Robin Hood in reverse, who took from the poor and gave to the rich." *Id.*

19. See *Fact Sheet*, *supra* note 17. The failure of the federal government to address the increasing homelessness crisis was acknowledged by members of Congress during consideration of the McKinney Act legislation. 133 CONG. REC. H996 (daily ed. Mar. 5, 1987) (statement of Rep. St. Germain). During debates on the House floor, Rep. St. Germain noted:

[The McKinney Act] is a bipartisan response to the very real crisis that exists in all of our communities today. This bill has been put together in a bipartisan manner under the direction of the Democratic leadership of the House based on previous attempts of my committee and the Appropriations Committee in responding to the needs of the homeless people. . . . [T]his is only our preliminary response and an emergency one at that. The failure of the administration and the Congress to continue to provide the absolutely essential housing assistance to low- and moderate-income people has directly resulted in the homeless situation that we see in all of our communities. No Member in this Chamber can tell us that they do not have a homeless problem in their districts. It is a problem that exists in our large cities, our small towns, our suburban communities and in our rural areas. The Congress must face up to the problem. We must act on a long-term basis and we on the Banking Committee pledge to do so.

Id.

20. 42 U.S.C. § 11301(a) (2004). The congressional findings accompanying the statute elaborate on the crisis:

- (1) the Nation faces an immediate and unprecedented crisis due to the lack of shelter for a growing number of individuals and families, including elderly persons, handicapped persons, families with children, Native Americans, and veterans;
- (2) the problem of homelessness has become more severe and, in the absence of more effective efforts, is expected to become dramatically worse, endangering the lives and safety of the homeless;
- (3) the causes of homelessness are many and complex, and homeless individuals have diverse needs;
- (4) there is no single, simple solution to the problem of homelessness because of the different subpopulations of the homeless, the different causes of and reasons for homelessness, and the different needs of homeless individuals;
- (5) due to the record increase in homelessness, States, units of local government, and private voluntary organizations have been unable to meet the basic human needs of all the homeless and, in the absence of greater Federal assistance, will be unable to protect the lives and safety of all the homeless in need of assistance; and
- (6) the Federal Government has a clear responsibility and an existing capacity to fulfill a

provide a variety of services to the homeless population including emergency shelter, transitional housing, job training, health care, education, and permanent housing.²¹

a. Title V of the McKinney Act

Title V of the McKinney Act provides a statutory scheme for addressing what Congress found to be the “greatest obstacle facing organizations providing help to the homeless—the lack of suitable buildings to serve as shelters.”²² Thus, Title V establishes a framework to address this obstacle whereby the Department of Housing and Urban Development (“HUD”) “identifies and publishes lists in the Federal Register of excess or surplus buildings and properties that are suitable for use to assist the homeless.”²³

Title V gives homeless organizations “first dibs” on the available property through three provisions.²⁴ First, properties published “as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of such publication.”²⁵ Second, Title V provides that if the Department of Health and Human Services (“HHS”) receives notice of intent to apply for the property for use to assist the homeless within the 60-day holding period, the property becomes unavailable for any other purpose until the Secretary of HHS reaches a decision on the application

more effective and responsible role to meet the basic human needs and to engender respect for the human dignity of the homeless.

Id. Congress further identified the purpose of the McKinney Act:

- (1) to establish the United States Interagency Council on Homelessness;
- (2) to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless of the Nation; and
- (3) to provide funds for programs to assist the homeless, with special emphasis on elderly persons, handicapped persons, families with children, Native Americans, and veterans.

§ 11301(b).

21. See *Fact Sheet*, *supra* note 17; see also U.S. Dep’t of Housing & Urban Dev., McKinney-Vento Homeless Assistance Act, <http://www.hud.gov/offices/cpd/homeless/rulesandregs/laws/index.cfm> (last visited Mar. 22, 2006).

22. Nat’l Law Ctr. on Homelessness & Poverty v. U.S. Veterans Admin., 765 F. Supp. 1, 3 (D.D.C. 1991) (quoting H.R. REP. NO. 10 (1987), *reprinted in* 1987 U.S.C.C.A.N. 362).

23. Nat’l Law Ctr. on Homelessness & Poverty v. U.S. Veterans Admin., 98 F. Supp. 2d 25, 27–28 (D.D.C. 2000) (citing 42 U.S.C. § 11411(a)–(f)). Title V specifically requires HUD to request information on a quarterly basis from “each landholding agency regarding Federal public buildings and other Federal real properties (including fixtures) that are excess property or surplus property or that are described as unutilized or underutilized in surveys by the heads of landholding agencies under section 524(a) of Title 40.” 42 U.S.C. § 11411(a) (2004).

24. See § 11411(d)(1), (2), (4).

25. § 11411(d)(1).

submitted.²⁶ Lastly, if the property remains available for use to assist the homeless beyond the 60-day holding period, an application for “use to assist the homeless shall be given priority of consideration over other competing disposal opportunities under sections 541 to 555 of Title 40”²⁷ Title V provides an exception to this priority rule only in cases where HHS “determines that a competing request for the property under section 550 of Title 40 is so meritorious and compelling as to outweigh the needs of the homeless.”²⁸

b. Evaluating a Title V Application for Use to Assist the Homeless

Organizations submitting an application for Title V property must comply with the HHS application requirements.²⁹ Based on the limited amount time for HHS to consider applications,³⁰ the evaluation will generally be confined to the information provided in the application materials.³¹ Applications are evaluated on a first-come, first-served basis.³² All applications are reviewed on the basis of the following five elements: proposed services offered, demand for the proposed program, the

26. § 11411(d)(2).

