

Version  
Sept 1989

## ADA FACT SHEET

The ADA will protect people with disabilities from discrimination in employment, transportation, public accommodations, activities of state and local government, and telecommunications; giving protection which is comparable to that afforded other groups on the basis of race, sex, national origin, age and religion. Most provisions go into effect 2 years after enactment, other than fixed-route publicly-funded transit vehicles:

Employment: All places of employment with 25 or more employees are covered for the first 2 years; after that, employers with 15 employees or more are covered. Provisions are similar to Section 504 of the Rehabilitation Act of 1973 (application procedures must be non-discriminatory, reasonable accommodation is required unless it would pose an undue hardship, employment criteria must be substantially related to essential functions of the job, etc.) Employers may require that an individual with a currently contagious disease not pose a direct threat to the health and safety of others, and may prohibit all workplace use of drugs and alcohol. Religious entities are not restricted from preferential hiring of people holding to their particular religious tenets.

Transportation (public and private): New purchased & leased bus & rail vehicles must be accessible. For publicly-funded systems, this requirement goes into effect 30 days after passage.

Comparable paratransit service must be provided unless it would pose an undue hardship.

All demand-response service which is provided to the general public, and privately funded fixed-route service, may purchase only accessible vehicles unless it can be demonstrated that the service is accessible when viewed in its entirety. The exception is privately funded fixed route service which uses vehicles carrying over 16 passengers, in which case new vehicles must be accessible.

Over-the-road coaches (Greyhound type buses) are exempted for six years in the case of large providers and seven years for small providers; after that, newly purchased vehicles must be accessible. The President can extend this for one year further. The bill commissions a three-year study to determine the best way to provide access to over-the-road coaches.

New bus and rail facilities must be accessible. In altered facilities, the altered area must be accessible to the maximum extent feasible. In major structural alterations, a path of travel to altered areas and restrooms serving altered areas must be accessible. Existing facilities must be accessible when viewed in their entirety.



-2-

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Rail: New vehicles must be accessible. One car per train must be accessible in no more than 5 years. Key rail stations must be accessible in no more than 3 years, with exemptions available for up to 20 years. Amtrak stations must be accessible within 20 years.

Public Accommodations: Includes hotels, restaurants, theaters, halls, stores, offices, transit stations, museums, parks, schools, social service agencies, gyms.

Eligibility criteria can't discriminate. Auxiliary aids and services are required unless the public accommodation can demonstrate undue hardship.

Existing facilities: Must remove barriers when such removal is readily achievable. If not, must provide alternative methods of making goods and services available.

Altered facilities: altered area must be accessible to the maximum extent feasible. In major structural alterations, a path of travel to the altered area and restrooms serving the altered area must be accessible.

New facilities must be accessible unless structurally impracticable, but elevators need not be provided in buildings under 3 floors or with less than 3000 square feet per floor, other than in shopping centers and health care facilities.

Public Services: Activities receiving funding from state and local government are covered, with requirements as in Section 504 of the Rehabilitation Act of 1973.

Telecommunications Relay Services: Telephone carriers offering services to general public (interstate and intrastate) must provide TTD relay services by 2 years after enactment.

Enforcement: Administrative remedies are available. Also, private remedies comparable to those in Titles II and VII of the Civil Rights Act of 1964 are available. Attorney's fees are available; punitive damages are not. The Attorney General can bring pattern or practice suits and seek penalties. State can be sued.



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QUESTIONS AND ANSWERS ON THE SUBSTITUTE AMENDMENT TO S. 933,  
THE AMERICANS WITH DISABILITIES ACT OF 1989

1. What is the purpose of the Americans with Disabilities Act of 1989? (ADA)?

The purpose of the ADA is to provide, clear, strong, consistent, enforceable standards addressing all forms of discrimination against individuals on the basis of disability.

2. What is the scope of the ADA?

The ADA extends civil rights protections for people with disabilities to cover such areas as employment in the private sector, public accommodations (such as theaters, hotels, restaurants, shopping centers, grocery stores), services provided by state and local governments, transportation, and telecommunication relay services.

3. Why is the ADA necessary?

The National Council on Disability (an independent Federal agency whose current membership consists of 15 persons appointed by President Reagan), the Civil Rights Commission, and two recent polls conducted by Lou Harris all conclude that discrimination against individuals with disabilities in the areas listed above is still pervasive in our society. The historic Civil Rights Act of 1964 does not cover people with disabilities, and thus, they have no Federal protections against discrimination in these areas. Federal law only protects against discrimination in Federal employment (section 501 of the Rehabilitation Act of 1973), affirmative action by Federal contractors (section 503), discrimination by entities receiving Federal aid (section 504), and activities conducted by the Federal Government (section 504).

Discrimination is sometimes the result of prejudice; sometimes it is the result of patronizing attitudes; and still other times it is the result of thoughtlessness or indifference. But whatever its origin, the results are the same: segregation, exclusion, or the denial of equal, effective and meaningful opportunities to participate in programs and activities.

Discrimination affects all categories of people with disabilities, including those with mobility impairments, sensory impairments, mental retardation, and other physical and mental impairments. It affects those who have hidden disabilities such as cancer, diabetes, epilepsy, heart disease and mental illness; people who have a history of a disability but are no longer disabled; persons who have been incorrectly classified as having a disability; and those who do not have a disability but who are treated or perceived by others as having a disability.

4. Who developed the provisions in the ADA?

In recent testimony before the Committee on Labor and Human Resources, former Senator Lowell Weicker, sponsor of last year's



version of the ADA described the genesis of this legislation, "With the enactment of Section 504 of the Rehabilitation Act of 1973, Congress said that no longer will Federal funds support or assist discrimination [on the basis of disability] and last year we reaffirmed that commitment in the Civil Rights Restoration Act... The legislation before this committee today completes the work begun in 1973 to secure the civil rights of Americans with disabilities."

The ADA of 1988 had bipartisan support (17 Democrats and 9 Republicans). In the House of Representatives, the bill was introduced by Representative Tony Coelho (D. CA) and had 124 cosponsors. The bill was developed by the National Council on Disability, whose membership includes Justin Dart, long-time stalwart of the Republican Party, and Jeremiah Milbank, the founder of the Eagle Forum. All of the fifteen members of the National Council on Disability were appointed by President Reagan. The ADA was the product of two reports, Toward Independence and On the Threshold of Independence.

5. Does the ADA enjoy bipartisan support?

Yes. The ADA of 1989 was introduced on May 9, 1989 and was sponsored by Senator Tom Harkin (D. IA), Senator Edward Kennedy (D. MA), Senator Dave Durenberger (R. MN), Senator Jim Jeffords (R. VT), Senator John McCain (R. AZ) and others. The sponsors in the House include Steny Hoyer (D. MD), Major Owens (D. NY), and Silvio Conte (R. MA).

Currently, 57 Senators have cosponsored the ADA (41 Democrats and 16 Republicans.) The House bill has 223 cosponsors (196 Democrats and 27 Republicans.)

6. Who endorses the ADA?

The ADA has been endorsed by more than 150 national organizations representing people with a wide variety of disabilities, including every major disability group. The ADA has also been endorsed by the Leadership Conference on Civil Rights, an umbrella organization representing 185 organizations active in the area of civil rights. Many religious groups have also endorsed the ADA.

7. Has the bill, as introduced, been subject to close scrutiny and review?

Yes. In April 1988, Senator Lowell Weicker, (R-CT) introduced S. 2345, the Americans with Disabilities Act of 1988. A joint hearing between the House and Senate was held on September 27, 1989 on S. 2345.

S. 933 was introduced on May 9, 1989. Four hearings have been held in the Senate on S. 933, the last of which occurred on June 22, at which time Attorney General Dick Thornburgh testified on behalf of the Bush Administration.



Extensive discussions have occurred between the Business and Disability communities and the Administration.

8. Does the Substitute Amendment take into consideration the cost burdens faced by small businesses?

Yes. With respect to employment, the bill totally exempts all employers with fewer than 15 employees. For those employers with 15 or more employees, the bill provides an exemption from making accommodations to the needs of disabled applicants or employees that will result in undue hardship on the business. Thus, for example, a small employer who hires a person with a hearing impairment will only incur nominal costs such as purchasing a \$50 amplifier to be placed on a telephone headset.

The provisions in the bill regarding employment are not new; small employers doing business with the federal government or receiving federal aid have been complying with these provisions for almost 15 years. Every study has found that fear of costs has proven to be unfounded. In fact, the major conclusion of one study was the employers found that compliance was "no big deal." Another survey found that most accommodations cost between \$50 and \$100 and the benefit of having an exemplary employee far outweighed these expenses.

With respect to making the business facility accessible to customers who are disabled, the bill focuses on new construction. For example, Iowa law already mandates that new buildings be made accessible to the handicapped. This federal bill follows the lead of Iowa and other states in this regard. An establishment need only make changes to existing facilities if these changes are easily accomplishable and able to be carried out without much difficulty or expense. Other accommodations need not be provided if they impose an undue burden on the business.

With respect to new construction, a small business need not install an elevator if the building is fewer than three stories or fewer than 3000 square feet per floor, unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or the Attorney General determines that a particular category of such buildings should have elevators based on usage.

9. Will there be sufficient time for businesses to be educated before they must be in compliance with the ADA?

Yes. The ADA allows for regulations to be issued one year after the date of enactment. The employment provisions of the ADA become effective 24 months after the date of enactment and the remaining provisions become effective 18 months after enactment, with the exception of the purchase of fixed-route buses, which must comply with the ADA upon the date of enactment.

10. May an employer fire an employee who uses or sells drugs at the worksite or poses a direct threat to the health or safety of others?



Yes. An employer may prohibit the use of alcohol or illegal drugs at the workplace by all employees. He or she may require that employees not be under the influence of alcohol or illegal drugs at the workplace; may require that employees conform their behavior to requirements established pursuant to the Drug-Free Workplace Act; and may hold a drug user or alcoholic to the same qualification standards for employment or job performance and behavior to which it holds other individuals even if any unsatisfactory performance or behavior is related to the drug use of alcoholism of such individuals.

The ADA treats drug addicts in the same way that they are treated under section 503 and 504 of the Rehabilitation Act and the Drug Free Workplace Act. However, the bill ensures that an employer will not fire a person who is falsely accused of being an addict or a person who may have been an addict or an alcoholic sometime in the past but who has been rehabilitated.

11. Are people with AIDS covered by the ADA?

Yes. However, the ADA makes it clear that a person with a contagious disease or infection may be excluded or denied a job or benefit if the covered entity can demonstrate that the person poses a significant risk of transmitting the infection to others through the receipt of a position or benefit. If no reasonable accommodation on the part of the employer or service provider can eliminate such a risk, the individual may be denied the position or benefit.

The policy in the ADA is equivalent to the policy recently adopted by the Congress in the Civil Rights Restoration Act (the Harkin/Humphrey Amendment) and the Fair Housing Amendments Act of 1988. The policy is also consistent with the policy developed by the Office of Personnel Management under the Reagan Administration and the Reagan Administration's Presidential Commission on the Human Immunodeficiency Virus Epidemic. It is also consistent with statements by President Bush, C. Everett Koop (the former Surgeon General), the National Institute of Medicine, the American Medical Association, the American Public Health Association, and the American Nurses' Association.

12. Is the ADA a gay rights bill, protecting homosexuals from discrimination?

No. The ADA does not create any rights of protections against discrimination for homosexuals. Thus, a covered entity is not precluded by the ADA from discriminating against a person solely on the basis of homosexuality. The bill is modeled after section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act, as recently amended. These statutes have never been interpreted to afford homosexuals protections from discrimination.

13. Will the ADA bankrupt the private/intercity bus industry?



No. For over-the-road coaches, the ADA provides an effective date of 5 years from the date of enactment for large carriers and 6 years for small providers. During this time, the Architectural Transportation Barriers Compliance Board, in conjunction with an advisory board consisting of 50 percent disabled consumers and 50 percent transportation providers, will conduct an interim study. Also during this time, private/intercity bus operators must modify their policies to assist persons who use wheelchairs onto and off the bus and store batteries.

For charter bus service providers, if using over-the-road buses, 5 and 6 year effective dates apply. Further, if operating a demand responsive type system (not using over-the-road buses) every new vehicle need not be accessible if operator can demonstrate it is providing equivalent services.

For hotel-type shuttles, the hotel need not make each vehicle with greater than 16 seat capacity accessible if the service provider can demonstrate that it is already meeting the demand with current vehicles or through alternative arrangements.

14. Does the Substitute Amendment establish new or accept existing remedies which have been applied to minorities?

With respect to employment, the ADA accepts the remedies found in Title VII of the Civil Rights Act of 1964. (injunctive relief and back pay) No right to compensatory or punitive damages.

With respect to public accommodations, the ADA provides for injunctive relief comparable to Title II of the Civil Rights Act of 1964. In addition, the Attorney General is authorized to bring pattern or practice suits and seek penalties akin to those provided for in the Fair Housing Amendments Act (up to \$50,000 for first offense and up to \$100,000 for second offenses.)

15. Will compliance with the ADA hurt or help the economy?

Lou Harris recently found that "not working" is perhaps the truest definition of what it means to be disabled in America. Ending discrimination will have the direct impact of reducing the Federal government's expenditure of \$57 billion annually on disability benefits and programs that are premised on dependency of the individual with a disability. It will also have the immediate effect of making people with disabilities into consumers and taxpayers.

The Department of Labor concluded that its rule implementing section 504 of the Rehabilitation Act (nondiscrimination by recipients of Federal aid) would have a substantial beneficial effect in the form of reduced need for veterans benefits, rehabilitation, disability, medical and food stamp payments. Furthermore, "when individuals move from being recipients of various types of welfare payments to skilled taxpaying workers,



there are obviously many benefits not only for the individuals but for the whole society." 45 Fed. Reg. 66,721 (1980)

Persons with developmental disabilities are still being placed in institutions because of the lack of placement in the community and the availability of jobs. In Iowa, it costs \$200 per day to place a person in an institution, which is \$73,000 per year. If a person is institutionalized for 20 years, the cost to society is \$1.46 million; for 40 years, the cost is \$2.92 million, etc. Many of these persons, with appropriate early intervention and special education services and training can lead independent lives in the community and hold down a job. In this way, they can become taxpayers and consumers and reduce these staggering costs to society.



Senate Passed  
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## THE AMERICANS WITH DISABILITIES ACT OF 1988

### FACT SHEET

-- The Americans with Disabilities Act of 1988 was a key recommendation of the National Council on the Handicapped in its 1986 report, Toward Independence.

-- The Act prohibits discrimination on the basis of handicap in areas such as employment, housing, public accommodations, travel, communications, and activities of State and local governments.

-- The Act covers employers engaged in commerce who have 15 or more employees; housing providers covered by Federal fair housing laws; public accommodations; transportation companies; those engaged in broadcasting or communications; and State and local governments.

-- The Act specifically defines discrimination, including various types of intentional and unintentional exclusion; segregation; inferior or less effective services, benefits or activities; architectural, transportation, and communication barriers; failing to make reasonable accommodations; and discriminatory qualifications and performance standards.

-- The Act specifies those actions that do not constitute discrimination. They include unequal treatment wholly unrelated to a disability or that which is the result of legitimate application of qualifications and performance standards necessary and substantially related to the ability to perform or participate in the essential components of a job or activity.

-- The Architectural and Transportation Barriers Compliance Board will issue minimum accessibility guidelines. Other regulations will be issued by the Attorney General, the U.S. Equal Employment Opportunity Commission, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Federal Communications Commission, and the Secretary of Commerce.

-- The Act will not repeal Sections 503 and 504 of the Rehabilitation Act of 1973 and all regulations issued under those sections will remain in full force and effect.

-- Enforcement procedures include administrative remedies, a private right of action in Federal court, monetary damages, injunctive relief, attorney's fees, and cutoffs of Federal funds.



5/24/90

**SUMMARY OF THE MAJOR CHANGES TO THE SENATE VERSION OF THE AMERICANS WITH  
DISABILITIES ACT MADE BY THE HOUSE AMENDMENT**

**TITLE I: EMPLOYMENT**

The House Substitute Amendment makes a limited number of clarifying changes to the Senate bill; only one substantive change of import was made.

The House amendment: clarifies that consideration shall be given to an employer's judgment as to what functions of a job are essential and written descriptions shall be considered evidence of essential functions; clarifies how the reasonable accommodation/undue hardship provisions operate in multiple-site companies; clarifies that voluntary health prevention programs are still permissible; and clarifies that persons who pose a direct threat to the health or safety of others (i.e., a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation) are not qualified individuals under the Act. Also, the House amendment requires coordination between multiple agencies in the enforcement of the ADA and section 504 of the Rehabilitation Act.

The Amendment adds a specific provision regarding food handlers. The Senate bill specifies that any person with a contagious disease who poses a direct threat to the health and safety may be fired or reassigned. The House amendment specifies that it is not a violation of the Act for any employer to refuse to assign or continue to assign any employee with an infectious or communicable disease of public health significance (whether or not the individual poses a direct threat to the health or safety of others) to a job involving food handling, provided that the employer shall make reasonable accommodation that would offer an alternative employment opportunity for which the employee is qualified and for which the employee would sustain no economic loss.

**TITLE II: STATE AND LOCAL GOVERNMENT AND PUBLIC TRANSPORTATION**

The House amendment makes no substantive changes to coverage of state and local governments and makes no changes to provisions applicable to ensuring that public buses be made accessible. The House amendment clarifies provisions related to paratransit but the basic requirements are still intact. ADA requires paratransit for those individuals who cannot otherwise use mainline accessible transit up until the point that it will create an undue financial burden on the transit authority.

With respect to rapid rail and light rail, the House amendment specifies that key stations must be made accessible within 30 years instead of 20 (Senate version) but two-thirds of the key stations must be made accessible within 20 years. The House amendment delineates special rules for making new



intercity and commuter passenger rail cars accessible for people who use wheelchairs and delineates rules governing historic vehicles.

**TITLE III: PUBLIC ACCOMMODATIONS AND TRANSPORTATION SERVICES BY PRIVATE ENTITIES**

The House amendment makes a limited number of clarifying changes to the provisions applicable to public accommodations but no substantive changes of import. Clarifications include: how the readily achievable provision operates where a company has multiple sites; nothing in the ADA requires an entity to permit an individual to participate in a program or receive a benefit if the persons poses a direct threat to the health or safety of others; and specifying rules governing historic buildings and vehicles.

A change was made to the section concerning transportation by private bus companies. The compromise was worked out by House and Senate sponsors, along with the disability community and the private bus industry. The Senate version basically required that within 6 years all new buses must be "readily accessible to and usable by" people with disabilities. In many cases this provision would have the effect of requiring lifts or ramps on each bus. The Senate bill also mandated a study by OTA to be completed within 3 years to look at most cost effective means of compliance. The compromise mandates access but does not necessarily require lifts. 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 punitive damages on behalf of an aggrieved party and a person can bring a 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 renovate or 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 violating this 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 and 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.



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**TITLE IV: TELECOMMUNICATIONS RELAY SERVICES**

The House only made technical and conforming changes to the Senate bill. Every common carrier must still ensure that relay services are provided unless a state has enacted legislation that ensures such services are provided.

**TITLE V: MISCELLANEOUS PROVISIONS**

Congress is still covered but the House incorporated by reference a House Resolution already on the books for enforcement of employment-related complaints and delegates to the Architect of the Capitol responsibility for developing remedies and procedures for matters not related to employment.

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For additional information, contact Robert Silverstein, Staff Director and Chief Counsel of the Senate Subcommittee on Disability Policy, chaired by Senator Tom Harkin. The telephone number is (202)224-6265.



AMENDMENTS TO H.R. 2273  
AND  
VOTING RECORDS OF IOWA DELEGATION

**LAFALCE AMENDMENT (PHASE IN FOR SMALL BUSINESSES)**

Amends Sec. 310 relating to effective dates by stating that no civil actions shall be made during the first 6 months following the effective date if the business employs 25 or less employees and has gross receipts of less than \$1 million, and no civil actions shall be made during the first year after the effective date if the business employs 10 or less employees and has gross receipts of less than \$500,000.

