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May 24, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: Senate/House ADA Differences

The Americans with Disabilities Act passed the House by a vote of 403-20. Four of the eight scheduled amendments passed during House floor debate. The only substantial and controversial change made to the House bill was Rep. Chapman's "Food Handlers" amendment.

Rep. Chapman's AIDS amendment to the employment title of the ADA specifies that it is not a violation of the Act for any employer to refuse to assign any employee with an infectious or communicable disease of public health significance (AIDS) to a job involving food handling, provided that the employer shall make a reasonable accommodation which offers an alternative employment opportunity for which the employee would sustain no economic loss. -- (The amendment does not take into account whether the individual poses a "direct threat" to the health or safety of others, thereby, discriminating against people with AIDS who pose no direct threat to others in food handling).

The Senate version specified that any person with a contagious disease who poses a "direct threat" to the health and safety of others may be fired or reassigned.

The Senate version is consistent with current statutes regarding people with AIDS and other contagious diseases, as well as, recent Supreme Court decisions. The Chapman amendment is based on unfounded fears and misperceptions about AIDS which only perpetuates discrimination. As you will note from the attached letter from Secretary Sullivan opposing the Chapman amendment -- AIDS cannot be transmitted during the preparation or serving of food or beverages and is inconsistent with anti-discrimination protections for people with AIDS and the intent of the Americans with Disabilities Act.

With regard to the public transportation provisions of the Act the House passed version specified that key transportation stations must be made accessible within 30 years with two thirds of the key stations accessible in 20 years. The Senate version required all key stations be made accessible within 20 years.

A House-Senate compromise was made during House Public Works & Transportation Committee action on the private transportation provisions of the Act. The Senate version required that within 6 years all new private buses be made "readily accessible and useable" to people with disabilities. In addition, the Senate

bill also mandated a study by OTA to be completed within 3 years to look at the most cost effective means of compliance. The compromise will mandate access but not require lifts. Instead regulations will define what constitutes access after reviewing the recommendations of the OTA study. The study's purpose has been changed to look at alternative means of providing access.

With respect to enforcement, the House amendment clarifies that the Attorney General may not seek damages on behalf of an aggrieved party and a person can bring suit for injunctive relief only if he or she is being subject to discrimination or has reasonable grounds for believing that he or she is about to be subject to discrimination because the covered entity is about to construct a new building in an inaccessible manner.

Finally, the House amendment changes the time frame under which a small business may be sued for violations under the public accommodations title. The House amendment retains the provisions delaying the effective date for 18 months. However, the House amendment specifies that with the exception of violations of provisions pertaining to making alterations and new construction "readily accessible to" and usable by people with disabilities, civil actions may not be brought against businesses that employ 25 or fewer employees and have gross receipts of \$1,000,000 or less during the first 6 months after the effective date. Additionally, no civil actions may be brought against businesses that employ 10 or fewer employees and have gross receipts of \$500,000 or less during the first year after the effective date.

The House only made one technical change to the telecommunications title of the Act which stipulates that every common carrier must still ensure that relay services are provided unless a state has already enacted legislation providing relay services.