27. § 11411(d)(4)(A).

28. § 11411(f)(3)(A). Although the statute provides for an exception when competing requests for the property are so “meritorious and compelling,” the statute provides no guidance for making this determination. *Id.* Instead, disposal of the real property is left to the discretion of the head of the governmental agency responsible for that property. 40 U.S.C. § 550(b)(2)(A)–(E) (2004).

29. 45 C.F.R. § 12a.9(b) (2005). The application packet requires the applicant to provide information regarding ten aspects of the applicant’s proposal:

- (1) A description of the applicant organization,
- (2) A description of the property desired,
- (3) A description of the proposed program,
- (4) The applicant’s ability to finance and operate the proposed program,
- (5) The applicant’s compliance with non-discrimination requirements,
- (6) The applicant’s insurance coverage,
- (7) Information enabling HHS to ensure historic preservation,
- (8) The potential impact of the applicant’s proposal on the environment,
- (9) Notification of the proposal to the legal government, and
- (10) Compliance with zoning and local use restrictions.

§ 12a.9(b)(1)–(10).

30. 42 U.S.C. § 11411(e)(3).

31. § 12a.9(c).

32. Although applications will be considered on a first-come, first-served basis, HHS handles competing homeless-use applications in the following manner:

If HHS receives one or more competing applications for a property within 5 days of the first application HHS will evaluate all completed applications simultaneously. HHS will rank approved applications based on the elements listed in § 12a.9(e)(2), and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

§ 12a.9(e)(4).

proposal's implementation time, the applicant's past experience in operating similar programs, and the availability of funding to properly operate the applicant's proposed program.³³ HHS regulations identify these five elements but provide little guidance as to how these elements are to be weighed and considered, apparently leaving this balancing task entirely to the discretion of the HHS.³⁴

2. *The Base Closure Act of 1994*

In 1994, Congress enacted the Base Closure Act, limiting the reach of the McKinney Act's "first dibs" for the homeless approach to non-military federal property:

The provisions of this section shall not apply to buildings and property at military installations that are approved for closure under the Defense Base Closure and Realignment Act of 1990³⁵

Thus, the Base Closure Act specifically excluded property at military bases approved for closure from the "first dibs" granted for uses to assist the homeless under Title V.³⁶ Although the homeless no longer receive "first dibs" on this surplus military property, the disposal process for base closures does not ignore their needs in determining the best way to allocate the property.³⁷ Under the Base Closure Act, the Department of Defense ("DOD") "and HUD have the responsibility, along with the Local

33. HHS reviews each application against five criteria, in descending order of priority (with criteria (iv) and (v) having equal importance):

- (i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.
- (ii) *Need.* The demand for the program and the degree to which the available property will be fully utilized.
- (iii) *Implementation time.* The amount of time necessary for the proposed program to become operational.
- (iv) *Experience.* Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.
- (v) *Financial ability.* The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

§ 12a.9(e)(2).

34. *Id.*

35. 42 U.S.C. § 11411(h)(1) (2004).

36. *Id.* Prior to the Base Closure Act, "the base-closing process had become adversarial in some communities. . . ." Monica Fountain, *Homeless Groups Seek Fort Details; New U.S. Law Could Change Plans*, CHI. TRIB., Oct. 14, 1994, Metro Lake, at 1L. However, advocates recognized that the aim of the Base Closure Act was to bring "more coordination between homeless agencies and local officials." *Id.*

37. *See O'Neill v. Dep't of Hous. & Urban Dev.*, 220 F.3d 1354, 1357 (Fed. Cir. 2000).

Redevelopment Authorities (LRAs) and representatives of the homeless, for planning and implementing the conversion of military installations that Congress has approved for closure or realignment.”³⁸ Under this statutory scheme, the LRAs, under the guidance of the DOD and HUD, submit a redevelopment plan for HUD’s review.³⁹ In devising a redevelopment plan, the Defense Base Closure and Realignment Act requires the LRAs to “consult with representatives of the homeless in the communities in the vicinity of the installation concerned . . . and undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.”⁴⁰ Within sixty days of receiving a redevelopment plan, the Secretary of HUD reviews the plan to determine whether it takes into consideration the needs of the local homeless population, the suitability of the property covered by the plan to meet those needs, and any economic impact of the homeless assistance on the local communities.⁴¹ The Secretary of HUD will also consider whether the plan appropriately balances the needs of the homeless with the needs of the communities for economic redevelopment and other development, whether the plan was developed in consultation with local representatives of the homeless, and whether the plan specifies the manner in which the property and resources, both on and off the installation, will be made available for homeless assistance purposes.⁴² Additionally, when reviewing the redevelopment plan, the Secretary of HUD shall “take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.”⁴³

Prior to the Base Closure Act, vacant property left in the wake of base closures fell within the class of surplus federal property that might become available to the homeless under Title V.⁴⁴ However, “Congress did not anticipate the scope of military base closures and realignments nor how the Title V priority of the McKinney Act would affect reuse of the

38. *Id.*

39. *Id.*

40. Defense Base Closure and Realignment Act of 1990, Pub. L. N. 101–510, 104 Stat. 1808 (codified at 10 U.S.C. § 2687 note (2004)).