Vote: Yes 401  
      No 0  
      NV 31

Iowa Delegation: Grandy Yes  
                  Leach Yes  
                  Lightfoot Yes  
                  Nagle Yes  
                  Smith Yes  
                  Tauke Yes

**MCCULLUM AMENDMENT (ESSENTIAL FUNCTIONS)**

If an employer has prepared a written description before advertising or interviewing applicants for a job, this description shall be considered evidence of the essential functions of the job.

Vote: There was no opposition to the amendment and was thus accepted.



OLIN AMENDMENT (LIMITATION ON UNDUE HARDSHIP)

Undue Hardship -- states that it is presumed that an undue hardship if an employer incurs costs in making an accommodation which exceed 10% of the annual salary or the annualized hourly wage of the job in question.

Vote:	Yes	187
	No	213
	NV	32

Iowa Delegation:	Grandy	NV
	Leach	No
	Lightfoot	No
	Nagle	No
	Smith	No
	Tauke	No

HANSEN AMENDMENT (WILDERNESS--AS AMENDED BY VENTO)

Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, but no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

There was no opposition to the amendment and thus was accepted.



CHAPMAN AMENDMENT (FOOD HANDLERS)

It is not a violation of the Act for an employer to refuse to assign or continue to assign any employees with an infectious disease of public health significance to a job involving food handling, provided that the employee shall make reasonable accommodation that would offer an alternative employment opportunity for which the employee is qualified and would sustain no economic damage to the employee.

Vote: Yes 199  
No 187  
NV 46

Iowa Delegation: Grandy No  
Leach No  
Lightfoot Yes  
Nagle No  
Smith No  
Tauke Yes

LIPINSKI AMENDMENT (COMMUTER RAIL)

A public entity with a fixed-route commuter rail system does not have to purchase or lease readily accessible and usable commuter rail vehicles to meet the requirements of the title if:

- (a) one car per train is accessible within 5 years of enactment;
- (b) the entity provides clear, concise and adequate notice in its station of which cars are accessible and the location of those cars and trains;
- (c) it makes sure services in non-accessible cars are also available in accessible cars.

Vote: Yes 110  
No 290  
NV 32

Iowa Delegation: Grandy Yes  
Leach No  
Lightfoot Yes  
Nagle No  
Smith No  
Tauke No



SHUSTER AMENDMENT (BUS LIFT WAIVER FOR SMALL COMMUNITIES)

Exempts public entities with populations of 200,000 or less from fixed route provisions in the Act.

Vote: Yes 148  
No 266  
NV 18

Iowa Delegation: Grandy Yes  
Leach No  
Lightfoot Yes  
Nagle No  
Smith No  
Tauke Yes

SENSENBRENNER AMENDMENT (REMEDIES)

It delinks the remedies in the ADA from the remedies contained in Title 7 of the Civil Rights Act. It fixes these remedies so that if Title 7 is changed, the ADA must specifically be mentioned in those changes.

Vote: Yes 192  
No 227  
NV 13

Iowa Delegation: Grandy Yes  
Leach No  
Lightfoot Yes  
Nagle No  
Smith Yes  
Tauke Yes



Centers for Disease Control  
Atlanta, Georgia 30333

MAY 7 1980

The Honorable Henry A. Waxman  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Waxman:

Thank you for your letter concerning the transmissibility of human immunodeficiency virus (HIV) in the workplace.

National and international epidemiologic studies have consistently shown that HIV has three main routes of transmission: sexual contact with an infected person, exposure to blood or blood products primarily through needle sharing among intravenous drug users, and perinatal transmission from an infected woman to her fetus or infant. None of the reported cases of acquired immunodeficiency syndrome (AIDS) in the United States are known or suspected to have been attributable to HIV transmission via casual contact in the workplace.

All epidemiologic and laboratory evidence indicates that bloodborne and sexually-transmitted infections such as HIV are not transmitted during the preparation or serving of food or beverages, and no instances of HIV transmission have been documented in this setting. In studies of households where over 400 family members lived with and/or cared for persons with HIV infection and AIDS, no instances of casual transmission have been reported, despite the sharing of kitchen and bathroom facilities, meals, and eating and drinking utensils. If HIV is not transmitted in these settings, where exposures are repeated, prolonged, and involve contact with the body secretions of infected persons, often when HIV infection was unrecognized for months or years, it would be even less likely to occur in other social or workplace settings. The pattern of cases would be much different from what is observed if casual contact resulted in HIV transmission.

The Public Health Service recommends that all food-service workers follow recommended standards and practices of good personal hygiene and food sanitation and avoid injury to the hands when preparing food. Should such an injury occur, workers are advised to discard any food



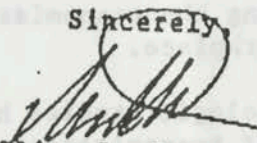
Page 2 - The Honorable Henry A. Waxman

contaminated with blood. Food-service workers known to be infected with HIV need not be restricted from work unless they have evidence of other infections or illnesses for which any food-service worker should also be restricted.

I am enclosing a copy of the Morbidity and Mortality Weekly Report (MMWR) of November 15, 1985, that gives recommendations for preventing transmission of HIV in the workplace. Guidelines for food-service workers are on page 7 of the report.

Thank you for the opportunity to provide you with information concerning this public health issue. A similar letter is being sent to Representative Don Edwards.

Sincerely,

  
William L. Roper, M.D., M.P.H.  
Director

Enclosure





## AMERICAN MEDICAL ASSOCIATION

535 NORTH DEARBORN STREET • CHICAGO, ILLINOIS 60610 • PHONE (312) 645-5000 • TWX 910-221-0300

JAMES S. TODD, M.D.  
Acting Executive Vice President

May 16, 1990

The Honorable J. Roy Rowland  
U.S. House of Representatives  
423 Cannon House Office Building  
Washington, D.C. 20515

RE: Food Handlers Amendment to  
the Americans with  
Disabilities Act

Dear Representative Rowland:

You have requested the American Medical Association's views on a proposed amendment to the Americans with Disabilities Act (ADA) involving food handlers. As we understand the proposed amendment, its inclusion in the ADA would not improve the legislation and the AMA does not support it.

The ADA employment discrimination provision already allows employers to require that an individual with a currently contagious disease or infection not pose a direct threat to the health or safety of others. The AMA supports this general exception to the prohibition against employment discrimination. When appropriately applied, it will provide protection to the health of co-workers and the public.

In this regard, there is no need for an amendment concerning food handlers. The existing ADA language provides appropriate protection from individuals, including food handlers, with contagious infectious diseases.

Sincerely,

*James S. Todd MD*  
James S. Todd, MD

JST/mjz





# AMERICAN PUBLIC HEALTH ASSOCIATION

1015 Fifteenth Street, N.W., Washington, D.C. 20005 • (202) 789-5600

WILLIAM H. McBEATH, M.D., M.P.H., *Executive Director*

November 6, 1987

The Honorable Edward M. Kennedy  
Chairman  
Senate Labor and Human Resources  
Committee  
SD 428  
US Senate  
Washington, D.C. 20510

Dear Chairman Kennedy:

The American Public Health Association, (APHA) strongly opposes any amendments to the Continuing Resolution or other legislation which would prohibit employment of HIV positive individuals as food handlers with in the federal government, or in federally funded programs. APHA, with a combined national and affiliate membership of over 50,000, is the oldest and largest society of public health professionals in the world.

The Centers for Disease Control and the U.S. Surgeon General have concluded that the AIDS virus is not likely to be transmitted through food. Indeed, there has never been a case of HIV transmission through food. The American Public Health Association agrees with the National Restaurant Association in its opposition to a ban on HIV positive employees in food handling.

A further concern with taking such an unwarranted action could be a decline in persons seeking AIDS antibody testing. It is likely that the fear of job discrimination could discourage persons from seeking the testing, counseling, and treatment which is needed to control this disease.

We urge you to oppose any amendments which would promote discrimination against persons in employment situations, such as food handling, where HIV transmission is not a danger.

Very truly yours,

William H. McBeath, MD, MPH  
Executive Director





Willie L. Baker, Jr.  
International Vice President  
Director, Public Affairs Department

VIA FAX

May 17, 1990

The Honorable Steny Hoyer  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Hoyer:

The United Food and Commercial Workers International Union has 1.3 million members organized in over 700 local unions throughout the United States and Canada. The UFCW and its local unions have collective bargaining agreements with employers throughout the food industry, including retail sales, meat packing, poultry and fish processing, and other food processing. We also have members in the health, leather, fur, shoe manufacturing and other industries.

We strongly urge your opposition to the "food handler" amendment that will be offered by Representative Chapman of Texas to the Americans with Disabilities Act. This amendment would reinforce the very kind of irrational discrimination that the Americans with Disabilities Act is designed to eliminate, and it should be defeated.

The amendment would allow discrimination in "food-handling" jobs against employees with "communicable diseases." It does not specify that those diseases be communicable through food. An employer could force a person out of a job with food-handling duties, even when that person remains qualified for, and wishes to continue in, the food-handling job.

The Chapman amendment purports to provide "alternative employment" to employees and to protect them from "economic damage." Most employers in the industry, however, have a small number of jobs that do not involve food handling. Many employees who work in such positions will not be qualified for alternative work.

Even if no employee suffered economic harm as a result of this discrimination, the Chapman amendment would still send a false and dangerous message that would undermine the efforts of our public health officials to calm unnecessary public fears about AIDS transmission.



The Honorable Steny Hoyer

May 17, 1990

- 2 -

As President Bush has said, "Every American must learn what AIDS is -- and what AIDS is not...you can't get it from food or drink.... While the ignorant may discriminate against AIDS, AIDS won't discriminate among the ignorant."

Please vote against discrimination and against AIDS hysteria by defeating the Chapman admendment.

Sincerely,

*Willie L. Baker, Jr.*

International Vice President  
Director, Public Affairs Department



# FOOD & ALLIED SERVICE TRADES

DEPARTMENT • AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL ORGANIZATIONS

815 Sixteenth Street, N.W., Suite 408 • Washington, D.C. 20008 (202) 737-7200

17 May 1990



ROBERT F. HARBRANT  
President  
JEFFREY L. FIEDLER  
Secretary-Treasurer

### BY FACSIMILE

The Honorable Steny Hoyer  
1513 Longworth House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Hoyer:

On behalf of the 3.5 million working men and women associated with the Food and Allied Service Trades Department, AFL-CIO, I am writing to urge you and your colleagues to vote against the Chapman Amendment to the Americans with Disabilities Act (ADA).

This amendment has been designed to allow employers to move an employee with a communicable or infectious disease of a public health significance out of a food handling position.

However the amendment is not necessary -- food handlers who pose a risk to others are already excluded from the ADA. But the Chapman amendment would expand allowable discrimination to include workers that do not represent a risk to the public.

The amendment would facilitate the discrimination of workers employed in the food business that may have certain diseases although those maladies may not be communicable via food.

The amendment is clearly an attempt to discriminate against workers with certain disabilities. For these reasons we oppose the inclusion of such an amendment in the ADA. We encourage you to vote against the Chapman amendment.

Sincerely,

Robert F. Harbrant  
President





# AFSCME®

## American Federation of State, County and Municipal Employees, AFL-CIO

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Riverside, Calif.

May 17, 1990

The Honorable Steny H. Hoyer  
U.S. House of Representatives  
1513 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Hoyer:

The American Federation of State, County and Municipal Employees (AFSCME) urges you to oppose an amendment to H.R. 2273 which may be offered by Representative Chapman which would allow employers to deny jobs with food-handling duties to persons with "communicable diseases."

The Chapman amendment has no legitimate purpose and would only serve to weaken this important legislation. It is not needed to deal with the issue of food-borne diseases as the legislation does not cover persons who "pose a direct threat to the health or safety of other individuals." This standard is sufficient to ensure that a person with a food-borne or air-borne disease will not be employed in a food-handling job.

The Chapman amendment would serve to reinforce the very kind of irrational discrimination that this legislation is designed to eliminate, and it should be defeated.

Sincerely,

Jerry B. Klepner  
Director of Legislation

JPK:rlh



May 16, 1990

Dear Conferee:

We, the undersigned representatives of governing bodies within our respective faith groups, urge you to support and pass the Americans With Disabilities Act (ADA). We oppose any amendments which will serve to weaken the present bill. We especially urge you to oppose the "food handler" amendment that will be offered by Representative Jim Chapman.

This amendment fosters the same type of irrational discrimination that the ADA is intended to eliminate. There is no medical reason to bar people with the HIV disease from working as food handlers. All research concludes that the virus cannot be spread through food, handshakes, coughing, sneezing or other daily casual contact. Recently, Dr. William Roper, Director of the Centers for Disease Control, wrote a letter which states clearly that people with AIDS do not pose a risk to others by handling food. The proposed amendment would undermine the education efforts of the federal government and our various faith groups, which are trying to educate the public about how AIDS is contracted and how it is not.

The amendment will have a disproportionate impact on poor and racial/ethnic minority workers who rely on employment in the food service sector to care for themselves and their families. Adoption of this amendment will increase dependency upon federal income support payments and significantly decrease the opportunity for individuals to live independent lives.

The proposed amendment is also directly contrary to the stated position of President Bush. Our President has publicly stated, on more than one occasion, that all people with AIDS should be covered by ADA. Exceptions due to public ignorance are not countenanced by President Bush.

ADA already contains specific language that any worker who poses a direct threat (now defined as significant risk) to others is excluded from coverage in the employment section of the bill. We, as people of faith, cannot endorse this amendment which reinforces precisely the type of irrational discrimination ADA is designed to eliminate. It responds to public misperception and fear by legitimizing that fear through explicit accommodation in the law.

Thank you for considering our views.

Sincerely,

Rev. Ken South  
Washington Representative  
AIDS National Interfaith Network

Carol B. Franklin  
American Baptist Churches, USA

Judith Golub  
Legislative Director  
American Jewish Committee



Mark J. Pelavin  
Washington Representative  
American Jewish Congress

Melva B. Jimerson  
Acting Director  
Church of the Brethren, Washington Office

Sally Timmel  
Director, Washington Office  
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Director, Lutheran Office for Governmental Affairs  
Evangelical Lutheran Church in America

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Director  
Mennonite Central Committee, Washington Office

Mary Anderson Cooper  
Acting Director, Washington Office  
National Council of Churches

Joan Bronk  
National President  
National Council of Jewish Women

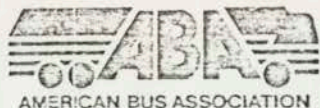
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Presbyterian Church (USA)

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Director, Department of Human Welfare,  
General Board of Church & Society,  
The United Methodist Church

Joyce V. Hamlin  
Women's Division,  
General Board of Global Ministries,  
The United Methodist Church

Rev. Jay Lintner  
Director, Office for Church in Society  
United Church of Christ

Father Robert J. Brooks  
Washington Office of the Episcopal Church



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March 26, 1990

Honorable Tom Harkin  
United States Senate  
Washington, D, C. 20510-1502

Dear Senator Harkin:

On behalf of the American Bus Association and the intercity bus industry that we represent, I appreciate very much your continuing concern about our interests in the Americans with Disabilities Act as it moves through the House of Representatives. Since the bill already has been passed by the Senate, your attention to the action of the Public Works and Transportation Committee has been extraordinary.

We are pleased with the amendment that you helped craft, which was adopted by the Surface Transportation Subcommittee dealing with private intercity bus service. We believe that it is a carefully crafted, fair and equitable compromise, and we sincerely hope that it will remain as is through consideration by the full committee and on the House floor. With your interest and support, we are confident that it will be accepted by the Senate in any subsequent House/Senate conference should one be necessary.

Please let us know if you have any questions or if we can be of any assistance as the bill continues to move through Congress. In the meantime, all best wishes to you.

Sincerely,

A handwritten signature in cursive script, which appears to read 'Susan Perry', is written over the typed name.

Susan Perry  
Senior Vice President -  
Government Relations





**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
Washington, D.C. 20507

**THE AMERICANS WITH DISABILITIES ACT**  
**TITLE I--EMPLOYMENT**  
**QUESTIONS AND ANSWERS**

**Q. What employers are covered by the ADA, and when is the coverage effective?**

**A.** The employment provisions apply to private employers, State and local governments, employment agencies, and labor unions. Employers with 25 or more employees will be covered starting July 26, 1992, when the employment provisions go into effect. Employers with 15 or more employees will be covered two years later, beginning July 26, 1994.

**Q. What practices and activities are covered by the employment nondiscrimination requirements?**

**A.** The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities.

**Q. Who is protected against employment discrimination?**

**A.** Employment discrimination is prohibited against "qualified individuals with disabilities." Persons discriminated against because they have a known association or relationship with a disabled individual also are protected. The ADA defines an "individual with a disability" as a person who has a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or is regarded as having such an impairment.

The first part of the definition makes clear that the ADA applies to persons who have substantial, as distinct from minor, impairments, and that these must be impairments that limit major life activities such as seeing, hearing, speaking, walking, breathing, performing manual tasks, learning, caring for oneself, and working. An individual with epilepsy, paralysis, a substantial hearing or visual impairment, mental retardation, or a learning disability would be covered, but an individual with a minor, nonchronic condition of short duration, such as a sprain, infection, or broken limb, generally would not be covered.

The second part of the definition would include, for example, a person with a history of cancer that is currently in remission or a person with a history of mental illness.

ADA FACT SHEET  
PAGE TWO

The third part of the definition protects individuals who are regarded and treated as though they have a substantially limiting disability, even though they may not have such an impairment. For example, this provision would protect a severely disfigured qualified individual from being denied employment because an employer feared the "negative reactions" of others.

**Q. Who is a "qualified individual with a disability"?**

**A.** A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not necessarily conclusive evidence, of the essential functions of the job.

**Q. Does an employer have to give preference to a qualified applicant with a disability over other applicants?**

**A.** No. An employer is free to select the most qualified applicant available and to make decisions based on reasons unrelated to the existence or consequence of a disability. For example, if two persons apply for a job opening as a typist, one a person with a disability who accurately types 50 words per minute, the other a person without a disability who accurately types 75 words per minute, the employer may hire the applicant with the higher typing speed, if typing speed is needed for successful performance of the job.

**Q. What is "reasonable accommodation"?**

**A.** Reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to perform essential job functions. Reasonable accommodation also includes adjustments to assure that a qualified individual with a disability has the same rights and privileges in employment as nondisabled employees.



**ADA FACT SHEET  
PAGE THREE**

**Q. What kinds of actions are required to reasonably accommodate applicants and employees?**

**A.** Examples of reasonable accommodation include making existing facilities used by employees readily accessible to and usable by an individual with a disability; restructuring a job; modifying work schedules; acquiring or modifying equipment; providing qualified readers or interpreters; or appropriately modifying examinations, training, or other programs. Reasonable accommodation also may include reassigning a current employee to a vacant position for which the individual is qualified, if the person becomes disabled and is unable to do the original job. However, there is no obligation to find a position for an applicant who is not qualified for the position sought. Employers are not required to lower quality or quantity standards in order to make an accommodation, nor are they obligated to provide personal use items such as glasses or hearing aids.

The decision as to the appropriate accommodation must be based on the particular facts of each case. In selecting the particular type of reasonable accommodation to provide, the principal test is that of effectiveness, i.e., whether the accommodation will enable the person with a disability to do the job in question.

**Q. Must employers be familiar with the many diverse types of disabilities to know whether or how to make a reasonable accommodation?**

**A.** No. An employer is only required to accommodate a "known" disability of a qualified applicant or employee. The requirement generally will be triggered by a request from an individual with a disability, who frequently can suggest an appropriate accommodation. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and the requirements of the job will vary in each case. If the individual does not request an accommodation, the employer is not obligated to provide one. If a disabled person requests, but cannot suggest, an appropriate accommodation, the employer and the individual should work together to identify one. There are also many public and private resources that can provide assistance without cost.