41. *Id.*

42. *Id.*

43. *Id.*

44. See U.S. DEP’T OF HOUS. & URBAN DEV., GUIDEBOOK ON MILITARY BASE REUSE AND HOMELESS ASSISTANCE (1996), <http://www.hud.gov/offices/cpd/homeless/library/milbase/mbrbook.pdf>. The military base property must first be deemed suitable, by HUD, for use to assist the homeless under Title V. 42 U.S.C. § 11411 (2004).

installations.”⁴⁵ Prior to the Base Closure Act, if a Title V application for that portion of the military installation made available for use to assist the homeless was approved, the property would be awarded to the homeless group without any consideration of the community’s need or possible plans for redeveloping the abandoned base.⁴⁶ As a result, local communities working to replace the economic void left by the base closure found their efforts disrupted by Title V.⁴⁷ Members of Congress recognized this unintended effect, noting that these problems contributed to the adversarial relationship that may develop between local communities and homeless advocate groups.⁴⁸ While urging support for the Base Closure Act, congressional proponents were careful to point out that this amendment did not mean the plight of the homeless was not a priority.⁴⁹ Rather, the effort to amend Title V’s application to military base closures reflected a belief “that the special needs of the homeless can be addressed in a way that is less disruptive to the job creation efforts of those who ultimately desire to bring prosperity and salvation to individuals and communities that desperately need an economic boost.”⁵⁰ The Base Closure Act established a collaborative process in which the local community and homeless organizations come together in determining the

45. U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 44.

46. 42 U.S.C. § 11411. *See also* U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 44.

47. *See* 140 CONG. REC. 28,350 (statement of Sen. Pryor). Senator Pryor observed that the McKinney Act, and more precisely Title V, placed “unnecessary and costly burden[s] . . . on communities nationwide that are working around the clock to redevelop former military installations.” *Id.*

48. *Id.* at 28,351. Senator Pryor, in offering support for the Base Closure Act, noted that:

[T]hese enormous planning efforts are focused on the community’s new mission of securing their economic future following the departure of the military.

Unfortunately, local communities that are working diligently to bring new businesses to town are repeatedly finding their efforts disrupted by the so-called McKinney Act legislation. . . .

The McKinney Act also did not take into account the massive economic development planning efforts of communities that lose military bases. . . .

Unfortunately, serious problems are currently arising in communities nationwide when homeless assistance groups exercise the legal authority provided by the McKinney Act to acquire former base property.

These transactions to homeless assistance groups are allowed by law even though they often undermine the Government-funded economic development efforts of local communities. In extreme cases, homeless assistance groups are using the McKinney Act to acquire entire former military bases. These problems, coupled with an often unaccommodating approach to homeless problems by certain local redevelopment authorities, has contributed to the creation of an intensely adversarial relationship in base closure communities that is truly detrimental to the interests of both parties.

Id.

49. *Id.*

50. *Id.*

best way to allocate the surplus military property amongst the competing interests.⁵¹

B. Title V in Practice

1. Recent Battle Over Federal Building in Downtown St. Louis

A recent Title V application by a homeless services provider for a surplus federal building in downtown St. Louis, Missouri, illustrates the tension created when community plans for the property clash with a homeless organization's desire to acquire the property under the authority of this obscure federal law.⁵² Two opposing forces sought to obtain the property: a private, for-profit developer and New Life Evangelistic Center ("New Life"), a non-profit, faith-based organization.⁵³ The surplus federal property in dispute was deemed suitable by HUD under Title V in September of 2003.⁵⁴ The federal building is located across the street from a historic opera house⁵⁵ which the developer plans to reopen as a prominent entertainment venue in downtown St. Louis.⁵⁶ The private developer planned to construct a parking garage on the nearby, soon-to-be vacant federal property as part of his multi-million dollar plan to restore the opera house.⁵⁷ The only thing preventing the developer from moving

51. See 140 CONG. REC. 28,648 (statement of Rep. Gonzalez). During House consideration of the bill, Rep. Gonzalez noted that "[m]embers on both sides of the aisle, communities, and homeless providers and advocates agree that this reform is needed and, indeed, essential." *Id.* Rep. Bereuter further noted:

[T]his legislation is a compromise measure worked out among Members of this body, the other body, homeless advocates, and community representatives This legislation is good policy which will create a more rational, orderly method in bringing communities and homeless advocates together to formulate a re-use plan which provides economic viability for the community while addressing the needs of the homeless in that community.

Id.

52. See Marianna Riley, *Rice Wants to Expand Homeless Ministry*, ST. LOUIS POST-DISPATCH, Dec. 7, 2003, at D17. The four-story federal building will become surplus and available under Title V's program in 2006. *Id.*

53. See Marianna Riley, *Rice's Ambitious Plan for Homeless Shelter Faces Review Today*, ST. LOUIS POST-DISPATCH, Feb. 23, 2004, at B1.

54. Notice of Federal Property Suitable as Facilities to Assist the Homeless, 68 Fed. Reg. 53,792 (Sept. 12, 2003).

55. The Kiel Opera House, once the home of the St. Louis Symphony Orchestra, was built in 1932 and has remained vacant since 1992. Riley, *supra* note 53.