**ADA FACT SHEET  
PAGE FOUR**

**Q. What are the limitations on the obligation to make a reasonable accommodation?**

**A.** The disabled individual requiring the accommodation must be otherwise qualified, and the disability must be known to the employer. In addition, an employer is not required to make an accommodation if it would impose an "undue hardship" on the operation of the employer's business. "Undue hardship" is defined as "an action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer's operation. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization would be considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer would be expected to make accommodations requiring greater effort or expense than would be required of a smaller employer.

**Q. Must an employer modify existing facilities to make them accessible?**

**A.** An employer may be required to modify facilities to enable an individual to perform essential job functions and to have equal opportunity to participate in other employment-related activities. For example, if an employee lounge is located in a place inaccessible to a person using a wheelchair, the lounge might be modified or relocated, or comparable facilities might be provided in a location that would enable the individual to take a break with co-workers.

**Q. May an employer inquire as to whether a prospective employee is disabled?**

**A.** An employer may not make a pre-employment inquiry on an application form or in an interview as to whether, or to what extent, an individual is disabled. The employer may ask a job applicant whether he or she can perform particular job functions. If the applicant has a disability known to the employer, the employer may ask how he or she can perform job functions that the employer considers difficult or impossible to perform because of the disability, and whether an accommodation would be needed. A job offer may be conditioned on the results of a medical examination, provided that the examination is required for all entering employees in the same job category regardless of disability, and that information obtained is handled according to confidentiality requirements specified in the Act. After an employee enters on duty, all medical examinations and inquiries must be job related and necessary for the conduct of the employer's business. These provisions of the law are intended to prevent the employer from basing hiring and employment decisions on unfounded assumptions about the effects of a disability.



**ADA FACT SHEET  
PAGE FIVE**

**Q. Does the ADA take safety issues into account?**

**A.** Yes. The ADA expressly permits employers to establish qualification standards that will exclude individuals who pose a direct threat -- i.e., a significant risk -- to the health and safety of others, if that risk cannot be lowered to an acceptable level by reasonable accommodation. However, an employer may not simply assume that a threat exists; the employer must establish through objective, medically supportable methods that there is genuine risk that substantial harm could occur in the workplace. By requiring employers to make individualized judgments based on reliable medical evidence rather than on generalizations, ignorance, fear, patronizing attitudes, or stereotypes, the ADA recognizes the need to balance the interests of people with disabilities against the legitimate interests of employers in maintaining a safe workplace.

**Q. Can an employer refuse to hire an applicant or fire a current employee who is illegally using drugs?**

**A.** Yes. Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of a "qualified individual with a disability" protected by the ADA when an action is taken on the basis of their drug use.

**Q. Is testing for illegal drugs permissible under the ADA?**

**A.** Yes. A test for illegal drugs is not considered a medical examination under the ADA; therefore, employers may conduct such testing of applicants or employees and make employment decisions based on the results. The ADA does not encourage, prohibit, or authorize drug tests.

**Q. Are people with AIDS covered by the ADA?**

**A.** Yes. The legislative history indicates that Congress intended the ADA to protect persons with AIDS and HIV disease from discrimination.

**Q. How does ADA recognize public health concerns?**

**A.** No provision in the ADA is intended to supplant the role of public health authorities in protecting the community from legitimate health threats. The ADA recognizes the need to strike a balance between the right of a disabled person to be free from discrimination based on unfounded fear and the right of the public to be protected.

**ADA FACT SHEET  
PAGE SIX**

**Q. What is discrimination based on "relationship or association"?**

**A.** The ADA prohibits discrimination based on relationship or association in order to protect individuals from actions based on unfounded assumptions that their relationship to a person with a disability would affect their job performance, and from actions caused by bias or misinformation concerning certain disabilities. For example, this provision would protect a person with a disabled spouse from being denied employment because of an employer's unfounded assumption that the applicant would use excessive leave to care for the spouse. It also would protect an individual who does volunteer work for people with AIDS from a discriminatory employment action motivated by that relationship or association.

**Q. Will the ADA increase litigation burdens on employers?**

**A.** Some litigation is inevitable. However, employers who use the period prior to the effective date of employment coverage to adjust their policies and practices to conform to ADA requirements will be much less likely to have serious litigation concerns. In drafting the ADA, Congress relied heavily on the language of the Rehabilitation Act of 1973 and its implementing regulations. There is already an extensive body of law interpreting the requirements of that Act to which employers can turn for guidance on their ADA obligations. The Equal Employment Opportunity Commission will issue specific regulatory guidance one year before the ADA's employment provisions take effect, publish a technical assistance manual with guidance on how to comply, and provide other assistance to help employers meet ADA requirements. Equal employment opportunity for people with disabilities will be achieved most quickly and effectively through widespread voluntary compliance with the law, rather than through reliance on litigation to enforce compliance.

**Q. How will the employment provisions be enforced?**

**A.** The employment provisions of the ADA will be enforced under the same procedures now applicable to race, sex, national origin, and religious discrimination under Title VII of the Civil Rights Act of 1964. Complaints regarding actions that occur after July 26, 1992, may be filed with the Equal Employment Opportunity Commission or designated state human rights agencies. Available remedies will include hiring, reinstatement, back pay, and court orders to stop discrimination.



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# AMERICANS WITH DISABILITIES ACT OF 1988

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## JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON THE HANDICAPPED

OF THE

COMMITTEE ON

LABOR AND HUMAN RESOURCES

UNITED STATES SENATE

AND THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

**S. 2345**

TO ESTABLISH A CLEAR AND COMPREHENSIVE PROHIBITION OF  
DISCRIMINATION ON THE BASIS OF HANDICAP

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SEPTEMBER 27, 1988

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**Serial No. 104**

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Printed for the use of the Committee on Labor and Human Resources and the  
House Committee on Education and Labor

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1989

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(II)

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(III)



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AMERICANS WITH DISABILITIES ACT OF 1988

TUESDAY, SEPTEMBER 27, 1988

U.S. SENATE, SUBCOMMITTEE ON THE HANDICAPPED, OF  
THE COMMITTEE ON LABOR AND HUMAN RESOURCES,  
U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON  
SELECT EDUCATION, OF THE COMMITTEE ON EDUCATION  
AND LABOR,

Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room SH-216, Hart Senate Office Building, Senator Tom Harkin (chairman of the subcommittee) presiding.

Present: Senators Harkin, Kennedy, and Weicker, Representatives Owens, Coelho, Martinez, and Jeffords.

OPENING STATEMENT OF SENATOR WEICKER

Senator WEICKER [presiding]. The joint committee hearing of the U.S. Senate and the U.S. House of Representatives on the Americans With Disabilities Act will come to order.

It is a great pleasure to welcome my colleagues from the House, to welcome all those in attendance, whether as observers or as witnesses. This is a historic occasion.

I have a prepared statement, which will be submitted in its entirety for the record. I would just like to make the following comments.

I, like you, have lived through weeks, indeed months, of those earth shattering, heartstopping issues such as patriotism and Pledges of Allegiance and all those things which are of deep concern to America. Somehow, I have heard absolutely nothing about 36 million Americans with disabilities.

I think it is to the credit of both candidates, both the Governor and the Vice President, that they support the legislation that is the subject matter of this hearing. Yet, I think the time has come for the Nation, never mind the candidates, to insist that we start to discuss the realities of the world around us. Those realities include 36 million of our neighbors who have particular problems with discrimination.

As is well known I have spoken in the past, not only as a U.S. Senator, but as the father of a disabled child. Within the last several weeks, I find I have another disabled child, this time a learning disabled child. As we grow older, the discrimination that takes place against the ailments of infirmity become more obvious and more frequent.

As new situations confront us, such as AIDS, discrimination once again raises its head, a discrimination which so many of you in this



room know all too well, insofar as your particular disabilities are concerned.

Now, the agenda of the Nation is going to be set in the next several weeks, not after the election is over. If both parties and their candidates can tiptoe off the stage without mentioning the Americans With Disabilities Act and its passage immediately, in the next Congress, if they can do that then there will be no Americans with Disabilities Act enacted by the next Congress. If there is silence now, there will be silence later. If there is indifference to discrimination now, there will be indifference later.

This is the moment in the time of all Americans when they set the priorities and the goals of this Nation. Foremost among them should be the fact that for 36 million, and growing in number, Americans, the time has come to end all discrimination, in whatever form. If we do that, that is a patriotism of which we can all be proud.

[The prepared statement of Senator Weicker follows:]

Opening Statement  
Senator Lowell Weicker, Jr.  
September 27, 1988

I am very pleased to join my colleagues this morning in convening a joint hearing on a subject of deep concern to me: discrimination on the basis of disability.

In its 1986 report, *Toward Independence*, the National Council on the Handicapped noted: "People with disabilities have been saying for years that their major obstacles are not inherent in their disabilities, but arise from barriers that have been imposed externally and unnecessarily." That report went on to recommend that "Congress... enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."

Earlier this year, in direct response to the Council's recommendation, Senator Harkin and I introduced S.2345, the Americans with Disabilities Act. Drafted principally by the Council, this legislation would prohibit discrimination against people with disabilities in employment, public accommodations, transportation, communication and public services. And it goes a step further in describing specific methods by which such discrimination is to be eliminated.

The bill has strong, bipartisan backing in both houses of Congress, including 25 cosponsors in the Senate and 114 in the House. It has been endorsed by more than 50 national organizations representing people with a wide variety of disabilities. It is also supported by the Leadership Conference on Civil Rights, an umbrella group of 185 organizations active in the area of civil rights.

As a prelude to further Congressional action on S.2345, we look forward this morning to hearing expert testimony on the types of discrimination experienced by people with disabilities. Most of our witnesses came by their expertise the hard way. They know first-hand what it is like to be shunned in the mainstream and shunted off into the margins of American life. They know first-hand that a disease like AIDS or a condition such as cerebral palsy can not only rob individuals of their health but also be used to deny them a table in a restaurant, a job, a home, and -- finally -- any shred of human dignity.

This hearing is also about fighting back and the rewards reaped as a consequence. We will learn of the difference early intervention has made in the life of a mentally retarded youth. We will revisit the triumph experienced by the students at Gallaudet when they succeeded in their battle for a deaf university president.

Their stories offer us a glimpse of a nation changing for the better. But the transformation has been much too long in coming and is proceeding at too slow a pace. It took the Civil Rights Act of 1964 and subsequent statutes to make plain this nation's opposition to racism, sexism and discrimination based on a person's age. It will take the Americans with Disabilities Act to set the record straight as to where we stand on discrimination based on disability.



Senator WEICKER. I understand that Senator Harkin, who is the chairman of the subcommittee and cosponsor of the legislation, is here.

But first, however, we will let Congressman Owens proceed, and then we will get to Senator Harkin.

**STATEMENT OF HON. MAJOR R. OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. OWENS. Thank you, Senator.

On behalf of the Subcommittee on Select Education of the Education and Labor Committee, I want to thank Senator Harkin and his colleagues for hosting this very important hearing. I have a brief opening statement.

For some of us, the Americans With Disabilities Act of 1988 represents the next giant step in the American civil rights movement. This legislation grants full rights to Americans with disabilities and moves our great Nation from a respectable position of official compassion for those with impairments to a more laudable position of empowering disabled Americans.

This legislation grows out of a vast movement for disability rights and empowerment, a movement made highly visible this spring when the students and faculty of Gallaudet University successfully campaigned for the installation of the first ever deaf president, and more deaf board of directors members of the university. One of the campaign student leaders is a witness in this morning's hearing, and he will testify as a participant on the third panel.

During the Gallaudet campaign, a faculty member characterized that historic effort as "our Selma." As of 1965 the Voting Rights Act was the legislative outgrowth of the 1965 civil rights march from Selma to Montgomery, AL, the Americans with Disabilities Act is part of a journey toward full empowerment for Americans with disabilities.

The measure prohibits discrimination on the basis of disability in such areas as employment, housing, public accommodations, travel, communications, and activities of state and local governments. To guide the journey toward full empowerment of disabled Americans, I have, in my capacity as chairman of the House Subcommittee on Select Education, created a task force on the rights and empowerment of Americans with disabilities.

I have appointed Justin Dart, a former Rehabilitation Services Administration Commissioner, to chair the task force. Mr. Dart is one of the most committed advocates for disabled Americans in this country, and he has made several unique contributions to the field of disability rights.

The task force and the selection of its membership was designed to be broadly representative of people with various disabilities. It has convened forums of public meetings of disabled consumers, rehabilitation professionals, parents, advocates, and Government officials in 44 States. Since May 23 of this year, over 500 people have been present at the forums and 10,000 people have attended the public meetings. Many of them have presented publicly aspects of the discrimination that they have faced on the basis of disability.

The task force is preparing an interim report documenting evidence of discrimination on the basis of disability in America, which will be ready by late October. An executive summary of the interim report is currently available for distribution. The final report of the task force is scheduled for release next year.

The task force is also recommending options for short and long term actions related to Congress, the executive branch, and the public. The information collected by the task force will be invaluable to my subcommittee and to Congress as a whole, as we consider the Americans with Disabilities Act and subsequent legislation to implement the integration of disabled Americans into the production mainstream of our society.

In the America of 1988, people with disabilities understand that democracy and self-help are synonymous. Americans with disabilities are mobilizing to help themselves. Power is their greatest need. With empowerment, all problems can be resolved, all public officials and programs can be held accountable.

Passage of the Americans with Disabilities Act of 1988 will greatly help in the empowerment of disabled Americans. With the power and authority of their Government fully behind them, combined with their own energies, Americans of disabilities can become the masters of their own fates.

[The prepared statement of Congressman Owens follows:]



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**Congressman  
MAJOR OWENS  
NEWS RELEASE**

FOR IMMEDIATE RELEASE

Contact: Margaret Summers  
(202) 225-6231

OWENS SAYS DISABILITY RIGHTS ACT WILL HELP "EMPOWER" DISABLED AMERICANS

"The Americans with Disabilities Act of 1988 represents the next giant step in the American civil rights movement," says Congressman Major Owens (D-NY), Chairman of the House Subcommittee on Select Education. The Subcommittee, along with the Senate Subcommittee on the Handicapped, will hold a hearing on the legislation Tuesday, September 27, 10 a.m., Room 216 in the Hart Senate Office Building. Among the scheduled witnesses are Gregory Hlibok, a student leader of Gallaudet University demonstrations for a deaf president and deaf board members earlier this year, and Jade Calgory, a star of the film "Mac and Me" and the first disabled child to be featured in a commercial movie.

The disability rights measure prohibits discrimination on the basis of disability in such areas as employment, housing, public accommodations, travel, communications, and activities of state and local governments. It covers employers engaged in commerce who have 15 or more employees; housing providers covered by federal fair housing laws; transportation companies; those engaged in broadcasting or communications; and state and local governments. Congressman Owens notes that the Act will not repeal Sections 503 and 504 of the Rehabilitation Act of 1973 and all regulations issued under those sections will remain in full force and affect. Enforcement procedure for the Act includes administrative remedies, a private right of action in federal court, monetary damages, injunctive relief, attorney's fees, and cutoffs of federal funds.

The measure is being sponsored in the House by Congressmembers Owens, Tony Coelho (D-Calif.), and Silvio Conte (R-Mass.). Its Senate sponsors are Tom Harkin (D-Iowa) and Lowell Weicker (R-Conn.).

(MORE)

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In addition to the measure, Congressman Owens, in his capacity as the House Select Education Subcommittee Chairman, has created a Task Force on the Rights and Empowerment of Americans with Disabilities "to guide the journey toward full empowerment of disabled Americans." He appointed Justin Dart, a former Rehabilitation Services Administration Commissioner, to chair the Task Force. "Mr. Dart is one of the most committed advocates for disabled Americans in this country," says Congressman Owens, "and he has made several unique contributions to the field of disability rights."

The Task Force is gathering evidence of discrimination against disabled Americans, and is seeking examples of successful local, state, national and international efforts to overcome barriers to self-realization of disabled people. It is also recommending options for short and long-term actions relating to Congress, the Executive Branch, and the public. "The information collected by the Task Force will be invaluable to my Subcommittee and to Congress as a whole, as we consider this and subsequent legislation to implement the integration of disabled Americans into the productive mainstream of society," says Congressman Owens.

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### OPENING STATEMENT OF SENATOR HARKIN

Senator HARKIN [presiding]. Thank you very much, Congressman Owens.

Again, I want to welcome all of you here. I want to also welcome my colleagues here. I would say without hesitation that you see in front of you really the vanguard in the Congress of those who care about and fight for Americans with disabilities. Senator Kennedy, Congressman Coelho, Congressman Owens, Senator Weicker, and Congressman Jeffords. I am really proud that you are all here.

We are holding this joint hearing on the pervasive problem of discrimination in our Nation against Americans with disabilities. This hearing will go down, I believe, in history as another significant step in Congress' effort to ensure equal opportunity for our 42 million Americans with disabilities.

People with disabilities, like racial and ethnic minorities and women, are entitled to obtain a job, enter a restaurant or hotel, ride a bus, listen to and watch the TV, use the telephone, and use public services free from invidious discrimination and free from policies that exclude them solely on the basis of their disability. Every American must be guaranteed genuine opportunities to live their lives to the maximum of their potential.

Almost a quarter of a century ago, Congress took the historic step of passing the Civil Rights Act of 1964 which, among other things, bars discrimination against persons on the basis of race, color, and national origin by recipients of Federal aid, and in such areas as employment and public accommodations. Americans with disabilities were not protected by this landmark legislation.

In 1968, the Congress and the President took another historic step when it passed the fair housing legislation barring discrimination in housing. Once again, people with disabilities were not extended protections by this legislation.

In 1973, some 15 years ago, the Congress finally adopted section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicaps. However, this legislation only prohibits discrimination by recipients of Federal aid. It does not cover discrimination by private employers; nor does it prohibit discrimination in public accommodations.

Thus, today under our Nation's civil rights laws, an employer can no longer say to a prospective employee, "I will not hire you because of the color of your skin, or because you are a woman, or because you are Jewish." If they did, a person could march over to the courthouse, file a law suit, win, and collect damages and attorney's fees.

Yet, to this day, nothing prevents an employer or an owner of a hotel or restaurant from excluding Americans with disabilities. The courthouse door is still closed to Americans with disabilities.

On April 28 of this year, several Senators and Representatives introduced the Americans With Disabilities Act of 1988 and took the first step in opening up the courthouse door to Americans with disabilities. The Americans With Disabilities Act prohibits discrimination against persons with disabilities in areas of employment, public accommodations, transportation, communications, and public services.

It is my expectation that this legislation will become the law of the land during the 101st Congress. However, the road to enactment will be filled with potholes and roadblocks. But if we stick together as a community, and we work with the groups representing employers and the hotel, restaurant, communications, and transportation industries, I believe we can succeed.

We have momentum on our side. When this Administration vetoes the Civil Rights Restoration Act, this Congress overrode it overwhelmingly. When the Fair Housing Act Amendments came before the Congress, we worked closely with the realtors and the homebuilders. We put together a broadbased coalition to get this passed. Again, overwhelmingly, we did it.

We can do the same with the Americans With Disabilities Act. It is good legislation, important legislation, needed legislation, and it is the right thing to do. Almost a quarter century after the passage of the Civil Rights Act of 1964, it is long overdue.

[The prepared statement of Senator Harkin follows:]



OPENING STATEMENT OF TOM HARKIN (D. Iowa), CO-CHAIRMAN  
JOINT HEARING ON DISCRIMINATION ON THE BASIS OF HANDICAP  
SENATE SUBCOMMITTEE ON THE HANDICAPPED  
HOUSE SUBCOMMITTEE ON SELECT EDUCATION  
SEPTEMBER 27, 1988

The Senate Subcommittee on the Handicapped and the House Subcommittee on Select Education are proud to hold this joint hearing on the pervasive problem of discrimination in our Nation against Americans with disabilities. I would like to extend a warm welcome to the witnesses and to the hundreds of persons in the audience. This hearing will go down in history as another significant step in Congress' effort to ensure equal opportunity for our 42 million Americans with disabilities.

People with disabilities, like racial and ethnic minorities and women, are entitled to obtain a job, enter a restaurant or hotel, ride a bus, listen to and watch the TV, use the telephone, and use public services free from invidious discrimination and policies that exclude them solely on the basis of their disability. Every American must be guaranteed genuine opportunities to live their lives to the maximum of their potential.

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We have momentum on our side. When the Administration vetoed the Civil Rights Restoration Act, this Congress overrode that veto overwhelmingly. And, when the Fair Housing Act Amendments came before this Congress, we worked closely with the realtors and the homebuilders and we put together a broad-based coalition to get this landmark legislation passed, again overwhelmingly.

We can do the same with the Americans With Disabilities Act. It's good legislation, important, needed, it's the right thing to do—and almost a quarter-century after the passage of the Civil Rights Act of 1964, it is long overdue.

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For further information, contact Pam McKinney at 202-224-3254, or Bobby Silverstein at 202-224-6265.

Senator HARKIN. I would like to recognize Congressman Coelho now and welcome him to this hearing.

STATEMENT OF HON. TONY COELHO, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COELHO. Thank you, Mr. Chairman.

First off, Mr. Chairman, I would like to thank you and Chairman Owens for holding this hearing. As you and the chairman have both indicated, this is a historic hearing. I think it starts us down a path that has been needed for years.

As you have all indicated, there are approximately 36 million, some people say 43 million, Americans with disabilities that basically do not have their basic civil rights.

As one with a hidden disability, as one who openly discusses my epilepsy, I know what discrimination is. I am not going to go into detail of what is in this bill, because that has already been discussed and will be discussed more. I am only going to discuss briefly with my colleagues, and with those of you in this room, as to why I feel so strongly that this legislation is needed.

I have said repeatedly over the years, please do not dwell on the things that I cannot do, help me do the things that I can do. I can be a wonderfully productive American citizen if you will help me do that. Every American citizen, regardless of their ability or disability cannot do certain things. Just because those of us who are disabled are limited in our ability of doing certain things, does not mean that we are unable of being productive citizens.

It is time that our Government recognizes our abilities and gives us the dignity to do what we can do.

As a young man, I developed seizures, later diagnosed as epilepsy. For many years, for 5 years, as I had my seizures on a regular basis, I did not know what they were. I went to every doctor that you could think of. I also went to three witch doctors because I was supposedly possessed by the devil. My Republican colleagues think I am, but others believed I was. [Laughter.]

As I went to college, I was an achiever. I got outstanding grades in high school and outstanding grades in college. I was student body president in high school and student body president in college. I was outstanding senior in college. I was sought after by different businesses and groups, to be involved in their activities and be employed by them. I had decided that I wanted to be an attorney.

In my senior year, I changed my mind. I decided I wanted to become a Catholic priest. As I graduated with honors, I then had a physical exam in order to enter the seminary. The physical exam pointed out that these seizures that I had been having for 5 years meant that I had epilepsy.

I always remember very well what happened, in that I walked to the doctor's office from my car, sat in the doctor's office, was told about my epilepsy, walked back to my car, got back in my car and drove back to my fraternity house and I was the same exact person. But only in my own mind because the world around me changed.



My doctor had to notify the legal authorities of my epilepsy. My church was notified and immediately I was not able to become a Catholic priest, because my church did not, at the time, permit epileptics to be priests. My driver's license was taken away, my insurance was taken away. Every job application has the word epilepsy on it and I marked it, because I was not going to lie. I could not get a job.

My parents refused to accept my epilepsy. I became suicidal and drunk by noon. The only reason is because I had not changed as a person. The only reason is that world around me had changed. The light had been turned off, the light of opportunity, the light of hope. Not until a priest friend of mine turned me over to a man of hope by the name of Bob Hope did the light get lit again.

I am here today, serving in the capacity that I serve, because some people believe not because my Government protected me, not because my Government protected my basic civil rights.

I am a major advocate of this bill because I want to make sure that other young people, as their looking for hope, as they believe that the system should work for them, have that hope, have that opportunity.

What happened at Gallaudet University was not only an inspiration, I am sure, to the hearing impaired. What happened at Gallaudet University was an inspiration to all of us with disabilities, in that if we ourselves believe in ourselves and are willing to stand up we can make a difference.

That is what this bill is all about; 36 million Americans deciding it is time for us to stand up for ourselves, to make a difference, to say that we want our basic civil rights also. We deserve it.

Give us an opportunity to do what we can do, do not keep telling us what we cannot do.

I thank my colleagues.

[The prepared statement of Congressman Coelho follows:]

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Congress of the United States  
House of Representatives  
Office of the Majority Whip

THE AMERICANS WITH DISABILITIES ACT OF 1988  
Statement by Rep. Tony Coelho  
September 27, 1988

The joint hearing we are participating in today represents another important step in the struggle to secure civil rights protections for Americans with disabilities, our nation's largest minority. The time has come to send a message across America that people with disabilities can no longer be locked out, stigmatized or ignored. The time has finally come to end the discrimination 43 million Americans with disabilities face as they strive to take their rightful place in every aspect of our society.

I am honored to co-chair today's hearing because I belong to this minority. We are a diverse group -- we use wheelchairs, we are blind, we are deaf, many of us have hidden disabilities - epilepsy, cancer, HIV infection, diabetes, mental illness. We have lived in the White House. We live in institutions and nursing homes. We live in large cities and in rural communities. We work in Congress and we work at McDonald's. Many of us aren't permitted to work at all.

No matter our what our disability is, where we live, or what we do, we all share the common experience of discrimination. And we all share a common dream: to live wherever we choose, to work and achieve whatever career goals we strive toward, to communicate with our neighbors, to travel where we choose, and, like all other Americans, to freely use and enjoy public accommodations in our communities.

The Americans with Disabilities Act is a major step towards achieving our dream of equality. This act was developed by the National Council on the Handicapped, an independent federal agency appointed by President Reagan to investigate the status of disabled Americans. Over the past five years, the Council conducted innumerable hearings and forums across this country and reached the same inescapable conclusions again and again: barriers and discrimination, rather than the inherent physical or mental characteristics of persons with disabilities themselves, are to blame for the staggering unemployment and isolation of these citizens, our nation's largest minority.

The Americans with Disabilities Act proposes a series of protections against discrimination which parallel existing civil rights statutes. In drafting this bill, the Council has drawn also on the successful model used by the federal government in eliminating discrimination on the basis of handicap in federally-funded activities. This vision of the National Council on the Handicapped, that existing civil rights could and should be extended to protect the disabled, has been shaped by the input of hundreds of disabled Americans and parents of disabled children.

As the Council found, unfair discrimination is the daily experience of many of the 43 million Americans with disabilities. Every sphere of life is affected: housing, employment, recreation, transportation; even the ability to operate independently in the commercial sphere, or to vote, or to raise children. Our entire society has been inadvertently structured in a way that unnecessarily denies innumerable opportunities, great and small, to people with disabilities, in ways that are never even noticed by most Americans.



Simple daily tasks, like visiting the grocery store or the bank, going to a restaurant or a movie, using the telephone to report an emergency, taking the bus to the doctor, or even getting in and out of one's own home, can become monumental tasks or impossible barriers to overcome -- not due to the actual physical and mental conditions of disabled Americans, but due to prejudice, fears, and unnecessary obstacles which have been placed in their path.

Countless numbers of our fellow citizens who are veterans of foreign conflicts, have acquired a disability while defending their country, only to come home to a society that subjects them to discrimination and injustice, a society that shuns them merely because they are disabled. The architectural, communication and transportation barriers they face do not affect them and their families alone. Our entire society bears the economic burdens of this prejudice: dependency is expensive. It increases benefit entitlements and decreases productive capacity sorely needed by the American economy.

As I can tell you from my own experience with epilepsy, employment discrimination is one of the most pervasive problems affecting Americans with disabilities. Jobs are unfairly denied every day to thousands of capable people with epilepsy and other disabilities due to prejudice, stereotypes and groundless myths about our lack of abilities or because we are erroneously perceived to pose dangers to ourselves and others.

For example, I know one woman with epilepsy who was employed for nearly eight years as a secretary for a company. One day she had a seizure at work and was fired, simply because her employer felt that her co-workers should not have to work with someone like her.

Similarly, a young man with multiple sclerosis was fired from his job because he was unable to handwrite his reports even though he was perfectly capable of dictating them. Or, what of the veteran who lost a leg in Vietnam and was denied a job in a factory line even though he was totally able to perform the job?

These stories, sadly, are all true. Yet these individuals, like many other American citizens, have no remedy to challenge the denial of employment. They want to be productive, self-supporting and tax-paying participants in society, but they have been told that they cannot do so, for reasons that are irrational, illogical, and unjust. This bill gives these persons a remedy.

People with disabilities want to work. This has been confirmed by numerous studies, including the 1986 Lou Harris survey which found that two-thirds of the disabled people polled who are not employed said that they wanted to work. One-quarter of these Americans attributed their unemployment to employer discrimination and an additional 28 percent attributed it to transportation barriers.

The full and dramatic reality of this problem has been largely hidden, denied, and explained away. When a program, or a job, or a school, has excluded disabled people, or segregated them in a separate facility, this has been justified through the unchallenged myth of equating disability with inability. When taking stock of the status of unemployment in our society, the staggering level of disabled employment - 66 percent - is not viewed as a solvable problem, it's viewed as an inevitability. You hear things like, "Of course they can't work. They're disabled." This alleged self-truth has gone substantially unchallenged and is one of the most fundamental errors our society has ever made.

Equating disability with inability is false. In employment, for example, numerous studies have shown that employment for the disabled is restricted more by misconceptions, stereotypes, and generalizations about handicaps, unfounded fears about increased costs and decreased productivity, and outright prejudice, than by people's disabilities themselves. Overwhelmingly, the documentation shows that disabled workers equal or outperform non-disabled workers, without increasing insurance benefits or worker's compensation costs. We have allowed our discomfort with the handicapped, and our feelings of hostility toward them to create this gigantic and wasteful injustice.

Society has neglected to challenge itself and its misconceptions about people with disabilities. When people don't see the disabled among our co-workers, or on the bus, or at the sports field, or in a movie theater, most Americans think it's because they can't. It's time to break this myth. The real reason people don't see the disabled among their co-workers, or on the bus, or at the sports field, or in a movie theater is because of barriers and discrimination. Nothing more.

It is barriers and discrimination that have caused an "out of sight, out of mind" situation with disabled people. When housing is inaccessible and unavailable, the disabled have to stay at home, under the care of their families, or live in nursing homes and other institutions, rather than establishing and controlling their own households next door to you and me. When regular transportation is inaccessible, and transit services for the disabled are segregated, you won't see them on your bus or commuter train. When prejudice dictates that the handicapped can be productively employed only in separate sheltered workshops, you won't see too many in your workplace.

The exclusion and segregation of people with disabilities has had an insidious partner: the gloss of good intentions. An atmosphere of charity and concern has cloaked our ill-treatment of disabled people and permeated our excuses for denying them access to the full benefits of the complex fabric of modern American society. The institutions and the token van rides and the overprotective denials of employment have all been provided with the noblest intent.

While the charity model once represented a step forward in the treatment of persons with handicaps, in today's society it is irrelevant, inappropriate and a great disservice. Our model must change. Disabled people are sometimes impatient, and sometimes angry, but for good reason: they are fed up with discrimination and exclusion, tired of denial, and are eager to seize the challenges and opportunities as quickly as the rest of us.

It is time to stop the excuses and the veneer of good intentions. We must stop the cycle of separateness which hides the people with disabilities, and creates prejudice, which creates more separateness.

In the past, concerns about cost have been raised as an obstacle to our addressing this problem. Estimates of these costs are inflated. For example, when the implications of Section 504 of the Rehabilitation Act of 1973 were debated, universities and hospitals claimed that non-discrimination was absolutely beyond their financial means. We have now had regulations implementing Section 504 over 10 years. During that time, these institutions have not complained of financial difficulties due to accommodating the disabled.

I believe we will find that in the long run, ending discrimination will actually lower costs to our society as a whole. Maintaining discrimination is



expensive because discriminatory barriers keep people out of work, lowers our gross national product and our tax revenue and, what's more, swell benefits payments. Government studies have estimated that eliminating employment discrimination in even a narrow spectrum of jobs would add \$58 million to annual government revenues. A Department of Transportation study indicated that, with accessible transportation, SSI benefit savings due to increased employment would account for \$276 million a year. Statistics indicated that funds generated by eliminating handicap discrimination would return more than three dollars for every dollar spent. We as a nation stand to cash in quite a bit on the integration, and subsequent enhanced productivity, of people with disabilities.

The Americans with Disabilities Act addresses these basic areas: employment, transportation, public accommodations, public services and communication barriers.

In employment, this Act will make it illegal to deny job opportunities to qualified applicants on the basis of handicap. The Act will cover the same range of employment activities as those covered by Title VII of the Civil Rights Act of 1964.

In transportation, the Act will eliminate barriers by requiring new transportation equipment to be accessible to the disabled. This follows a national trend, in which the current federal mandate to provide useable public transportation for the disabled is being done through lift-fitted and otherwise-accessible equipment. The next step, barriers in existing equipment, will be dealt with by allowing phase-in periods. This way, transit systems will slowly become more and more accessible to the disabled without creating a burdensome cost to the transit districts. The bill provides that para-transit (separate, subsidized door-to-door van systems) can and should still be used, but not as a substitute for regular fixed-route service.

In mandating this particular configuration of transportation services, Congress will be affirming the consensus which is being reached in both the disability community and the transit community after a decade of much experimentation in how best to eliminate transportation barriers. An increasing number of cities large and small, including New York, Denver, Seattle, San Francisco, Tacoma, Johnstown, and Champagne-Urbana, have successfully integrated large numbers of disabled people into their entire transit systems. These cities serve as models to the rest of the country, illustrating how to maximize disabled ridership, minimize costs, and work harmoniously with the disability community.

The Act will prohibit discrimination in public accommodations covered by Title II of the 1964 Civil Rights Act. Also, it will prohibit discriminatory activities of state and local governments resulting from ordinances, laws, regulations, or rules. It includes the continued phase-in of closed captioning in television broadcasts, viewable by deaf and hearing-impaired watchers upon purchase of decoder. Such measures will begin to bring down the many barriers that are so debilitating to the disabled on a day-to-day basis.

The Americans with Disabilities Act of 1988 provides the vehicle through which we can address the critical problem of discrimination on the basis of handicap in our country. We must provide disabled citizens the same equality of opportunity which our nation values so highly. We must all work together toward the day when disabled people face no discrimination. I urge all my colleagues to join us in this fight.

Senator HARKIN. Congressman Coelho just again showed what we know around here to be true, that that testimony that comes from the heart is always the best testimony.

I would like to recognize our distinguished chairman of the Labor and Human Resources Committee, the Senator from Massachusetts, Senator Kennedy.

#### OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. Mr. Chairman, just for a moment, because we all want to hear the witnesses, I too want to commend you, Senator Weicker, Major Owens, Congressman Coelho, Congressman Jeffords, for holding these hearings.

I think, as you listen to those who have spoken today, you realize that there probably has not been a family in the country that has not been touched by some form of physical or mental challenge. You have heard some statements today, very moving statements of members of the family. That has been true in the Kennedy family, as well, a sister who is retarded, my own son who has lost a limb to cancer. I bet if you go across this country, there really is not a member of a family or an extended family that has not been touched.

This legislation will become law. I think those that have physical or mental challenge has to take heart by the actions that have been taken very recently in the Congress, with the Fair Housing Act and the Civil Rights Restoration Act. There is a movement and it is alive and it is growing. And it should grow.

This legislation will become law. It will become law not because of the people up here, although all of us want it to become law, but because of you all across this Nation, in the small towns and communities, in the plants and factories all across this Nation, that are really challenging our country to ensure that we are basically going to have an even playing field and we are going to eliminate the barriers that keep people out, so that people can become a real part of the American dream.

I just want to give the assurance to both Senator Harkin, who is the chairman of the Subcommittee on the Handicapped, and Senator Weicker, who has done such a great job in this area as well, that this will be the first order of business when the next Congress meets, assuming that we are all here.

Senator HARKIN. That is great news, the first order of business next year.

[The prepared statement of Senator Kennedy follows:]



STATEMENT OF SENATOR EDWARD M. KENNEDY  
ON S. 2345, THE AMERICANS WITH DISABILITIES ACT

For Immediate Release:  
September 27, 1988  
CONTACT: Paul Donovan  
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Today marks the first day of hearings by the Senate Subcommittee on the Handicapped on the Americans with Disabilities Act. At the outset, I want to commend Senator Harkin and Senator Weicker for their leadership on this issue, and for their tireless support in working toward a more just society for the disabled and for all Americans.

The 100th Congress has already adopted two landmark bills to protect the rights of the disabled. The Civil Rights Restoration Act, enacted over the veto of the President, provides substantial protections for the handicapped against discrimination. And the Fair Housing Act of 1988 includes for the first time a series of provisions to bring the disabled within its far-reaching protections.

The Americans with Disabilities Act is the essential next step in our ongoing effort to guarantee that the 36 million physically and mentally challenged citizens of our nation enjoy the same fundamental rights as all other Americans. We recognize that enactment of a law does not necessarily end discrimination or prejudice in our society, but it is often the indispensable means of advancing toward that goal.

With the help of medical science and the commitment of growing numbers of concerned citizens in public and private life throughout the country, we are poised on the threshold of a new era of opportunity in our society for millions of fellow citizens who have been unfairly left out. We are beginning to learn that disabled people are not unable. The old barriers of fear and prejudice and ignorance are crumbling, and the Americans with Disabilities Act will speed the day when those ancient attitudes are finally and fully overcome, and disabled Americans enjoy the right to realize their full potential.

In 1973, Congress took the first step in ensuring that the civil rights of millions of Americans with disabilities are protected. Section 504 of the Rehabilitation Act has served as a symbol of equal citizenship for disabled Americans, an incentive for self-advocacy and community education -- and when necessary, a basis for court action. The legislation we are discussing today builds on what we started in 1973 -- it will provide disabled Americans with the same rights already accorded to women and minorities -- the right to be free from discrimination in all its insidious forms.

Finally, the Americans with Disabilities Act will also halt discrimination against individuals suffering from AIDS or who are infected with the AIDS virus. I am delighted that Admiral Watkins is with us today. The report of his Presidential Commission makes clear that discrimination against victims of AIDS is seriously impairing our ability to halt the spread of the AIDS epidemic, and action by Congress is overdue.

I look forward to this hearing, and I commend all those who have worked so hard to develop this legislation. The Americans with Disabilities Act deserves our high priority in Congress, and I intend to do all I can as chairman of the Labor and Human Resources Committee to expedite its enactment.



Senator HARKIN. I want to recognize my former colleague from the House, an individual I worked very closely with for many years during the House, again an eloquent spokesman for the right of Americans with disabilities, Congressman Jeffords from Vermont.

**STATEMENT OF HON. JAMES M. JEFFORDS, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF VERMONT**

Mr. JEFFORDS. Thank you very much, Mr. Chairman.

As has been pointed out, individuals with disabilities have been denied for so long, services, jobs, housing, transportation, hotel rooms, a means to communicate, access to Government officials, voting polls, and yes, even restrooms. Such denials have been sustained, systematic and yes, tolerated. No more.

With the introduction of the Americans With Disabilities Act of 1988 and this hearing, we begin in earnest to undo the remaining forms of discrimination against individuals with disabilities.

I wish to commend the National Council on the Handicapped, my esteemed colleagues especially those here today, Mr. Justin Dart, and others for their untiring efforts to document the full range of discrimination experienced by persons with disabilities, thus creating a moral and practical foundation for the expectations reflected in the ADA.