56. *Id.* The developer had been working for approximately two years on a plan to reopen the historic opera house. *Id.*

57. *Id.* The developer and the city both agree that without the parking garage, the historic renovation project will be stalled. *Id.* The developer's renovation proposal estimates total project costs at \$35.5 million, including the \$7.5 million that would go to the federal government to purchase the property. Purchasing the surplus federal property would enable the developer to provide parking

forward with the renovation plan is the fact that HUD deemed the federal property excess and suitable as a facility to assist the homeless.⁵⁸ In accordance with Title V, New Life submitted an application to acquire the 280,000 square-foot facility to provide shelter and other assistance programs for the homeless.⁵⁹ To further complicate this issue, the dispute over the use of the surplus federal property takes place against the backdrop of an extensive effort by St. Louis to revitalize its downtown St. Louis by attracting businesses and residents back to the city.⁶⁰

In April 2004, HHS rejected New Life's Title V application for the surplus property.⁶¹ HHS rejected the application based on New Life's failure to establish three of the five elements required under the HHS regulations.⁶² HHS specifically determined that New Life's application failed to support assertions that the requisite need existed for the proposed use of the property and that New Life had the necessary experience and financial ability to successfully implement the proposed plan.⁶³ In July

directly across the street from the renovated opera house. *Id.*

58. See Riley, *supra* note 52.

59. *Id.* The surplus federal building could provide enough space to house approximately 1,000 homeless people daily. *Id.* New Life had been operating a homeless shelter exclusively for men in downtown St. Louis for the past thirty years. *Id.* In 2002, New Life expanded its operation to take in women and children and now seeks the federal building to accommodate the approximate 150 percent increase in women and children at New Life's existing facility since 2002. *Id.*

60. While expressing compassion for the homeless, St. Louis City officials continue to stress the importance of spurring economic and community development in downtown St. Louis. See Riley, *supra* note 53. Mayor Francis Slay stressed that St. Louis is "trying to find creative ways to deal with the problem, and just because it doesn't satisfy [New Life] doesn't mean [St. Louis is] not sensitive to homeless issues." *Id.* Arguing that "a vibrant downtown business district generates more taxes, which support more social services in the state" Mayor Slay's chief of staff emphasized that the city would not apologize for trying to revitalize downtown." Sultan, *supra* note 8. In addition to economic improvements in downtown St. Louis, recent population estimates from St. Louis officials indicate that St. Louis city had stabilized its population for the first time in approximately fifty years. Jake Wagman, *City Reaches Milestone; Work Remains*, ST. LOUIS POST-DISPATCH, Dec. 19, 2004, at B1. Revised Census Bureau estimates show that the population in the city of St. Louis decreased only 150 from 2000 to 2003. *Id.* Part of the push helping to stabilize the city's attrition has been the growth of residential real estate in downtown St. Louis. *Id.* "Since 1999, more than 1,000 units have opened downtown in what is known as the loft district. . . ." Marianna Riley, *Downtown "Loftstyle" is Booming*, ST. LOUIS POST-DISPATCH, Dec. 5, 2004, at A01. This trend is on the rise, as estimates indicate that by 2006, approximately 2,500 additional units are expected. *Id.* As a result of the significant efforts to revitalize downtown St. Louis, the dispute over the federal property pits the city's desire to encourage economic ventures against an obligation to address the plight of the city's homeless population. See *Kiel Soap Opera*, *supra* note 9.

61. Marianna Riley, *Rice's Plan for Abram Building is Rejected: Decision Could Clear Way for Renovation of Kiel Opera House*, ST. LOUIS POST-DISPATCH, Apr. 27, 2004, at A1. New Life was the only applicant for the Title V property. Plaintiff's Memorandum in Support of Motion for Preliminary Injunction, *New Life Evangelistic Ctr., Inc. v. Thompson* (No. 04CV01159), 2004 WL 3628343, at *6 (D.D.C. July 9, 2004) [hereinafter *New Life Prelim. Inj. Mem.*].

62. *New Life Prelim. Inj. Mem.*, at *8.

63. *Id.*

2004, New Life challenged this decision by seeking judicial review in federal court and filing a motion for preliminary injunction to prevent the General Services Administration⁶⁴ (“GSA”) from transferring the property to the developer.⁶⁵

2. *Title V Threatens to Derail City Plans for Surplus Federal Properties in the Chicago-Area.*

In the Chicago suburb of Homewood, a dispute in 2000 over who should take possession of a vacant army reserve base “fractured relationships between local officials and advocates for the homeless.”⁶⁶ Homewood Park District officials had been planning for years to convert the abandoned base, located in the heart of a Homewood neighborhood,

64. Because New Life’s bid for the property failed, the federal property would be disposed of accordingly under 40 U.S.C. §§ 540–559 (2004). Section 545 contains some exceptions, but in general, “the Administrator of General Services may make or authorize a disposal or a contract for disposal of surplus property only after public advertising for bids, under regulations the Administrator prescribes.” § 545(a)(1)(A). Section 545 further prescribes that:

[b]ids must be publicly disclosed at the time and place stated in the advertisement [and] [a]n award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, is most advantageous to the Federal Government, price and other factors considered. However, all bids may be rejected if it is in the public interest to do so.

§ 545(a)(3)–(4). Recall that the developer’s competing bid and proposal for use in acquiring the surplus federal property included a \$7.5 million purchase price for the property. *See supra* note 57.