I am looking forward to the testimony of the witnesses here today. They represent a source of guidance and energy, a reflection of potential and determination, and the spirit of cooperation and partnership. They know what discrimination is and how to overcome it. They know what patience is and how to show it. They know what credibility is and how to judge it.

Our family members, our friends and our neighbors with disabilities ask for one simple right, the right to control their own lives, to make choices and to choose. This will not happen until we eliminate all forms of discrimination.

We continue the process of transforming the ADA into law. Its effects should not be judged in terms of cost, but rather realized potential; not be measured in terms of effort, but in increased productivity; and not be characterized as preferential treatment, but as reaffirmed human dignity. Starting today, we must work together to make the ADA a fact, not a gesture; reflected in practice, not promises; and grounded in commitment, not hope.

I was elected in Congress in 1974 and I worked with my colleagues on many acts along these lines, the Education of all Handicapped Children Act, the Rehabilitation Act, especially to extend the protections under section 504 to people seeking services and jobs directly with the Federal Government, the Civil Rights Restoration Act, the Technology Related Assistance Act or Individuals with Disability Act of 1988, and now the ADA.

Although our efforts reflect progress, we know from experience that comprehensive legislation takes great effort. As two of my distinguished figures have recently said, read my lips, the ADA will be enacted.

Thank you. [Applause.]

Senator HARKIN. I recognize our colleague from California, Congressman Martinez.

**STATEMENT OF HON. MATTHEW G. MARTINEZ, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. MARTINEZ. Senator Harkin, thank you very much.

Let me start off by commending you and Congressman Owens for holding this hearing today on discrimination against disabled Americans.

For too long, these 32 million Americans have been ignored and their civil rights have been denied. They represent the largest minority group in this Nation and it is time that the Congress listened and acted on their concerns.

As chairman of the House Subcommittee on Employment Opportunities, I am proud of the great strides that the Rehabilitation Act has made in fighting employment discrimination, but it is not enough. While the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin by most employers, no similar protection is provided for disabled workers in the private sector.

I believe the Americans With Disabilities Act would be a giant step in providing that protection. Each and every qualified American should have the right to work to the best of his or her ability and this legislation will ensure that right. Americans willing and capable of work should no longer be judged on their disability but rather on their abilities.

Society and our Nation could benefit greatly from the integration of these individuals, not only into the work force but society as a whole. The ADA will give disabled Americans the right to have a full and productive life, a right which, in today's society, is often denied them.

During the past two Congresses, the Subcommittee on Employment Opportunities has also held hearings on discrimination against disabled Americans. In fact, we had a very eloquent testimony given by the son of Senator Kennedy.

It became evident during those hearings, and I am sure it will become evident today that society and Congress have begun a process of integration, but more needs to be done. I look forward to the testimony of the witnesses today. Senator Harkin, these are the individuals that know firsthand what it is like not to be given a fair and equal chance in the world based not on their ability, but on their disability.

Thank you.

[The prepared statement of Congressman Martinez follows:]



OPENING STATEMENT OF CONGRESSMAN MATTHEW G. MARTINEZ  
BEFORE THE SENATE SUBCOMMITTEE ON THE HANDICAPPED  
AND THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION

HEARING ON DISCRIMINATION ON THE BASIS OF DISABILITY  
SEPTEMBER 27, 1988  
216 HART, 10:00 A.M.

SENATOR HARKIN AND CONGRESSMAN OWENS, I WANT TO COMMEND YOU FOR HOLDING THIS HEARING TODAY ON DISCRIMINATION AGAINST DISABLED AMERICANS. FOR TOO LONG, THESE 32 MILLION AMERICANS HAVE BEEN IGNORED AND THEIR CIVIL RIGHTS DENIED. THEY REPRESENT THE LARGEST MINORITY GROUP IN THIS NATION AND IT IS TIME THAT CONGRESS LISTENED AND ACTED ON THEIR CONCERNS.

AS CHAIRMAN OF THE HOUSE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES, I AM PROUD OF THE GREAT STRIDES THE REHABILITATION ACT HAS MADE IN FIGHTING EMPLOYMENT DISCRIMINATION AGAINST THE DISABLED AMONGST FEDERAL AGENCIES AND CONTRACTORS. HOWEVER, IT HAS NOT BEEN ENOUGH. WHILE THE CIVIL RIGHTS ACT OF 1964 PROHIBITS EMPLOYMENT DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN BY MOST EMPLOYERS, NO SIMILAR PROTECTION IS PROVIDED FOR DISABLED WORKERS IN THE PRIVATE SECTOR. I BELIEVE THE "AMERICANS WITH DISABILITIES ACT" WOULD BE A GIANT STEP IN PROVIDING THAT PROTECTION.

Although our efforts reflect progress, we have first-hand experience that comprehensive legislation takes great effort. As two of my distinguished colleagues have recently said, just as the ADA will eventually...

Thank you (Applause)

Senator Harkin I recognize my colleague from California, Congressman Martinez.

EACH AND EVERY QUALIFIED AMERICAN SHOULD HAVE THE RIGHT TO WORK TO THE BEST OF HIS OR HER ABILITY AND THIS LEGISLATION WILL ENSURE THAT RIGHT. AMERICANS WILLING AND CAPABLE OF WORK SHOULD NO LONGER BE JUDGED ON THEIR DISABILITY BUT ON THEIR ABILITIES. SOCIETY AND OUR NATION COULD BENEFIT GREATLY FROM INTERGRATING THESE INDIVIDUALS, NOT ONLY INTO THE WORKFORCE, BUT SOCIETY AS A WHOLE. THE ADA WILL GIVE DISABLED AMERICANS THE RIGHT TO HAVE A FULL AND PRODUCTIVE LIFE, A RIGHT WHICH IN TODAY'S SOCIETY IS OFTEN DENIED TO THEM.

DURING THE PAST TWO CONGRESSES, THE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES HAS ALSO HELD HEARINGS ON DISCRIMINATION AGAINST DISABLED AMERICANS. WHAT HAS BECOME EVIDENT DURING THOSE HEARINGS, AND I AM SURE WILL BECOME EVIDENT TODAY, IS THAT SOCIETY AND CONGRESS HAVE BEGUN THE PROCESS OF INTERGRATION BUT MORE NEEDS TO BE DONE.

I LOOK FORWARD TO THE TESTIMONY OF THE WITNESSES. THESE ARE THE INDIVIDUALS THAT KNOW FIRST HAND WHAT IT IS LIKE NOT TO BE GIVEN A FAIR AND EQUAL CHANCE IN THE WORLD, BASED NOT ON THEIR ABILITY, BUT ON THEIR DISABILITY.



Senator WEICKER [presiding]. Congressman, thank you very much. I ask unanimous consent that a statement by Senator Simon of Illinois be included in the record in its entirety.  
[The prepared statement of Senator Simon follows:]

PAUL SIMON  
ILLINOIS

COMMITTEE:  
LABOR AND HUMAN RESOURCES  
JUDICIARY  
FOREIGN RELATIONS  
BUDGET

United States Senate

WASHINGTON, DC 20510

STATEMENT OF SENATOR PAUL SIMON  
HEARING ON DISCRIMINATION ON THE BASIS OF DISABILITY  
September 26, 1988

Mr. Chairman, I deeply regret that I will not be able to attend this very important hearing. I would like to welcome the witnesses in person, and particularly welcome Mary Linden, from Morton Grove, Illinois. I will be looking forward to reading the testimony of all of the witnesses.

The topic of this hearing is important not only to the millions of Americans who continue to suffer directly the effects of discrimination, but also to our nation. We all feel the effects and are clearly lessened as a nation when we fail to guarantee the rights and use the abilities of all of our citizens.

A recent article in the magazine Business Week called Americans with disabilities the "last minority." We know from experience that civil rights legislation does not automatically end unfair and unequal treatment of people who have historically been left out of the mainstream. But we have also seen the enormous difference that comprehensive civil rights laws have made in the lives of other American "minorities." We know we can do better -- much better -- in bringing Americans with disabilities into the mainstream of our society -- into the workplace, our communities, our lives. We need the Americans with Disabilities Act to complete the civil rights agenda in this country and to bring equality of opportunity to our "last minority."

I sense we are ready to take the final steps to bring about full equality for Americans with disabilities -- and we will be a far richer nation when we do.

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91-312 42



Mr. COELHO. Mr. Chairman, can I have unanimous consent that a statement by me be put in the record at the end of my remarks?

Senator WEICKER. Indeed, a statement by Congressman Coelho will be included in the record at this point in its entirety, or at the conclusion of his statement.

We now go to the first witness, Sandy Parrino of the National Council on the Handicapped. I would like to say that this is a courageous lady. I might add, she represents a courageous group, the entire council, because indeed theirs has not been an easy road in bringing this legislation before us.

They have resisted the importunings of those that were dedicated either to partisanship or philosophy or special interest, and have tried to bring forth a work product that will do the job for the disabled, period. That was the only thing they had in mind.

I want to thank you, Sandy, by way of this introduction. The floor is yours.

**STATEMENT OF SANDRA PARRINO, CHAIRPERSON, NATIONAL COUNCIL ON THE HANDICAPPED, WASHINGTON, DC**

Ms. PARRINO. Thank you. Good morning.

My name is Sandra Swift Parrino. I am very honored to lead off testimony about a piece of legislation that is very close to my heart—the Americans With Disabilities Act of 1988.

I am, in private life, a mother with an involvement and commitment to two children born with serious disabilities. I am, in public life, the Chairperson of the National Council on the Handicapped, an independent Federal agency whose Board is comprised of 15 knowledgeable persons with disabilities—and experts on disability service programs. All of us, appointed by the President and confirmed by the Senate.

We are the only Federal agency mandated to address, analyze, and make recommendations on issues of public policy affecting Americans with disabilities. The main thrust of our efforts is toward eliminating barriers which prevent disabled persons from full participation in the mainstream of American life. Barriers, as you will see, that will topple upon passage of the Americans with Disabilities Act which you will hear referred to as ADA.

The National Council on the Handicapped has not been timid in its efforts in both originating and spearheading this legislation. Legislation we first recommended in a report titled "Toward Independence" that was sent to both the President and Congress in 1986.

Legislation we designed after indepth analysis and study. Legislation that is of clear importance to persons with disabilities and to Federal policy regarding disability programs. Legislation that offers constructive, realistic, and fiscally sound solutions to enhance independence and productivity of people with disabilities. Landmark legislation that is a civil rights, equal opportunity bill for 36 million disabled Americans. Legislation that will, in essence, no longer allow 36 million Americans to be left out of the American dream scenario.

The Americans with Disabilities Act of 1988 is not only important to 36 million citizens with disabilities—it is also—as I will il-

lustrate a bit later—of the highest importance to our Nation. From the quadriplegic as the result of a football injury . . . to the child in a hospital crib from rapidly growing numbers of senior citizens to 75,000 Vietnam veterans—the basic nugget of truth is that—due to discriminatory practices—persons with disabilities continue to suffer from the highest rates of unemployment and poverty than any other group of Americans. Less access to decent schooling—housing—work and transportation than anyone in this country—including noncitizens.

ADA is critically important because its provisions are shaped to break the chains that bind many of the 36 million people into a bondage of unjust, unwanted dependency on families, charity, and social welfare. Dependency that is a major and totally unnecessary contributor to public deficits and private expenditures.

These hearings will provide you with a vital source of information to assess the scope and meaning of the Americans With Disabilities Act. On behalf of 36 million citizens, I ask you to keep in mind that for decades disabled people have been waiting. For decades disabled people have seen laws enacted by their elected Representatives that prohibit discrimination for other categories of individuals. For decades, disabled Americans have had to live with the realization that there are no similarly effective laws to protect them.

Today, I am proud to say, there is an emerging group consciousness on the part of disabled Americans, their families, friends and advocates. A consciousness toward mounting political activism.

Martin Luther King had a dream. We have a vision. Dr. King dreamed of an America "where a person is judged not by the color of his skin, but by the content of his character." ADA's vision is of an America where persons are judged by their abilities and not on the basis of their disabilities; 36 million Americans, our Nation's largest and no longer silent minority. Ladies and gentlemen, American cannot afford to discard her disabled brothers and sisters.

In "Toward Independence", our 1986 report to Congress, our vision has been to shape responsible legislation by which Federal disincentives and barriers to employment are removed so that disabled Americans can go to work.

In the 1984 report to Congress by the Rehabilitation Services Administration, it was indicated that for every \$1 spent to return a disabled person to work, \$18 were returned to the tax base upon their placement. This would include not only taxes paid by the individual, but money saved from the removal of public expenditures.

ADA seeks to protect disabled citizens against discrimination in such areas as transportation, private sector employment, public accommodations, housing and communications and where appropriate the activities of State and local Government agencies.

America cannot afford to discard her disabled people. The majority of disabled people not working said they want to work. The first Louis Harris poll showed that disabled workers in the workplace are rated "good" to "excellent" by an overwhelming majority of their employers. Disability does not mean incompetence. The perception that disabled people are flawed and incapable of caring for themselves is the result of discriminatory attitudes, not the result of disability.



In a nation with a labor shortage, two-thirds of all disabled Americans between the ages of 16 and 64 years of age are not working. No one demographic group under 65 has such a small proportion working. The two words "not working" are perhaps the truest definition of what it means to be disabled in America today.

As Louis Harris discovered, people with disabilities want to become involved in their communities as taxpaying contributors.

It is contrary to sound principles of fiscal responsibility to spend billions of Federal tax dollars to relegate people with disabilities to positions of dependency upon public support.

People with disabilities represent America's greatest untapped resource of employables who want to work. As we all know, in America, jobs are a major source of status, dignity, and self-esteem. "What do you do," is a conversational staple. To contribute to society and support yourself is a cherished precept of our American vision.

ADA sweeps into obsolescence those obstacles that limit opportunity, promote discrimination, prevent integration, restrict choice and frustrate self-help for the working aged disabled Americans who are unemployed.

May I remind you, America cannot afford to discard her disabled brothers and sisters. Advancing age, economic circumstances, illness, and accident will someday, according to reputable statistics, put most of us, in the category of a person with a disability.

The goals espoused in the Americans with Disabilities Act are economically practical as well as morally correct and humanely necessary. The ADA is legislation that does away with troubling historical echoes. Echoes that must no longer be interpreted by America's disabled citizenry as a life sentence.

Esteemed Members of Congress, in closing, I wish to relay a message from 36 million Americans with disabilities. For decades, we have retained a faith in the reformability and adaptability of our Government. For decades we have been told to have patience, but patience is not an inexhaustible commodity. People with disabilities have waited long enough. America has waited long enough. The Americans with Disabilities Act must be enacted now.

The vision of equality for 36 million Americans with disabilities now rests with you.

I thank you. [Applause.]

[The prepared statement of Ms. Parrino follows:]

TESTIMONY OF SANDRA SWIFT PARRINO, CHAIRPERSON  
NATIONAL COUNCIL ON THE HANDICAPPED

GOOD MORNING

MY NAME IS SANDRA SWIFT PARRINO.

I AM HONORED TO LEAD OFF TESTIMONY ABOUT A PIECE OF LEGISLATION THAT IS VERY CLOSE TO MY HEART... THE AMERICANS WITH DISABILITIES ACT OF 1988.

I AM, IN PRIVATE LIFE, A MOTHER WITH AN INVOLVEMENT AND COMMITMENT TO TWO CHILDREN BORN WITH SERIOUS DISABILITIES.

I AM, IN PUBLIC LIFE, THE CHAIRPERSON OF THE NATIONAL COUNCIL ON THE HANDICAPPED. AN INDEPENDENT FEDERAL AGENCY WHOSE BOARD IS COMPRISED OF 15 KNOWLEDGEABLE PERSONS WITH DISABILITIES...AND EXPERTS ON DISABILITY SERVICE PROGRAMS. ALL OF US, APPOINTED BY THE PRESIDENT AND CONFIRMED BY THE SENATE.

WE ARE THE ONLY FEDERAL AGENCY MANDATED TO ADDRESS, ANALYZE AND MAKE RECOMMENDATIONS ON ISSUES OF PUBLIC POLICY AFFECTING AMERICANS WITH DISABILITIES. THE MAIN THRUST OF OUR EFFORTS IS TOWARDS ELIMINATING BARRIERS WHICH PREVENT DISABLED PERSONS FROM FULL PARTICIPATION IN THE MAINSTREAM OF AMERICAN LIFE. BARRIERS, AS YOU WILL SEE, THAT WILL TOPPLE UPON PASSAGE OF THE AMERICANS WITH DISABILITIES ACT WHICH YOU WILL HEAR REFERRED TO AS ADA.



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THE NATIONAL COUNCIL ON THE HANDICAPPED HAS NOT BEEN TIMID IN ITS EFFORTS IN BOTH ORIGINATING AND SPEARHEADING THIS LEGISLATION. LEGISLATION WE FIRST RECOMMENDED IN A REPORT TITLED "TOWARD INDEPENDENCE" THAT WAS SENT TO BOTH THE PRESIDENT AND THE CONGRESS IN 1986.

LEGISLATION WE DESIGNED AFTER IN-DEPTH ANALYSIS AND STUDY. LEGISLATION THAT IS OF CLEAR IMPORTANCE TO PERSONS WITH DISABILITIES AND TO FEDERAL POLICY REGARDING DISABILITY PROGRAMS. LEGISLATION THAT OFFERS CONSTRUCTIVE, REALISTIC AND FISCALLY SOUND SOLUTIONS TO ENHANCE INDEPENDENCE AND PRODUCTIVITY OF PEOPLE WITH DISABILITIES. LANDMARK LEGISLATION THAT IS A CIVIL RIGHTS, EQUAL OPPORTUNITY BILL FOR 36 MILLION DISABLED AMERICANS. LEGISLATION THAT WILL, IN ESSENCE, NO LONGER ALLOW 36 MILLION AMERICANS TO BE LEFT OUT OF THE AMERICAN DREAM SCENARIO.

THE AMERICANS WITH DISABILITIES ACT OF 1988 IS NOT ONLY IMPORTANT TO 36 MILLION CITIZENS WITH DISABILITIES....IT IS ALSO....AS I WILL ILLUSTRATE A BIT LATER...IMPERISHABLY IMPORTANT TO OUR NATION. FROM THE QUADRIPLAGIC AS THE RESULT OF A FOOTBALL INJURY....TO THE CHILD IN A HOSPITAL CRIB....FROM RAPIDLY GROWING NUMBERS OF SENIOR CITIZENS...TO 75 THOUSANDS VIETNAM VETERANS...THE BASIC NUGGET OF TRUTH IS THAT.... DUE TO DISCRIMINATORY PRACTICES....PERSONS WITH DISABILITIES CONTINUE TO SUFFER FROM THE HIGHEST RATES OF UNEMPLOYMENT AND POVERTY THAN ANY OTHER GROUP OF AMERICANS. LESS ACCESS TO DECENT SCHOOLING..HOUSING..WORK AND TRANSPORTATION THAN ANYONE IN THIS COUNTRY....INCLUDING NON-CITIZENS.

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ADA IS OF CRITICALLY IMPORTANT BECAUSE ITS PROVISIONS ARE SHAPED TO BREAK THE THE CHAINS THAT BIND MANY OF THESE 36 MILLIONS INTO A BONDAGE OF UNJUST, UNWANTED DEPENDENCY ON FAMILIES, CHARITY AND SOCIAL WELFARE. A DEPENDENCY THAT IS A MAJOR AND TOTALLY UNNECESSARY CONTRIBUTOR TO PUBLIC DEFICITS AND PRIVATE EXPENDITURES.

THESE HEARINGS WILL PROVIDE YOU WITH A VITAL SOURCE OF INFORMATION TO ASSESS THE SCOPE AND MEANING OF THE AMERICANS WITH DISABILITIES ACT. ON BEHALF OF 36 MILLION CITIZENS I ASK YOU TO KEEP IN MIND THAT...FOR DECADES DISABLED PEOPLE HAVE BEEN WAITING.