65. Complaint for Declaratory and Injunctive Relief, *New Life Evangelistic Ctr., Inc. v. Thompson* (No. 04CV01159), 2004 WL 3628342, at *1 (D.D.C July 9, 2004) [hereinafter *New Life Complaint*]. In early November 2004, New Life claimed that the parties to the suit had reached an agreement that would allow New Life to submit a new application for the federal building. Marianna Riley, *Rice May Get New Chance to Acquire Federal Building*, ST. LOUIS POST-DISPATCH, Nov. 10, 2004, at B3; *see also* Jerry Berger, *Rice Gets More Time to Make Pitch for Abrams Building*, ST. LOUIS POST-DISPATCH, Feb. 18, 2004, at B2. Despite offers from the developer and the city to assist New Life in finding an alternative location to suit its needs, New Life has defiantly rebuffed any offers. Geri L. Dreiling, *Homeless Holy Wars; The Defiant Reverend Larry Rice Infuriates Big Developers and City Leaders Over a Proposed Shelter in a Downtown Federal Building*, THE RIVERFRONT TIMES, Feb. 25, 2004. The developer allegedly attempted to communicate with New Life several times but New Life refused to take the developer’s calls. *Id.* The developer expressed a willingness to work with New Life “to help to try and find a facility” but New Life wouldn’t budge. *Id.* Additionally, Mayor Slay sought a compromise by “offering to help find an alternate site.” Jerry Berger, *Slay Offers to Help Rice Find Alternate Shelter for Homeless*, ST. LOUIS POST-DISPATCH, Mar. 3, 2004, at B2. In a letter to New Life, Mayor Slay wrote: “If we are going to get serious about breaking the cycle of homelessness, we must all work together on a solution.” *Id.* However, New Life ignored these efforts and continued its pursuit of the 280,000 square-foot federal building. *Id.*

66. Lola Smallwood, *Homewood Locked in Homeless Site Battle*, CHI. TRIB., Mar. 3, 2000, Metro Southwest, at 1. The fractured relationship between local communities and homeless advocates is not unique to this Homewood dispute. *See* Julia Angwin, *Homeless Housing Requirement Strains Cities’ Compassion*, STATE NEWS SERVICE (Washington), July 22, 1994 (describing similar problem in Alexandria, VA).

into a park.⁶⁷ Homewood residents supported the park plan by approving a referendum measure in 1998 to provide the funds for the estimated one-million dollar project.⁶⁸ Community plans for the park hit a roadblock when a homeless support group expressed interest in acquiring the surplus federal property to provide permanent shelter for the homeless.⁶⁹ The dispute sparked weeks of “often-nasty public debate” over who should get the property.⁷⁰ The residents and park officials felt they were “being held hostage” by the leverage that Title V provided the homeless support group.⁷¹ Park officials viewed the homeless group’s position as an ultimatum to find other suitable property for a permanent shelter.⁷² However, park officials pointed out that neither the park district nor Homewood were in a position to find, provide, or purchase a suitable alternative site.⁷³ Although both sides expressed an interest to find a compromise, negotiations “dissolved into finger-pointing and hard feelings on both sides.”⁷⁴ Homewood residents shared concern for the homeless but were adamant in their belief that utilizing the land for the construction of homeless housing “could tear at the very fabric of Homewood.”⁷⁵ Ultimately, the homeless group decided to give up its quest for the land mainly because of the overly burdensome costs of converting the site into suitable housing for the homeless.⁷⁶ However, had the homeless group decided to pursue the property under Title V, “neither the district nor the village officials could [have] stop[ped] the transfer of the

67. Smallwood, *supra* note 66.

68. Lola Smallwood, *Homewood Parks Lost Dibs on Ex-Army Base*, CHI. TRIB., Feb. 10, 2000, Metro Southwest, at 1.

69. Marilyn Thomas, *Residents Will Fight PADS For Nike Land; Homewood Site Set to Go to Homeless*, CHI. TRIB., Feb. 22, 2000, Metro Southwest, at 1. Assuming no infirmities with the homeless organization’s application, the chief of the Chicago GSA Property Disposal Division at the time summed up the situation by stating that “[u]nless the Park District use will produce some real significant benefits, usually regional in scope, we would have to go with the homeless use.” *Id.*

70. Lola Smallwood, *Homeless Agency Gives Up On Quest for Suburb Land*, CHI. TRIB., Mar. 19, 2000, Real Estate, at 9L.

71. Thomas, *supra* note 69. The tension created by this feeling of being held hostage mirrors the tension in the St. Louis dispute where the homeless service provider ignored offers by the city and the developer to find a compromise in the dispute over the surplus federal property. *See Berger, Slay Offers to Help*, *supra* note 65; Dreiling, *supra* note 65.

72. Thomas, *supra* note 69.

73. *Id.*

74. Smallwood, *supra* note 66.

75. *Id.*

76. Smallwood, *supra* note 70. In the wake of the decision to abandon plans for acquiring the surplus property, the park and Homewood officials vowed to continue collaborative efforts to assist the homeless group in finding a permanent site for the homeless shelter. *Id.*

base . . . if [the homeless group's] plan [would have been] approved by the U.S. Department of Health and Human Services."⁷⁷

The Homewood dispute was not the first time city officials in the Chicago area saw their plans for a park threatened by Title V's right of "first dibs" for homeless organizations.⁷⁸ In 1996, a homeless organization sought to use Title V to obtain a prime piece of property located near the Navy Pier area.⁷⁹ The controversy arose because HHS approved the homeless organization's Title V application for the surplus federal property around the same time the National Park Service approved the city's proposal to use the land in the redevelopment of Navy Pier.⁸⁰ The homeless organization planned to use the land to build a greenhouse to allow the homeless to harvest organic produce, herbs and flowers.⁸¹ The federal government encouraged the opposing sides to come together to work out their differences.⁸² In the end, the city and the homeless organization reached a compromise where the city received the Navy Pier land, and in return, gave the coalition a slightly larger piece of vacant, city-owned property.⁸³ The homeless organization also received a \$50,000 grant from the city to assist with the planning and development of its organic greenhouse.⁸⁴

III. ANALYSIS

A. *Practical Effects of Title V's Statutory Scheme on Local Communities*

Title V's statutory framework grants homeless organizations an absolute, unfettered claim to surplus federal property qualified only to the extent of the criteria considered by HHS when evaluating a homeless organization's application for Title V property.⁸⁵ Over the past three decades, the United States has seen a staggering increase in its homeless

77. Smallwood, *supra* note 68. The Homewood dispute is not the first time city officials in Chicago have seen their plans for a park threatened by Title V's right of first refusal for homeless organizations. *Id.*

78. *See, e.g.*, Joel Kaplan, *City, Homeless Group Work Deal on Navy Pier Land*, CHI. TRIB., May 9, 1996, Metro, at 3.

79. *Id.*

80. *Id.* Navy Pier is now one of Chicago's main attractions providing shopping, dining and entertainment options for Chicagoans and the millions of visitors to the city.

81. Kaplan, *supra* note 78.

82. *Id.*

83. *Id.*

84. *Id.*

85. *See supra* notes 5, 33.

population.⁸⁶ On the one hand, Title V provides access to otherwise prohibitively expensive federal surplus property that enables non-profits to address the needs of this population.⁸⁷ According to some estimates, in a given year, well over 100,000 homeless citizens receive the benefits of programs operated by non-profits that have acquired the property to run their programs under Title V.⁸⁸ At the same time, however, Title V's approach essentially creates a federal subsidy system in the form of foregone revenues otherwise available from a free market disposal of the surplus property.⁸⁹

Additionally, the Title V approach addresses the problem of homelessness with a tunnel vision that completely ignores the impact on local communities. As a result, Title V creates a hostile atmosphere that pushes the sides further apart on an already divisive issue.⁹⁰ While homeless advocates decry the Not-In-My-Backyard attitude towards resolving homeless issues, Title V's "first dibs" approach deepens the resentment when city leaders and residents feel that their plans and aspirations for their communities are being held hostage by the leverage granted to homeless organizations under Title V.⁹¹ Often, local development efforts, receiving substantial support from the community at-large, are blindsided by the significant effects of the federal rights created on behalf of the homeless under the little-known Title V.⁹²

Given the scarcity of resources available to the non-profit organizations that commonly exploit Title V's absolute right, it is understandable that these organizations would seize the opportunity provided by Title V to either acquire free property or use Title V as leverage to force the local community to bargain for funding or alternative property for assistance to

86. Burt, *supra* note 1.

87. *Foscarinis Testimony*, *supra* note 2.

88. *Id.*

89. In addition to forgoing the proceeds from the sale of the property, the government might also be forgoing potential future tax revenue streams from property, sales and even employment taxes. The surplus federal property provided at no cost to homeless organizations would otherwise be disposed of in a manner consistent with other applicable provisions of law regarding disposal of federal property. See 40 U.S.C. §§ 541–559 (2004). For instance, the landholding agency might otherwise transfer the property at a reasonable fair market value and receive valuable consideration, as was the case with the federal building in St. Louis, discussed *supra*, where the developer's proposal for the property included \$7.5 million for the cost to acquire the property from the federal government.

90. See *supra* notes 52–84 and accompanying text.

91. *Id.*

92. *Id.* In the Homewood park land dispute, Homewood residents were shocked to learn that the local officials were unaware of Title V until it threatened to derail the plans for a new park when a homeless organization applied to use the surplus property. Smallwood, *supra* note 68.

the homeless.⁹³ However, because Title V's statutory scheme does not encourage or even consider the merits of a collaborative process, neither side is forced to come to the bargaining table⁹⁴ creating a setting where the local community might feel as though it were being held hostage to the whims of the homeless organization.⁹⁵

In the early years of the McKinney Act, it became clear that Title V's broad application to all surplus federal property was having an unintended effect by its application to the military base closings that became increasingly common in the post-Cold War era.⁹⁶ Recognizing the inequity that results when local communities were excluded from taking part in developing a reuse plan for the significant void left in the community by the base closures, Congress amended the McKinney Act by exempting property available as the result of military base closures from becoming property available to the homeless under Title V's "first dibs" approach.⁹⁷ Even though this eliminated the "first dibs" for homeless organizations, the amendment did not eliminate the needs of the homeless from the equation when planning how to redevelop the closed military installations.⁹⁸ Although this amendment might be considered unique because of the large scale of the property that becomes available when a military base closes, it recognizes the inequity of the "first dibs" approach, embracing the sound principle that local communities should be allowed to have a say in the way excess federal property will be disposed of when legitimate, competing uses exist that would benefit the community as a whole.⁹⁹

93. See *Foscarinis Testimony*, *supra* note 2.

94. In the dispute over the surplus federal property in downtown St. Louis, discussed *supra*, both city officials and the developer allegedly offered to work with New Life to find alternative property or make other arrangements to meet New Life's needs in providing assistance to the homeless. New Life allegedly rebuffed any efforts made by the city or the developer prompting increased resentment and bitterness in the dispute. Editorial, *Who's Problem Is It, Anyway?*, ST. LOUIS POST-DISPATCH, Feb. 28, 2004, at 34. New Life's president expressed defiance in pursuing the surplus federal property, ignoring any other potential buildings.

95. Recall the dispute over the park land in a Chicago suburb. See *supra* notes 66–84 and accompanying text. The Homewood residents and community officials felt they were "being held hostage" by the homeless organization during the voluntary negotiations that took place. Thomas, *supra* note 69.