FOR DECADES THE DISABLED HAVE SEEN LAWS ENACTED BY THEIR ELECTED REPRESENTATIVES THAT PROHIBIT DISCRIMINATION FOR OTHER CATEGORIES OF INDIVIDUALS. FOR DECADES DISABLED AMERICANS HAVE HAD TO LIVE WITH THE REALIZATION THAT THERE ARE NO SIMILARLY EFFECTIVE LAWS TO PROTECT THEM. TODAY, I AM PROUD TO SAY, THERE IS AN EMERGING GROUP-CONSCIOUSNESS ON THE PART OF DISABLED AMERICANS, THEIR FAMILIES, FRIENDS AND ADVOCATES. A CONSCIOUSNESS TOWARD MOUNTING POLITICAL ACTIVISM. MARTIN LUTHER KING HAD A DREAM. WE HAVE A VISION. KING DREAMED OF AN AMERICA WHERE A PERSON WAS JUDGED NOT BY THE COLOR OF HIS SKIN, BUT BY THE NATURE OF HIS CHARACTER. ADA'S VISION IS OF AN AMERICA WHERE PERSONS ARE JUDGED BY THEIR ABILITIES AND NOT ON THE BASIS OF THEIR DISABILITIES.

36 MILLION AMERICANS...OUR NATION'S LARGEST AND NO LONGER SILENT MINORITY. LADIES AND GENTLEMEN, AMERICA CANNOT AFFORD TO DISCARD HER DISABLED BROTHERS AND SISTERS.



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IN SHEPHERDING THIS LEGISLATION FROM RICHLY DESERVED CONCEPT TO STATUTORY CIVIL RIGHTS UMBRELLA...IN "TOWARDS INDEPENDENCE," OUR 1986 REPORT TO CONGRESS, OUR GOAL HAS BEEN TO DEVISE PRACTICAL, RESPONSIBLE LEGISLATION BY WHICH FEDERAL EXPENDITURES RELATING TO DISABILITY ARE MORE PRUDENTLY SPENT WHILE INEFFECTIVENESS AND COUNTER PRODUCTIVITY ARE MINIMIZED.

"IN THE 1984 REPORT TO CONGRESS BY THE REHABILITATION SERVICES ADMINISTRATION, IT WAS INDICATED FOR EVERY \$1.00 SPENT TO RETURN A DISABLED PERSON TO WORK, \$18.00 WERE RETURNED TO THE TAX BASE UPON THEIR PLACEMENT. THIS WOULD INCLUDE NOT ONLY TAXES PAID BY THE INDIVIDUAL, BUT MONEY SAVED FROM THE REMOVAL OF PUBLIC EXPENDITURES. (SINCE DISABILITY INCREASES WITH AGE, THE COUNCIL'S ROLE IN PREVENTION COULD BE MENTIONED IN THE TESTIMONY)."

ADA SEEKS TO PROTECT DISABLED CITIZENS AGAINST DISCRIMINATION IN AREAS SUCH AS TRANSPORTATION...PRIVATE SECTOR EMPLOYMENT...PUBLIC ACCOMMODATIONS...HOUSING AND COMMUNICATIONS AND WHERE APPROPRIATE THE ACTIVITIES OF STATE AND LOCAL GOVERNMENTS AGENCIES.

IN FACT, BOTH LOUIS HARRIS POLLS SUBSTANTIATED THAT THE TWO WORDS "NOT WORKING" ARE PERHAPS THE TRUEST DEFINITION OF WHAT IT MEANS TO BE DISABLED IN AMERICA TODAY.

AMERICA CAN NOT AFFORD TO DISCARD HER DISABLED PEOPLE. THE MAJORITY OF DISABLED PEOPLE NOT WORKING SAID THAT THEY WANT TO WORK. THE FIRST LOUIS HARRIS POLL SHOWED THAT DISABLED WORKERS IN THE WORKPLACE ARE RATED "GOOD" TO "EXCELLENT" BY AN OVERWHELMING MAJORITY OF THEIR EMPLOYERS.

DISABILITY DOES NOT MEAN INCOMPETENCE. THE PERCEPTION THAT THE DISABLED ARE FLAWED AND INCAPABLE OF CARING FOR THEMSELVES IS THE RESULT OF

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DISCRIMINATORY ATTITUDES...NOT THE RESULT OF DISABILITY. AS LOUIS HARRIS DISCOVERED, PEOPLE WITH DISABILITIES WANT TO BECOME INVOLVED IN THEIR COMMUNITIES AS TAXPAYING CONTRIBUTORS.

IT IS CONTRARY TO SOUND PRINCIPLES OF FISCAL RESPONSIBILITY TO SPEND BILLIONS OF FEDERAL TAX DOLLARS TO RELEGATE PEOPLE WITH DISABILITIES TO POSITIONS OF DEPENDENCY UPON PUBLIC SUPPORT.

MAY I REMIND YOU, PEOPLE WITH DISABILITIES REPRESENT AMERICA'S GREATEST UNTAPPED RESOURCE OF EMPLOYABLES WHO WANT TO WORK.

AS WE ALL KNOW, IN AMERICA JOBS ARE A MAJOR SOURCE OF STATUS, DIGNITY AND SELF-ESTEEM. "WHAT DO YOU DO?" IS A CONVERSATIONAL STAPLE, TO CONTRIBUTE TO SOCIETY AND SUPPORT YOURSELF IS A CHERISHED PRECEPT OF OUR AMERICAN VISION.

ADA SWEEPS INTO OBSOLESCENCE THOSE OBSTACLES THAT LIMIT OPPORTUNITY, PROMOTE DISCRIMINATION, PREVENT INTEGRATION RESTRICT CHOICE AND FRUSTRATE SELF-HELP FOR THE 65 PERCENT OF NON-INSTITUTIONAL WORKING AGE DISABLED AMERICANS WHO ARE UNEMPLOYED.

AMERICA CAN NOT AFFORD TO DISCARD HER DISABLED BROTHERS AND SISTERS. ADVANCING AGE, ECONOMIC CIRCUMSTANCES, ILLNESS, ACCIDENT WILL SOMEDAY, ACCORDING TO REPUTABLE STATISTICS, PUT ALL OF US, OR A LOVED ONE, IN THE CATEGORY OF A PERSON WITH A DISABILITY.

THE GOALS ESPOUSED IN THE AMERICANS WITH DISABILITIES ACT ARE ECONOMICALLY PRACTICAL AS WELL AS MORALLY CORRECT... AND HUMANELY NECESSARY. THE ADA IS LEGISLATION THAT DOES AWAY WITH TROUBLING HISTORICAL ECHOES. ECHOES THAT MUST NO LONGER BE INTERPRETED BY AMERICA'S DISABLED CITIZENRY AS A LIFE SENTENCE.



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IN CLOSING I WISH TO RELAY A MESSAGE FROM 36 MILLION DISABLED AMERICANS. FOR DECADES WE HAVE RETAINED A FAITH IN THE REFORMABILITY AND ADAPTABILITY OF OUR GOVERNMENT. FOR DECADES WE HAVE BEEN TOLD TO HAVE PATIENCE. BUT PATIENCE IS NOT AN INEXHAUSTIBLE COMMODITY. PEOPLE WITH DISABILITIES HAVE WAITED LONG ENOUGH. AMERICA HAS WAITED LONG ENOUGH. THE AMERICANS WITH DISABILITIES ACT MUST BE ENACTED NOW. THE HOPES, ASPIRATIONS AND VISIONS OF 36 MILLION AMERICANS WITH DISABILITIES NOW RESTS WITH YOU.

Senator WEICKER. Sandy, thank you very much.

To the members of the panel, we have extraordinary individuals who have come to testify on this act. I would hope we could keep our questions down to a minimum, in order that all might have a chance to present their story, possibly each one of us only asking a question or two.

Sandy, very briefly, has a position been stated on this legislation by the Administration?

Ms. PARRINO. At this time, this legislation reflects the views of the members of the National Council on the Handicapped. However, both Presidential nominees have endorsed the bill.

Senator WEICKER. Last, in your view, is it possible to eliminate discrimination against persons with disabilities without Federal legislation?

Ms. PARRINO. I think the testimony answers that question. We have waited. We have been patient. It has not happened. I think that it is necessary to have this legislation.

Personally, I find that the fact that my two children are not protected under the Constitution to be unacceptable to me and it is unacceptable to me that 36 million disabled Americans are not protected under the Constitution. I think we need the legislation.

Senator WEICKER. Congressman Owens.

Mr. OWENS. Mr. Chairman, I have no questions. I would just like to join Senator Harkin in congratulating Mrs. Parrino on the magnificent job that was done in achieving consensus on this piece of legislation, and to thank her for the many years of hard work it took to get to this point.

Senator WEICKER. Congressman Jeffords.

Mr. JEFFORDS. Just one question. You mention a labor shortage which would indicate a need and if we end discrimination we would have an available resource, a human resource. Is the training that is available under present Federal legislation sufficient to handle the ability to make that resource available?

Ms. PARRINO. There is not enough training at the moment. We spend much too much in sustaining dependency and not enough in rehabilitating and training and educating.

Mr. JEFFORDS. Thank you.

Senator WEICKER. Senator Kennedy.

Senator KENNEDY. Just one question. We will probably hear a good deal of discussion about the cost of this legislation. I think it has been well documented, and you have certainly referred to the fact, that if this legislation is actually implemented, the possibilities that it gives for those that are physically handicapped and handicapped will be able to be much more productive in terms of the kinds of returns that will come back, not only in human terms but actually in financial terms, will be useful as well.

I wonder if you would just address that briefly, because this will certainly that, on the floor of the Senate, will be asked about. If you could tell us, if we achieve this legislation, whether people will be able to, you believe, be much more productive in terms of being involved in our economy? I am sorry we have to have this kind of a bottom line type of a question, but I think that is what is on people's minds these days, unfortunately.



Ms. PARRINO. The National Council is seeking to provide Congress with some kind of economic analysis of this bill. We are in the process of finding the appropriate people to do that, because it will be asked in the winter or the spring, we are sure.

There is a lot of data available in some of the areas, and there is also a lot of data that is not available. We are trying to first find what has already been done, what analysis has been done, and then see where the holes are, what has to be looked into.

I think we will be able to put some kind of a picture together by the spring. It is certainly a question that will be asked and has to be answered, but your reference to the labor shortage, we wonder just what this country is going to do as we know there is going to be a tremendous shortage of workers. It is a perfect match that we have here.

I certainly would hope we would not go looking outside the country to fill those jobs when we have a population here who wants to work in all levels of employment. So I think economically, if we look at it that way, it will be a great plus to us.

Senator KENNEDY. I appreciate that, and I hope you will keep us informed. It seems to me to be reasonably self-evident. If you eliminate these barriers and people are able to participate, that they are going to be productive members of society and they will also be contributing members to the society, in terms of their involvement in our whole economy.

I think whatever material we can have on that will be generally useful. Thank you very much.

Senator WEICKER. Congressman Coelho.

Mr. COELHO. Thank you, Senator.

Sandy, outstanding statement. Very, very nicely done. All of us appreciate your work and your effort and your presentation today.

Only one comment and one question. The comment is, do not have any more patience.

Ms. PARRINO. I think it has run out, do you not?

Mr. COELHO. It is time, I think, to stand up. I think Gallaudet proved that and sort of lit a spark not only with the hearing disabled but with the disability community all over the country. We do not want to be patient anymore. So I hope that you do not believe that anymore. Let us move on.

The question I have is that your statement that it is up to us now to adopt it is correct, but you understand politics. You know that that is not the way it is done. What is really important is the grassroots.

You and I talk about 36 million or 43 million—and we move between those numbers, it is somewhere in there—Americans with disabilities. If 36 million Americans would contact their legislative leaders, and urge upon them the need for this legislation, it would be done. That is a tremendous political force.

I am, as I said, one of those in the disabled community. I do not think we have done enough of educating my colleagues, as to what we want and what we do not want. That is why I say patience is over with.

I would just ask the question what are you doing, in the grassroots, to get all the groups to lobby on the ADA bill? We have 130

sponsors in the House. I do not know how many in the Senate. But that is not enough.

Ms. PARRINO. To try and answer your question, of course the members of the National Council on the Handicapped are not allowed to lobby, and of course we do not.

Mr. COELHO. We understand that. Not that we have got that out of the way.

Ms. PARRINO. Now that that is out of the way. [Laughter.]

However, we certainly believe in education. The Council is preparing some information on the bill, some questions and answers and an explanation, sort of in plain English, what the bill means. We hope to go, the staff and the members, to all 50 States and to just educate people at a State level, and then encourage them to educate people down to the grassroots level.

We are only 15 members and our staff, we only have 8, so it is a very large job. But we are going to attempt to do it. We will not go out and tell people what they should do regarding their Congressmen, but we will educate them about the bill, tell them what it means, and why it has been written and why it has been introduced.

Mr. COELHO. Thank you.

Senator WEICKER. Congressman Martinez.

Mr. MARTINEZ. Thank you, Senator Weicker.

I have a question along the same line that the Senate asked. Maybe it is a little bit different, or maybe the response to his was not exactly what I was looking for. I am interested in what the present administration's reaction was to the Council's report, first. Second, we have, in the Federal sector, a law that is supposed to protect the physically challenged. I am wondering if the Council, in its examination of everything, made a determination of whether that law is effective.

Anytime Congress acts, it holds out great hope to the people that look to benefit from that act of Congress. In many instances the followup or administration of that law does not occur. So those people that held up that hope are very disappointed. In this particular area, I would hate to see these people disappointed because they have worked so hard to see this come about.

So the two questions are one, what was the administration's reaction? Two, in your observations, how is the present law in the Federal sector working?

Ms. PARRINO. Well, to answer your first question, sitting behind me is our new Executive Director, Paul Hearne. Paul was sworn in to his position in August by the Vice President. At that swearing in, he indicated a need for Federal antidiscrimination legislation, to protect the rights of disabled people, and he mentioned this bill.

So that, I would say, there has been a level of acceptance of this legislation from the administration.

Mr. MARTINEZ. The second question regards the law that presently exists in the Federal sector, that protects the physically disabled.

Ms. PARRINO. Are you referring to 504 regulations?

Mr. MARTINEZ. Yes.

Ms. PARRINO. Is that adequate?

Mr. MARTINEZ. Is it working? As with various other things, under our supervision as the oversight subcommittee on Employ-



ment Opportunities, we find that the EEOC has not really placed enough emphasis on those things that provide affirmative action in the workplace.

I am wondering if, in this instance, the same thing is occurring, that where we have the law on the books really no one is paying attention to it and the physically disadvantaged continue to be discriminated against?

Ms. PARRINO. Well, here goes my hometown. I agree with you, not enough is being done. There is not enough compliance.

The village I live in, in Westchester County, Briar Cliff Manor, which does participate in revenue sharing, could not see fit to put a ramp in until just this year. Therefore, people in that town, that village, who wanted to go into the town hall and participate in town meetings or decisions that were being made for the population, disabled were not able—certainly physically disabled people were never able to get into that town hall.

That is just one example that has certainly irritated me for many years. I think it is true in communities all over the country. There has not been enough compliance in the 504 regulations. That is a personal opinion.

In that regard, then, does there need to be something put into the law that has teeth in it to force compliance?

Ms. PARRINO. I am not an attorney, and I do not know that I can really answer that, but my uneducated guess would be yes, that there has to be something. It is not enough to just have it down on the books because the similar situation with education.

All the classrooms were supposed to have been made accessible, but many schools are not. Many schools do not have the elevators or the accessibilities, to this day, 13 years after the bill was enacted. They still are not accessible and the classrooms are not accessible.

I would say that we would need some more, I guess, teeth you call it.

Senator WEICKER. Sandy, thank you very much. There will be further questions which can be submitted for the record. Thank you for your effort. Thank you for your courage. It is good to have the endorsement of the National Council. We will take it from here.

Ms. PARRINO. Thank you.

Senator WEICKER. Our next witness is Admiral Watkins. Again, in this particular instance, I would like to commend the Admiral for his courage for bringing sanity and common sense and fact to the discussion of AIDS within this Nation.

Before you arrived on the scene with your Commission, we were dealing with ignorance, superstition, fear, and philosophy. You have turned that around. You have my eternal gratitude for turning it around, you and your entire Commission.

Again, I will use that by way of introduction at this hearing. Thank you very much.

STATEMENT OF ADM. JAMES WATKINS, CHAIRPERSON, PRESIDENT'S COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC, WASHINGTON, DC

Mr. WATKINS. Thank you, Senator Weicker.

It is not only a pleasure to come over again to Capitol Hill to talk to important committees, but I am particularly honored that you would ask me to come over to testify on behalf of the Americans With Disabilities Act.

As former chairman of the President's Commission on the HIV Epidemic, I spent most of my time in the last year working with those who have a disability, the HIV infection, and those who, because of their infection, join millions of other Americans with handicaps and disabling conditions.

The Commission held over 45 days of public hearings and site visits in preparation for its report to the President. As I participated in these rigorous and, to my knowledge, unparalleled set of hearings, one point became clear early on, that without strong Federal antidiscrimination laws, to protect those with HIV from discrimination in both the public and private sectors, they would continue to face the unfair discrimination that other disabled persons have always faced.

As I prepared for this testimony today, I went back to read the section of our Commission's report on discrimination. Quite frankly, I felt it impossible to improve upon the words that we labored over for some weeks, so I would like to submit that section of the report in its entirety for my formal written statement.

Now, I would also like to summarize some of its points. Of course, my focus is obviously on AIDS and the HIV infection. Nevertheless, if the HIV epidemic had never occurred and, having experienced a unique opportunity over the past year to witness behaviors of many Americans toward their own neighbors, I would support the Americans With Disabilities Act so that all of our citizens with disabling conditions be guaranteed fair treatment in the workplace, schools, and housing.

My predecessor here this morning said enough time has, in my opinion, been given to the States to legislate what is right. Too many States, for whatever reason, still perpetuate confusion. It is time for Federal action.

Throughout our investigation of the spread of HIV in the United States, the Commission was confronted with a problem of discrimination against individuals with HIV seropositivity and all states of HIV infection, including AIDS.

At virtually every commission hearing, witnesses attested to discrimination's occurrence and its serious repercussions for both the individual who experiences it and for this Nation's effort to control the epidemic. Many witnesses indicated that addressing discrimination is the first critical step in the Nation's response to the epidemic.

HIV-related discrimination is impairing this Nation's ability to limit the spread of the epidemic. Crucial to this effort are epidemiological studies to track the epidemic as well as the education, testing and counseling of those who have been exposed to the virus. Public health officials will not be able to gain the confidence and



cooperation of infected individuals or those at risk for infection if such individuals fear that they will be unable to retain their jobs and their housing, and that they will be unable to obtain the medical and support services that they need because of discrimination based on a positive HIV antibody test.

As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the epidemic, and will leave HIV-infected individuals isolated and alone.

In general, because HIV is blood-borne and sexually transmitted, there is no need to treat those infected with HIV in a manner different from those not infected in such settings as the workplace, housing, and the schools. In the vast majority of workplace and public settings, there is virtually no risk of direct exposure to body fluids which could result in HIV transmission.

Detailed Centers for Disease Control guidelines have been issued for dealing with HIV infection in those cases which require special handling, such as health care workers and other workers who might be exposed to blood or those school children who lack control of bodily secretions.

Therefore, discrimination against persons with HIV infection in the workplace setting, or in the areas of housing, schools, and public accommodations, is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care or associate with such individuals.

As a witness at the Commission's hearings on discrimination explained, individuals infected with HIV face two fights: The fight against the virus and the fight against discrimination. Just as the HIV-infected must have society's support in their fight against the virus, these individuals must have society's support in their fight against discrimination and must have assurances that policies will be implemented to prevent discrimination from occurring in the future.

Furthermore, each act of discrimination, whether publicized or not, diminishes our society's adherence to the principles of justice and equality. Our leaders at all levels, National, State, and local, should speak out against ignorance and injustice, and make clear to the American people that discrimination against those disabled for whatever reasons will not be tolerated. This is the guts of your act.

The National Council on the Handicapped, an independent Federal agency comprised of 15 members appointed by the President to make recommendations on public policy issues affecting people with disabilities, included the proposal for a comprehensive Federal law of this kind in their January 1988 report to the President.

Their proposal, the Americans With Disabilities Act of 1988, of course, is the focal point of these hearings here today. It is what the Commission believes is the type of comprehensive, disability antidiscrimination legislation which should then serve as a model for all Federal legislation in this area.

I would like to close, Mr. Chairman, with one final comment. As the Commission debated this section of our report, one of the physicians on our panel, Dr. Burton Lee, a distinguished cancer specialist, made the following point. Dr. Lee said that in treating literally tens of thousands of lymphoma patients, even today, these patients faced almost inevitably some sort of discrimination once news of their disease became public.

Dr. Lee strongly supports the ADA because of the incredibly debilitating effects discrimination has on his own patients. He said that such a protection in law, particularly at a cancer patient's most vulnerable moment, can mean the difference between a premature death, or years more of life with family and friends.

Work, a decent place to live, a chance for an education are the essentials of life. Passage of the ADA will ensure that no one will lose these essentials simply because they have a disabling condition.

Thank you, Mr. Chairman, for allowing me to appear before you this morning.

[The prepared statement of Admiral Watkins, with an attachment, follows:]



STATEMENT OF ADMIRAL JAMES WATKINS

GOOD AFTERNOON:

I GREATLY APPRECIATE THE OPPORTUNITY THIS AFTERNOON TO BRIEFLY ADDRESS THE PRIVATE SECTOR LEADERSHIP CONFERENCE ON AIDS. AS YOU KNOW, FROM OCTOBER OF 1987 UNTIL JULY, I WAS THE CHAIRMAN OF THE PRESIDENTIAL COMMISSION ON THE HIV EPIDEMIC, A JOB WHICH REQUIRED MY FULL-TIME ATTENTION. I CAN TRUTHFULLY SAY THAT, HAVING BEEN INVOLVED IN PUBLIC SERVICE FOR THE LAST \_\_\_\_\_ YEARS, MY ROLE AS CHAIRMAN OF THE COMMISSION WAS THE MOST COMPLICATED AND DIFFICULT OF MY CAREER.

IN RETROSPECT, I SEE THAT THE COMMISSION BEGAN AS MANY AMERICAN INSTITUTIONS ARE STILL OPERATING, IN THE DARK, WITHOUT DIRECTION, THAT IS WITHOUT THE PROPER PLANNING NECESSARY TO DEAL WITH AIDS. AFTER THE COMMISSION CONDUCTED 50 DAYS OF PUBLIC HEARINGS AND SITE VISITS, OUR PERSPECTIVE WAS MUCH DIFFERENT AND WE WERE ABLE TO PUT TOGETHER A FINAL REPORT WHICH HAS BEEN WIDELY PRAISED.

YOU SEE, AFTER YOU'VE DONE YOUR HOMEWORK, THE HIV EPIDEMIC REALLY ISN'T SO HARD. ABOUT FIVE MONTHS INTO OUR

ASSIGNMENT, IT BECAME CLEAR TO ALL THE COMMISSIONERS THAT WE WERE HEARING AN INCREDIBLE AMOUNT OF CONSENSUS FROM OUR WIDE VARIETY OF HUNDREDS OF WITNESSES. THESE WERE PEOPLE FROM ALL WALKS OF LIFE, ALL POINTS OF VIEW. WHILE THEY DIFFERED ON SOME OF THE FINE POINTS OF PUBLIC POLICY, THE GREAT MAJORITY SUPPORTED A COMMON SENSE APPROACH TO DEALING WITH THE HIV EPIDEMIC.

THIS CONSENSUS OF ACTION IS WHAT YOU SEE IN THE COMMISSION'S REPORT--A COMMON SENSE APPROACH. WE TRY, AND I BELIEVE WE SUCCEED, TO SPEAK TO THE BASIC GOODNESS AND FAIRNESS THAT IS THE CENTERPIECE OF AMERICAN LIFE. NOBODY SHOULD GET SPECIAL TREATMENT, AND EVERYONE SHOULD BE TREATED FAIRLY WHEN THEY ARE SICK.

THIS IS MY FIRST PUBLIC APPEARANCE SINCE I LEFT FOR VACATION IN A REMOTE PART OF CANADA IN MID-JULY. BECAUSE I WAS NOT IN WASHINGTON, OR REACHABLE BY PHONE WHEN THE PRESIDENT ISSUED HIS FIRST IN A SERIES OF IMPLEMENTING ANNOUNCEMENTS, I MISSED BEING PART OF THE FIRST WAVE OF REACTION. I WOULD LIKE



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TO GIVE YOU MY REACTION TODAY, AS IT IS RELATED TO THE SPECIAL MISSION AMERICAN BUSINESS AND LABOR HAVE IN DEALING WITH THE HIV EPIDEMIC.

AS MANY OF YOU KNOW, THE CENTERPIECE OF THE COMMISSION'S AIDS STRATEGY WAS PASSAGE OF FEDERAL AND STATE ANTIDISCRIMINATION LAWS WHICH CLEARLY STATE THAT THOSE WITH HIV ARE DISABLED AND HAVE A HANDICAPPING CONDITION. SO FAR, MANY STATES HAVE PASSED SUCH LAWS, BUT ACTION ON THE FEDERAL LEVEL HAS BEEN MUCH SLOWER. THE SENATE SUBCOMMITTEE ON THE HANDICAPPED WILL BE HOLDING ITS FIRST DAY OF HEARINGS ON SUCH A LAW ON SEPTEMBER 29TH AND I WILL BE A WITNESS AT THAT HEARING IN STRONG SUPPORT OF THE AMERICANS WITH DISABILITIES ACT. SO FAR, THE HOUSE HAS NOT HELD ANY HEARINGS ON THE ADA BILL, AND SEPARATE LEGISLATION TO EXTEND CIVIL RIGHTS COVERAGE FOR ONLY THOSE WITH HIV WAS DROPPED FROM A HOUSE BILL IN JUNE.

THIS LEGISLATION IS ESSENTIAL AS, AND I QUOTE FROM OUR REPORT, "HIV-RELATED DISCRIMINATION IS IMPAIRING THIS NATION'S ABILITY TO LIMIT THE SPREAD OF THE EPIDEMIC...AS LONG

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AS DISCRIMINATION OCCURS...INDIVIDUALS WHO ARE INFECTED WITH HIV WILL BE RELUCTANT TO COME FORWARD FOR TESTING, COUNSELING, AND CARE. PUT YOURSELF IN THE SHOES OF SOMEONE WHO IS AFRAID HE WILL LOSE HIS JOB AND HOME, AND WHO MIGHT HAVE 10 OR 15 YEARS FROM TIME OF INFECTION UNTIL <sup>any</sup> SYMPTOMS ARE PRESENT. THE COMMISSION FELT THAT THIS PERSON SHOULD BE TREATED LIKE ANYONE ELSE WHO HAS CANCER, HEART DISEASE, DIABETES OR ANY OTHER DISABLING CONDITION. NO SPECIAL TREATMENT, JUST FAIR TREATMENT.

AS YOU CAN SEE, THE CONGRESS HAS NOT GOTTEN VERY FAR IN THIS PROCESS. I INTEND TO WORK WITH MEMBERS OVER THE NEXT YEAR TO MAKE SURE THIS NECESSARY LEGISLATION TO COVER THE RIGHTS OF ALL ILL AND DISABLED PEOPLE IN BOTH THE PUBLIC AND PRIVATE SECTORS IS ENACTED AND SIGNED INTO LAW. BOTH PRESIDENTIAL CANDIDATES HAVE ENDORSED THIS TYPE OF LEGISLATION.

HOWEVER, AS IMPORTANT AS PASSAGE OF A FEDERAL ANTIDISCRIMINATION LAW IS, THE COMMISSION ALSO RECOGNIZED THAT



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PASSAGE OF CIVIL RIGHTS LAWS CAN BE A SLOW PROCESS. I QUOTE:  
"THE COMMISSION RECOGNIZES THAT PASSAGE OF MORE  
COMPREHENSIVE DISABILITY DISCRIMINATION LEGISLATION  
BY CONGRESS MAY TAKE TIME. THEREFORE, THE COMMISSION  
BELIEVES THAT IT IS IMPERATIVE FOR THE FEDERAL  
GOVERNMENT TO TAKE IMMEDIATE STEPS TO INFORM THE  
PUBLIC REGARDING EXISTING FEDERAL ANTIDISCRIMINATION  
LAW AND REGARDING THE REMEDIES WHICH ARE  
AVAILABLE...."

I AM CONCERNED THAT THE DEBATE OF THE LAST TWO MONTHS  
HAS NOT FOCUSED PROPERLY ON WHAT WAS ACTUALLY IN THE  
PRESIDENT'S STATEMENT, AND THAT IS AN ENDORSEMENT OF THE OFFICE  
OF PERSONNEL MANAGEMENT GUIDELINES FOR ALL FEDERAL AGENCIES,  
BUT ALSO, MOST IMPORTANTLY, AS A STANDARD OF CONDUCT FOR THE  
NATION.

WE DO NOT HAVE TO WAIT UNTIL THE ADA BILL IS PASSED  
NEXT YEAR TO USE THE OPM GUIDELINES AS A MODEL FOR ALL AMERICAN  
BUSINESSES. I URGE EVERYONE HERE TODAY TO GET A COPY OF THE

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GUIDELINES AND ENDORSE THEM IN YOUR WORKPLACE. WHEN I FIRST  
HAD A CHANCE TO REVIEW THEM, I WAS SO IMPRESSED WITH THEIR  
CLARITY. CONNIE HORNER, THE DIRECTOR OF OPM, HAD PUT INTO  
WORDS THE COMMON SENSE WE NEED ON THIS ISSUE.

THE ROLE OF AMERICAN BUSINESS AND LABOR IS CENTRAL IN  
ESTABLISHING FAIR EMPLOYMENT POLICIES AS WELL AS POTENTIALLY  
BEING THE MAJOR AVENUE OF EDUCATION ON THE HIV EPIDEMIC FOR THE  
AVERAGE AMERICAN. LET US TAKE THE TRAGEDY OF AIDS AND TURN IT  
INTO AN OPPORTUNITY TO IMPROVE THE EDUCATION AND HEALTH OF ALL  
AMERICANS. WHAT THE WORKER LEARNS IN THE WORKPLACE ABOUT THE  
HIV EPIDEMIC, AS WELL AS HIS OR HER OWN HEALTH, IS TAKEN HOME  
AND SHARED WITH THE REST OF THE FAMILY. WE MUST NOT MISS THE  
OPPORTUNITY TO EDUCATE WORKERS ABOUT HOW THEY CAN MAINTAIN A  
HEALTH LIFESTYLE FOR THEMSELVES AND THEIR FAMILIES.

MANY PEOPLE HAVE ASKED ME WHAT MY GREATEST WORRY IS  
FOR THE FUTURE WITH THE HIV EPIDEMIC, AND I ALWAYS ANSWER--OUR  
TEENAGERS, AND THE ROLE OF DRUG ABUSE IN FUTURE SPREAD OF HIV.  
WITH REGARD TO THE LATTER, IT IS TIME THAT WE COLLECTIVELY



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RENOUNCE THE USE OF ILLEGAL DRUGS. WE NEED STRONGER LAW ENFORCEMENT POLICIES THAT REACH NOT ONLY THE STREET MERCHANT IN HARLEM, BUT THE YUPPIE ON WALL STREET. WE NEED A GREATLY EXPANDED TREATMENT SYSTEM, SO THAT ANYONE WHO DESIRES HELP IN KICKING THE HABIT CAN DO SO. PERIOD. ANYONE, ANYTIME, NO MORE SIX MONTH WAITING LISTS.

WITH REGARD TO OUR YOUNG PEOPLE, THE FUTURE OF OUR NATION, WE ARE LEARNING MANY LESSONS FROM THIS EPIDEMIC. WE HAVE SEEN THAT IT IS BETTER, LESS EXPENSIVE, AND FAR MORE HUMANE TO PREVENT A PROBLEM THAN TO CORRECT IT -- AND IF THIS IS TRUE FOR HIV, IT IS EVEN MORE TRUE FOR DRUG ABUSE. WE HAVE SEEN THAT SCIENCE DOES NOT HOLD ALL THE ANSWERS TODAY, AND MAY NOT TOMORROW. WE HAVE SEEN THAT EDUCATION IS OUR GREATEST WEAPON AGAINST THIS EPIDEMIC, AND AGAINST SO MANY OF OUR OTHER PROBLEMS NEEDING SOLUTIONS. AND WE HAVE SEEN THAT WE CANNOT FIND THOSE SOLUTIONS ALONE. ONLY THROUGH THE EFFORTS OF MANY, WORKING TOGETHER, WILL THESE BOULDERS FINALLY BEGIN TO BE ROLLED AWAY.

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LET US USE THIS EPIDEMIC AS A CATALYST. LET US SEE IT AS PROVIDING OPPORTUNITIES TO CREATE A BETTER NATION FOR OUR CHILDREN TO INHERIT. LET US ELIMINATE INEQUITIES IN OUR HEALTH CARE DELIVERY SYSTEM; EDUCATE OUR YOUNG PEOPLE ABOUT THEIR OWN HUMAN BIOLOGY; ELIMINATE DISCRIMINATION, AND HARNESS THE GOODNESS ALREADY AT WORK OUT THERE INTO AN UNBEATABLE ARMY AGAINST THIS DISEASE.

YOUR LEADERSHIP IN ACHIEVING THESE GOALS IS ESSENTIAL, AND I APPLAUD ALL THAT MANY OF YOU HAVE ALREADY DONE TO ATTACK AND CONQUER SO MANY OF THESE PROBLEMS. I AM ALSO GRATEFUL THAT YOU ALLOWED ME TO COME BEFORE YOU TODAY TO CHALLENGE YOU CONTINUE TO WORK -- SINGLY AND TOGETHER, WITH GOVERNMENT, AND TO IMPROVE THAT GOVERNMENT WHEN NECESSARY -- TO REMOVE THE MANY OBSTACLES IN THE WAY OF FREE AND HEALTHY LIVES FOR OUR YOUNG PEOPLE.

FINALLY, I WANT TO PAY A SPECIAL TRIBUTE TO THE WORK OF B.J. STILES AND THE NATIONAL LEADERSHIP COALITION ON AIDS. NOT ONLY HAVE THEY PROVEN AN EFFECTIVE NATIONAL ORGANIZATION



ENCOURAGING DEVELOPMENT OF AND OTHER RATIONAL WORKPLACE AND PUBLIC POLICIES, BUT AT OUR DARKEST HOUR LAST OCTOBER, B.J. AND HIS BOARD STEPPED FORWARD TO EXTEND THE HAND OF FRIENDSHIP TO ME AND THE OTHER COMMISSIONERS, AND WISH US WELL IN OUR WORK. IT WAS A GENEROUS GESTURE, AND THE WORKING RELATIONSHIP BETWEEN THE LEADERSHIP COALITION AND THE COMMISSION WAS EXCELLENT THROUGHOUT MY TENURE. I WANTED TO THANK B.J. PUBLICLY TODAY FOR THAT.

THANK YOU.

*Alvin  
James  
Watkins*

## CHAPTER NINE: LEGAL AND ETHICAL ISSUES

### Section I. Discrimination

Throughout our investigation of the spread of HIV in the United States, the Commission has been confronted with the problem of discrimination against individuals with HIV seropositivity and all stages of HIV infection, including AIDS. At virtually every Commission hearing, witnesses have attested to discrimination's occurrence and its serious repercussions for both the individual who experiences it and for this nation's efforts to control the epidemic. Many witnesses have indicated that addressing discrimination is the first critical step in the nation's response to the epidemic.

HIV-related discrimination is impairing this nation's ability to limit the spread of the epidemic. Crucial to this effort are epidemiological studies to track the epidemic as well as the education, testing, and counseling of those who have been exposed to the virus. Public health officials will not be able to gain the confidence and cooperation of infected individuals or those at high risk for infection if such individuals fear that they will be unable to retain their jobs and their housing, and that they will be unable to obtain the medical and support services they need because of discrimination based on a positive HIV antibody test.

As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the HIV epidemic, and will leave HIV-infected individuals isolated and alone.

On the other hand, the Commission has also received testimony about situations in which HIV-infected individuals have been treated with compassion and understanding by employers, coworkers, fellow students, and members of their local community. From these contrasting experiences, it is clear that the key to an enlightened and compassionate response is education and the planning and development of HIV programs and policies well in advance of the occurrence of the first case of HIV infection. The Commission believes that every employer, school system, and community should start that education and planning process now.

In general, because HIV is blood-borne and sexually transmitted, there is no need to treat those infected with HIV in a manner different from those not infected in such settings as the workplace, housing, and the schools. In the vast majority of workplace and public settings there is virtually no risk of the direct exposure to body fluids which could result in HIV transmission. Detailed Centers for Disease Control (CDC) guidelines have been issued for dealing with HIV infection in those cases which require special handling, such as health care workers and other workers who might be exposed to blood or those schoolchildren who lack control of their body secretions.

Therefore, discrimination against persons with HIV infection in the workplace setting, or in the areas of housing, schools, and public accommodations, is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care for or associate with such individuals.

It is illegal to discriminate against persons with AIDS in those local jurisdictions with AIDS-specific anti-discrimination statutes, in those states which include AIDS as a protected



handicap under their disability anti-discrimination laws, and in programs which receive federal funds. Section 504 of the Rehabilitation Act of 1973 is the federal anti-discrimination statute which prohibits discrimination against otherwise qualified persons with disabilities (including persons subject to a range of AIDS-related discrimination) in any program or activity receiving federal funds.

Nevertheless, complaints of HIV-related discrimination persist and their number is increasing. For example, HIV-related cases handled by the New York City Commission on Human Rights have risen from three in 1983, to more than 300 in 1986, to almost 600 in 1987. Similarly, the Office of Civil Rights which enforces federal disability discrimination law in programs funded by the Department of Health and Human Services reports a rise in complaints related to HIV infection in the past few years. AIDS advocacy groups and civil rights organizations nationwide also are experiencing an increase in HIV-related discrimination cases.

As a witness at the Commission's hearing on discrimination explained, individuals infected with HIV face two fights: the fight against the virus and the fight against discrimination. Just as the HIV-infected must have society's support in their fight against the virus, these individuals must have society's support in their fight against discrimination and must have assurances that policies will be implemented to prevent discrimination from occurring in the future.

One of the primary causes of discriminatory responses to an individual with HIV infection is fear, based on ignorance or misinformation about the transmission of the virus. We cannot afford to let such ignorance and misinformation persist. Each publicized incidence of discrimination, such as the picketing of a school that has admitted a child with HIV infection, perpetuates this ignorance and sows doubts in the minds of those who hear of it. This undermines current and future HIV education programs as well as rational HIV policies.

Furthermore, each act of discrimination, whether publicized or not, diminishes our society's adherence to the principles of justice and equality. Our leaders at all levels—national, state, and local—should speak out against ignorance and injustice, and make clear to the American people that discrimination against persons with HIV infection will not be tolerated.

Just as our society has taken a definitive stand on discrimination against persons with other handicapping conditions and illnesses—such as cerebral palsy, mental retardation, and cancer—society must take a stand on discrimination against persons with HIV infection. The United States has been an international leader in affirming and promoting the civil rights of persons with disabilities. While much remains to be done, as a nation we can take great pride in the progress we have made in embracing persons with disabilities as a part of the mainstream of society. Persons with HIV infection must be clearly and definitively guaranteed their civil rights and be protected against discrimination just as persons with other disabilities are. Such protection enables the HIV-infected person to become a partner with social institutions in limiting further spread of the infection and supporting effective care-giving systems.