96. See *supra* note 48.

97. See *supra* note 35 and accompanying text.

98. See *supra* notes 38–42 and accompanying text.

99. Although the Base Closure Act gives the local community a voice in the redevelopment of a closed military base, this more collaborative approach does not necessarily translate to a conflict-free process, as illustrated by the closing of the Lowry Air Force Base ("Lowry") in Denver, Colorado. See Justin Burton, *How to Build a Ghetto*, DENVER WESTWORD, June 8, 2000; Tony Perze-Giese, *Plots and Subplots*, DENVER WESTWORD, Dec. 4, 1997; Renate Robey, *Lowry Housing Issue in Limbo*, THE

When the competing proposals for use of the federal property are considered separately, both might provide significant benefits to the local community. However, when the legislative framework pits these individually worthy causes against one another, value judgments must be made and the ensuing struggle inevitably paints one side as the bad guys who are trying to thwart the noble efforts of the other side.¹⁰⁰

IV. PROPOSAL

A. *A Collaborative Approach to the Disposal of Surplus Federal Property Under Title V of the McKinney Act*

Title V should be amended¹⁰¹ to require homeless organizations and local communities to work together, under the supervision of HUD, when

DENVER POST, Sept. 1, 1994, at B2; Renate Robey, *Air Force Details Plan for Lowry Issue of Homeless Housing Project Still Not Settled*, THE DENVER POST, Aug. 2, 1994, at B1. The issue involving Lowry originated prior to the final passage of the Base Closure Act. Julia Angwin, THE DENVER POST, *Lowry a Model for Vacant Bases*, July 25, 1994, at B1. The Lowry Redevelopment Authority (“LRA”) and HUD collaborated with the homeless organizations and struck a compromise that involved a grant from HUD and pledge of money from the Lowry LRA to relocate a large number of the homeless units off-site. Perez-Giese, *supra*. However, the compromise left several homeless units on the base. *Id.* Despite the collaboration between the LRA, HUD and the homeless organizations, residents remained unhappy with how the remaining homeless units were concentrated in certain areas. *Id.* Compromise and negotiation involves striking a balance which makes it difficult, particularly as the stakeholders grow in numbers, to completely satisfy the “needs” and “wants” of all interested parties. However, although the potential for conflict persists, a statutory framework that requires the parties to come together, giving both sides a voice, lays the foundation for a more equitable disposal process instead of the lopsided right of first refusal provided by Title V when non-military properties are involved.

100. New Life feels that despite its efforts to help those in desperate need, public opinion has characterized New Life as the bad guys standing in the way of a portion of the continued economic development of downtown St. Louis. *Battle Over Use of Old Federal Building in St. Louis* (NPR: Morning Edition aired Mar. 11, 2004), at 2004 WL 56911925. The developer’s proposal for the St. Louis property was to build a parking garage, with some commercial space, that would provide parking space nearby for the proposed renovation of the Kiel Opera House as an entertainment venue. New Life was quoted at a press conference saying, “These are human beings. . . . Let the people who want to go to the Opera House walk a block or two, but [the homeless] have to have a place to go.” Sultan, *supra* note 8. Again, viewed in isolation, it would be hard to argue that building a parking garage is more important than providing food and shelter for the needy in our society. However, this humanitarian argument could be used for virtually any application and would theoretically always prevail. The reality is that economic development provides several benefits to the community as a whole, such as job creation and tax revenues to fund social programs, including efforts to assist the homeless.

101. In the alternative, HHS could add to the list of criteria used when evaluating Title V applications by homeless organizations. *See supra* note 33. The federal regulations allow “[a]dditional evaluation factors [to] be added as deemed necessary by HHS.” 45 C.F.R. § 12a.9(e)(3) (2005). Thus, HHS could add factors to account for the recommendations discussed *infra* at notes 102–111 and accompanying text.

surplus federal property becomes available for use to assist the homeless to ensure that the positive effects of Title V are not offset by corresponding negative effects on local community development efforts.¹⁰²

Under this collaborative approach, HUD would evaluate the competing private party proposal to determine whether it represents a project whose benefits accrue to the community as a whole, for example through the creation of jobs and tax revenues, and whether the project fits in with any local development initiatives. If the project meets this threshold requirement, Title V should require the homeless organization and the competing applicant to work together to achieve a solution with mutual benefits, as opposed to the current Title V winner-takes-all approach.¹⁰³

A collaborative approach to disposing of Title V property could be modeled after the provisions of the Base Closure Act, which requires redevelopment plans for the base to incorporate the needs of the homeless in reallocating the available base property.¹⁰⁴ The Base Closure Act requires local officials, representatives of the homeless and other interested parties to come together in producing a development plan, specifically requiring the application to include “[a]n assessment of the manner in which the redevelopment plan *balances* the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.”¹⁰⁵ The Base Closure Act encourages an equitable result by providing the flexibility to bring all interested parties together, while attaching due importance to both the community’s interests and the need to provide assistance to the homeless.¹⁰⁶ By bringing the parties together, the legislative scheme would promote collaboration by giving both sides a voice in the matter instead of the result under Title V currently where homeless organizations are given the right to unilaterally bring community

102. Recall the St. Louis dispute, which took place against the backdrop of a downtown revitalization effort aimed at attracting businesses and residents back to downtown St. Louis. *See supra* note 52–60 and accompanying text. This revitalization effort had been in the works for approximately four years when the federal property became available under Title V. *Id.* Downtown St. Louis had seen millions of investment dollars pour into downtown and the developer’s competing application for the federal property was seen a key component to connecting the various areas that were being redeveloped in the downtown area.

103. For example, this approach would have forced the City of St. Louis and New Life to come to a common ground, rather than engage in probickering and court action. *See supra* note 60–65.

104. *See* 42 U.S.C. § 11411(h); The Base Closure Act.

105. Defense Base Closure and Realignment Act of 1990, Pub. L. No. 101-510, 104 Stat. 1808 (codified at 10 U.S.C. § 2687 note (2004)) (emphasis added).

106. *See id.*

development efforts to a screeching halt.¹⁰⁷ This approach encourages more dialogue between the community and the homeless organizations.¹⁰⁸

A more collaborative approach does not mean that homeless organizations would be subjected to the mercy of the community and lose all of the rights currently provided by Title V.¹⁰⁹ This approach merely incorporates the community's interests into the HHS evaluation process. This would allow the community, or developer, the opportunity to come to the table with alternative solutions to meet the needs of the homeless organization. Thus, if the use of the property proposed by the community is important enough, the community and other interested parties will work to find a solution or run the risk of missing out on the opportunity represented by the proposed use of the property.¹¹⁰ Further, under a collaborative approach, the revenue from the sale of the property, or a portion of future tax revenues, could be earmarked to fund McKinney Act programs or provide the financial resources for the homeless organization to acquire alternative property and fund its proposed programs for the homeless.¹¹¹ Moving towards a more collaborative approach will inject

107. This Note reiterates that the behavior of homeless organizations should not be characterized as malicious or unreasonable. Homeless organizations faced with limited resources reasonably seek to use the federal law to provide much needed access to property to facilitate their efforts in the fight against homelessness. Title V's framework creates this often unworkable situation, not the homeless organizations seeking to exercise the rights afforded them under the federal law.

108. For example, if the parties do not collaborate or engage in a dialogue, this proposed framework could require HUD to mediate the dispute and allocate the property.

109. The importance of a federal scheme that provides access to real property should not be understated. This Note does not advocate the elimination of Title V access to surplus federal property; rather, this Note seeks to inject greater efficiency and equity into the property disposal process.

110. Requiring a collaborative process with oversight by HUD, much like the approach taken under the Defense Base Closure and Realignment Act, could lead to greater benefits for the homeless organizations as a whole. *See supra* note 89.

111. A competing proposal involving development that would spur economic growth would present the government with the opportunity to leverage private funds to partially subsidize homeless assistance under the McKinney Act. The proceeds from the private purchase of the federal property provide funds that would otherwise be forgone if the homeless organization received the property under Title V's current framework. While this private subsidy will likely not represent substantial sums in the context of the overall McKinney Act budget, every penny counts when it comes to the federal budget. During Congressional debates considering the McKinney Act, disagreements over bill amendments did not result from disparate views regarding the existence of the need, or obligation, to assist the homeless; rather, the discord focused on the issue of funding the program while exercising fiscal responsibility to avoid increasing the deficit. *See* 100 CONG. REC. 8682 (statement of Sen. Gramm); 100 CONG. REC. 11,825 (statement of Rep. Michel). While considering the McKinney legislation, Congress found itself in the classic dilemma, as expressed by Sen. Gramm:

On the one hand, we have a need that is perceived by Congress, the need to help the homeless That is not the purpose of this amendment.

some much needed flexibility into the decision making process for surplus federal property under Title V.

V. CONCLUSION

Title V's current approach to the use of surplus federal property to assist the homeless takes great strides to provide homeless organizations with access to real property, a much needed and often prohibitively expensive asset for these organizations to acquire. However, Title V's grant to homeless organizations "first dibs" to this property represents an inflexible approach that eliminates from consideration any alternative proposals that might provide significant benefits to the community as a whole. Adopting a collaborative approach to the disposition of property under Title V would encourage the community and homeless

We have, however, a second need, and that need is to try to control the growth of the deficit recognizing that every penny that we spend raising the deficit is a dollar that has to be borrowed; that is, a dollar that, if borrowed by the Federal Government, will not be available to build new homes, new farms, or new factories to generate new economic growth.

So, in a very real sense, if we simply raised the deficit \$442.7 million, while we may help some people who are now designated as being homeless, there are working Americans who because we have preempted the capital market by almost \$500 million will find that those funds are not available in the capital market to make them home-owners—they are working families who are trying to become home-owners not through some Government program, not through some gift of the taxpayer, but the old-fashioned way, by going to work, building up a nest egg, going to the savings and loan and borrowing the money, building, and buying their own home.

I submit, Mr. President, that while we are expressing concern for the homeless it is very appropriate that we reaffirm our commitment, a commitment that we made before the homeless problem at least in its current form surfaced as a new concern of the Congress, and that is concern about the Federal budget deficit.

100 CONG. REC. 8682 (statement of Sen. Gramm). In supporting the amendment to the original version of the bill, Sen. Murkowski added: "I support this amendment because I believe that we must be both compassionate and fiscally responsible at the same time." *Id.* at 8683. This careful adherence to enacting legislation while remaining fiscally responsible led to the inclusion of the following provision in the McKinney Act:

Appropriations . . . shall be made in accordance with the provisions of the Congressional Budget and Impoundment Control Act of 1974, which prohibits the consideration of any bill that would cause the deficit to exceed the levels established by the Balanced Budget and Emergency Deficit Control Act of 1985, such that it shall not increase the deficit of the Federal Government for fiscal year 1987.

42 U.S.C. § 11303(c) (2004). Thus, much like the practicality guiding Congress during consideration of the McKinney Act, this Note proposes amending Title V to produce legislation that incorporates the practical realities surrounding the circumstances of a given piece of surplus federal property yielding a more equitable and efficient disposal process meeting the needs of the homeless while encouraging economic and community redevelopment efforts.

organizations to come together instead being pushed further apart by the unilateral operation of Title V on behalf of the homeless and to the exclusion and often detriment of the local community.

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