#### Obstacles to Progress

The Commission has identified the following obstacles to progress in combating discrimination against persons with HIV infection:

- There is not a societal standard or national policy statement clearly and unequivocally stating that discrimination against persons with HIV infection is wrong.
- There is no comprehensive, national legislation clearly prohibiting discrimination against persons with HIV infection as a handicapping condition.
- There is a lack of coordinated leadership from our public and private institutions on the issue of discrimination against persons with HIV infection.
- A patchwork of federal, state, and local laws is both confusing and, ultimately, ineffective in preventing discrimination or providing remedies.
- Enforcement of existing anti-discrimination laws is slow and ineffective.
- Education about transmission of the virus and about the laws banning HIV-related discrimination is insufficient. This results in ignorance, misinformation, acts of discrimination, and, in some persons, an irrational fear of association with those who are HIV-infected.

The Commission believes that removing these obstacles and eliminating HIV-related discrimination will require coordinated action by all Americans—by individuals and organiza-

ered under Section 504. The Commission supports the position that Section 504 coverage applies to persons who are HIV positive yet asymptomatic.

Section 504's prohibition against discrimination extends, however, only to federally funded programs and activities. Thus, large segments of the population in the private sector do not fall within its jurisdiction. There is no existing federal anti-discrimination protection for persons with disabilities facing discrimination in the workplace, housing, or public accommodations which do not receive federal funds.

#### RECOMMENDATIONS

The Commission believes that federal disability anti-discrimination law should be expanded to cover the private as well as the public sector. Specifically, the Commission recommends:

- 9-4 Comprehensive federal anti-discrimination legislation which prohibits discrimination against persons with disabilities in the public and private sectors, including employment, housing, public accommodations, and participation in government programs, should be enacted. All persons with symptomatic or asymptomatic HIV infection should be clearly included as persons with disabilities who are covered by the anti-discrimination protections of this legislation.

The National Council on the Handicapped, an independent federal agency comprised of 15 members appointed by the President to make recommendations on public policy issues affecting people with disabilities, included a proposal for a comprehensive federal law of this kind in their January 1988 report to the President. Their proposal, the Americans with Disabilities Act of 1988, was recently introduced in the United States Congress. The Commission believes that this type of comprehensive, disability anti-discrimination legislation should serve as a model for federal legislation in this area.

The Commission does not intend for anti-discrimination legislation to invoke affirmative action for persons with HIV infection. In other words, no one would be required to hire an individual with HIV infection based on that status.

The Commission recognizes that particular attention will need to be paid to the impact of such legislation on small employers, as has been done in other civil rights laws. Any dis-

ability anti-discrimination law passed should be consistent with, and not go beyond, the reach of existing civil rights laws for other groups such as minorities and women. In carrying out provisions of the new legislation, all persons with disabilities should have access to the same support services as those covered under other comprehensive federal anti-discrimination laws.

The Commission recognizes that passage of more comprehensive disability discrimination legislation by Congress may take time. Therefore, the Commission believes that it is imperative for the federal government to take immediate steps to inform the public regarding existing federal anti-discrimination law and regarding the remedies which are available for those who experience HIV-related discrimination by entities that receive federal financial assistance. Enforcement of existing law must be strengthened.

In 1986, the Department of Justice issued a memorandum which concluded that although federal disability law prohibits discrimination based on the disabling effects of AIDS, discrimination based on fear of contagion was not covered. The absence of any further statement from the Department of Justice has created confusion and uncertainty about its position, particularly since *Arline* rejected the fear of contagion argument. Specifically, the *Arline* decision stated:

We do not agree with petitioners that, in defining a handicapped individual under Section 504, the contagious effects of a disease can be meaningfully distinguished from the disease's physical effects on a claimant in a case such as this.

To eliminate uncertainty and clarify the applicability of federal disability law to HIV-related conditions, the Commission recommends:

- 9-5 The Department of Justice, which has been designated to coordinate the enforcement of disability discrimination law for all federal agencies, should issue a follow-up memorandum expressing support for the *Arline* decision and withdrawing its earlier opinion that fear of contagion is not a basis for Section 504 coverage. In addition, the Department of Justice memorandum should take the lead in endorsing lower court rulings by clarifying that persons who are HIV-infected yet asymptomatic, as well as persons with symptomatic HIV infection, are covered by Section 504.



- 9-6 The Office of Civil Rights within each agency should develop policy guidelines stating that all HIV-infected persons, including those who are asymptomatic, are subject to the jurisdiction of the Office. The agencies should publicize the availability of the services of their Offices of Civil Rights to those who have experienced HIV-related discrimination and should publish their intent to investigate actively all complaints. The agencies should distribute these policy guidelines to all contractors and grantees.
- 9-7 All agency Offices of Civil Rights should establish a system of aggressive investigation of violations of Section 504 in HIV infection-related cases, including expedited procedures for review of complaints and regular monitoring of those procedures.
- 9-8 Supplemental funds should be allocated to all agency Offices of Civil Rights to increase staff and resources for the enforcement of Section 504.

**State and Local Government Response**

In addition to strong federal anti-discrimination legislation, state and local legislation is needed to provide the local administrative procedures and courts as an alternative to federal litigation for enforcement of the rights of the HIV-infected. Local government officials are able to intervene quickly and utilize ongoing relationships in the community for rapid resolution of discrimination complaints. Rapid resolution is needed as the infected individual may well die in the time interval that a typical case is processed.

**RECOMMENDATIONS**

For state and local governments, the Commission recommends:

- 9-9 If not now the case, states should amend their disability laws to prohibit discrimination against persons with disabilities, including persons with HIV infection who are asymptomatic or symptomatic, and persons with AIDS, in public and private settings including employment, housing, public accommodations, and governmental services.
- 9-10 State-sponsored HIV education campaigns should include anti-discrimination components.
- 9-11 Arbitration, mediation, and accelerated settlement procedures and programs should be developed and utilized to

assist in the speedy resolution of HIV-related discrimination complaints. Mediators and arbitrators should be trained to deal with the special circumstances surrounding HIV-related discrimination cases.

**Community Response**

One of the primary barriers between those infected with HIV and those not infected is the widespread belief that HIV infection is someone else's problem—there is no need to become educated about it. Individuals in large and small communities across the country are discovering that this is not the case, as they have learned to accommodate individuals with HIV infection living in their midst. In those communities which have developed HIV-related policies and guidelines for health care settings, the workplace, and the schools, and had their programs in place before the first case of HIV infection appeared, fears were reduced and individuals with HIV infection have been accepted. In some cases, where community leaders have not educated the community and not developed policies in advance, the result has been discrimination fueled by fear and ignorance, leading to divisiveness in the community and suffering for the family and friends of the infected individual.

To prevent discrimination, the primary tools at the local level are comprehensive, participatory educational programs, advance planning, and preparation. Educational programs about the transmission of the virus, the laws against discrimination, and the reasons for compliance should be developed by employers, school systems, and health care providers. Education should be provided in simple language for the layman and it should come from a person who has the confidence of those being offered the information. Local officials in government, business, public health, schools, and religious and community organizations should assume a leadership role in this effort.

**RECOMMENDATIONS**

Specifically, the Commission recommends:

- 9-12 Organizations representing health professionals should adopt a public policy stating that their members have an ethical obligation to treat patients with HIV infection in a non-discriminatory fashion. These organizations should develop education programs for their members

which include education on non-discrimination.

- 9-13 Religious leaders should take an active role in the anti-discrimination education effort with members of their parish or congregation. In addition, religious institutions should develop outreach programs for individuals in their community with HIV infection and should involve the congregation or parish members in volunteer activities.
- 9-14 Employers should develop an HIV education program for all employees. Education programs to combat discrimination should emphasize two goals: information about transmission to prevent the further spread of HIV infection and education about legal issues—such as how to ensure confidentiality and prevent discrimination. This approach should be used in all workplace settings.
- 9-15 Employers should have each department or office review and revise policies and procedures in light of medical and legal information related to HIV infection, and, where applicable, interact with the community to further public education about HIV infection. This last step may be most applicable to the public sector.

**HIV and the Schools**

The Commission has heard testimony about the experiences, both good and bad, of a number of HIV-infected schoolchildren. Important lessons can be learned from those model communities which have policies in place regarding HIV infection in advance of the first case, and have been able to accept the HIV-infected individual in their schools without fear and discrimination. In some school districts, a well-coordinated system of educational programs has produced an enhanced sense of community pride and satisfaction from having worked together to fashion an enlightened, rational policy on HIV infection for the schools. The Commission has been impressed with the courage and compassion which school and public health officials have displayed in planning and preparing for a positive outcome. A number of common principles emerge from the experiences of these model communities. The recommendations in this section should be implemented in conjunction with the school-based education recommendations in the education chapter of this report.

**RECOMMENDATIONS**

Specifically, the Commission recommends:

- 9-16 Each school system should establish a board-developed policy, with accompanying guidelines, for dealing with an individual with HIV infection in the school before it is confronted with the first case. The Centers for Disease Control or other public health guidelines should be utilized but the policy should be flexible and allow each case to be dealt with on an individual basis, based on medical facts.
- 9-17 Educational materials about the transmission of the disease and the anti-discrimination laws should be developed and disseminated and, where necessary, explained fully by legal and medical experts. Age-appropriate materials on these topics should be developed for students.
- 9-18 School officials should identify a decision-making structure to review all HIV policies and procedures and to deal with each individual case. Legal, medical, and public health consultants from the community should be involved.
- 9-19 Open public meetings should be scheduled, featuring school officials, medical and legal consultants, and community officials, to discuss the board's policies and the rationale for its decisions. School officials must be prepared to educate the entire community, including parents, public officials, clergy, pediatricians, students, and media representatives, about the reasons for the board's decisions. Support and counseling should be offered to employees, parents, or children who are troubled by the board's decision.
- 9-20 In any communications about specific HIV-infected individuals, the confidentiality of the schoolchild or staff member should be maintained to minimize the opportunity for discriminatory behavior.
- 9-21 A team should be formed with responsibility for reviewing all aspects of the case on an ongoing basis and monitoring medical or legal developments that might affect school district decisions.
- 9-22 School officials should actively participate in community education efforts so that they support acceptance of HIV-infected individuals in the schools in a non-discriminatory manner.



- 9-23 Educational associations should disseminate information to their members on the policies and procedures used by those communities which have accepted an HIV-infected individual in their schools without fear and discrimination.

#### HIV and Health Care Settings

The Commission has heard testimony that some hospitals and some health care workers in hospitals have been unwilling to care for HIV-infected persons or have provided inappropriate care because of fear. Steps must be taken to eradicate this fear because these institutions are critical sources of care and are leaders in community attitudes.

Over the next five to 10 years, even more community-based health care facilities, such as group homes, nursing homes, hospices, and mental health facilities, will be needed in many communities to care for patients with HIV infection. Long-range planning for these facilities must be undertaken now in order to avoid fearful and discriminatory reactions from the community.

#### RECOMMENDATIONS

Specifically, the Commission recommends:

- 9-24 Hospitals and providers of health care to HIV-infected patients should establish a mandatory education program for all hospital employees, including an anti-discrimination component and professional, confidential counseling for all employees. Health care workers need to be reminded about the social context of HIV infection and the need for confidentiality and protection of private medical information.
- 9-25 Health care providers dealing with patients with HIV should make available a patient care advocate, if one does not yet exist, to regularly contact individuals with HIV, so that patients could confidentially report treatment problems. Health care professionals who have repeated, substantiated complaints made against them, and who resist education, should be formally reprimanded and placed on probation. In general, the Commission feels that remedies such as this should be short-term in nature and could gradually be phased out.
- 9-26 State and local governments and health care providers should develop long-range plans now to anticipate the need for community-based health care facilities, and should develop a strategy to

educate community members to accept facilities and prevent discriminatory responses.

- 9-27 Those working to educate a community in preparation for acceptance of patients with HIV infection should develop a strategy to prevent discrimination. Some important points to include are: allowing time for education; knowing the legal issues involved; mobilizing political, community, and religious leaders for support; bringing in legal and public health experts; meeting with people who have concerns and listening to their concerns.

Senator WEICKER. Thank you very much. Before I proceed to questions with Admiral Watkins, those that are in wheelchairs, I would like to get as many as possible up here. This is a tremendous statement by the entire community. I think we have the entire community right in this hearing room. [Applause.]

If you want to just come forward, that will enable more that are in the back to be in a comfortable position, as comfortable as possible during such as this. I think it is terrific that you are all here.

Admiral Watkins, one question that I have is that the words that I hear all over the place are well, we like that Presidential Commission report, but we do not like the antidiscrimination aspect of it. We can take the report, but we do not want that antidiscrimination aspect of it. Have you heard this, also?

Mr. WATKINS. Yes, I have, Senator Weicker.

Senator WEICKER. That is what we are contending with here. That is why it is such a privilege to have you here, because it is not just a question of discrimination against AIDS, which is the most recent discrimination, but the decades old discrimination that so many have suffered with here in this room.

I could not help but think, with all the concern for the ritual of the Pledge of Allegiance, how many people think about those last words, indivisible with liberty and justice for all? And justice for all. That is what the Americans with Disabilities Act is all about, justice for all.

So instead of being a ritual, let us make it a reality. [Applause.]

Congressman Owens.

Mr. OWENS. I have no questions, Admiral, but since you first came to my office for a brief introductory session, I have been quite pleased with the way you have moved in this city and the Nation as a whole, to establish a certain kind of calm and a return to reason on this whole issue. I want to congratulate you on a magnificent job that you have done.

We recently passed legislation related to AIDS on the House level. It may have some shortcomings, but I think that the positive, upbeat nature of that legislation is due primarily to the fact that you established an environment in which we could work; an environment where anybody who was not a reasonable person was isolated. In several votes that we took, we isolated those unreasonable and hysterical people.

I think you are to be congratulated for helping to establish that atmosphere which made possible the passing of the current legislation.

Mr. WATKINS. Thank you, Congressman Owens.

Senator WEICKER. Thank you, Congressman. Congressman Jeffords.

Mr. JEFFORDS. Admiral, it is good to see you again. I deeply appreciate the earlier conversation we had on the dynamics of the work force, which put me a little ahead of the curve in understanding, and I appreciate that, and your dedication to public service after work as a tremendous member of our naval establishment.

Congressman Waxman introduced a bill earlier this year, and I joined him on that, on counseling and testing and discrimination. I just want to alert everyone that all we could get out was counseling and testing. The problems of discrimination, the inability to ar-



ticulate anything which we could get past the House on the floor debate, many of these things indicate that that is going to be the most serious problem that we face when we get to ADA, is how we can work in to ensure the rights of those that have AIDS.

I appreciate very much your very excellent testimony on that. I want to alert my colleagues that it is going to be no easy task and hopefully we will find a rational way to deal with this. Your statements are going to be so helpful in that regard, and I thank you for that.

Mr. WATKINS. Thank you, Mr. Jeffords.

Senator WEICKER. There will be further questions for response to the record, more particularly those of the Chairman, Senator Harkin, who I might add, without his help, without his hard driving on this issue, we would not be here today. He is a magnificent chairman.

He has specific questions for you, Admiral Watkins, which I would appreciate your responding for the record.

Mr. WATKINS. Thank you, Mr. Chairman.

Senator WEICKER. Thank you very, very much for all you have done for the Nation. Thank you. [Applause.]

Now we have a panel of witnesses, Mary Linden from Morton Grove, IL; Dan Piper from Ankeny, IA, accompanied by his mother, Sylvia; Jade Calegory from Corona Del Mar, CA; and Lakisha Griffin, from Talladega, AL.

I think that we will go in order of how I called the witnesses. Please be relaxed. You are among friends, both in front and behind you. I think we want, and America wants, to hear your story. Please proceed. Mary, you are the first witness.

**STATEMENTS OF MARY LINDEN, MORTON GROVE, IL; DAN PIPER, ANKENY, IA, ACCOMPANIED BY SYLVIA PIPER, ANKENY, IA; JADE CALEGORY, CORONA DEL MAR, CA; AND LAKISHA GRIFFIN, ALABAMA SCHOOL FOR THE BLIND, TALLADEGA, AL**

Ms. LINDEN. I am deeply honored to be asked to speak before the committee. The Americans with Disabilities Act is the greatest act ever passed in the 20th century, I believe, sir.

You see before you a woman who, until 1987, did not even believe that she could help with anything or even change her own outlook. My father had always chosen my path, before his death in 1964. There was no accessible housing for him to use for me, so he put both my mother and myself in a retirement home. Upon her death, I moved to their adjacent nursing home. His access still provides for my care.

His words, "As long as I am paying for your keep, you take my orders" still go through my mind every time new challenges offer themselves.

At 7 years of age, I entered the Jesse Spalding School for the Crippled, a venerable institution of the Chicago school system, a segregated institution of the Chicago school system which is still in operation today. I was there and they never even taught me to write. I learned to print after, I taught myself to print after I finished high school, with a class rank of 9 out of a class of 45, in 1951.

No career plans or educational plans were made for me because the school and my parents thought I was too disabled to compete. I have been after my education for 20 years. I got most of it after transportation became accessible, after a fashion that is. It is not. I have got 61 hours of credit.

But we cannot get from Morton Grove to Northeastern University because the two transportation organizations will not unite, so discrimination still exists. I want my 4 year degree so that I can go and have Executive Director Jim DeJong of the Coalition for Citizens with Disabilities [CCDI] in Illinois, for the most precious thing in the world, a paying job.

I beg of you to pass this act, so that other children will not have to go through what I went through, will not be stared at, will not be limited as to how many times they can see things. It will not be once every 6 months that we get to go shopping. If we pass it, we can go stare at the glass windows any time we want to.

The youngsters here will have much more chance than I did, but they should have a chance to work and to contribute as much as they can.

I thank you.

[The prepared statement of Ms. Linden follows:]



Testimony of Mary Ella Linden  
before the  
Senate Subcommittee on the Handicapped  
September 27, 1988

on the  
Americans with Disabilities Act (ADA)

Ladies and Gentlemen, I am deeply honored to speak before you in support of the Americans with Disabilities Act of 1988. This legislation is very much needed, not only for the provisions it contains, but also for the principle it embodies: freedom from discrimination on the basis of a disability which will give us the opportunity to participate in American society as equal members, as fully human beings.

When the Act becomes law, people with disabilities will have several accepted, legal, legitimate channels through which to air their needs and grievances. There will no longer be a necessity for those demonstrations which the noninvolved world may find so distasteful. Freer access to job opportunities will allow people with disabilities to be seen as human beings with the same needs, drives, and desires as the nonimpaired in the workplace. Perhaps people will learn not to stare so hard, too.

You see before you a woman who did not learn until August 10, 1987, that she had the strength to help with anything or to change her own outlook. My father had always chosen my path until his death in 1964. There was no alternative housing situation for my father to use for me after his death, but a nursing home. And so, at the age of 34, I was placed in a retirement home with my mother upon his death. And upon her death I was

placed in the adjacent nursing home. His estate still provides for my care. His words, "As long as I'm paying the bills, you take my orders", have echoed through my mind whenever new challenges have offered themselves.

I was born in Chicago in 1930, attended segregated public schools, and graduated from high school in 1950 with a class rank of ninth out of forty five. But no plans were made for me for a career or for higher education, because I was considered too crippled to compete by both the school and my parents. In fact, the school never even took the time to teach me to write! I taught myself to print in 1951 after I had graduated from the public school system. However, I can still neither read nor write in cursive. It is very embarrassing to have to ask someone to read a letter or a professor's comments. The effects of the school's failure to teach me are still evident today. Fortunately I had been taught to use the typewriter by a very creative and resourceful aunt. This skill has enabled me to obtain sixty-one hours of college credit. But I am getting ahead of myself.

Both of my parents were children of Swedish immigrants -- eager to succeed and to be American. They believed the doctors who made surgical adjustments on my leg and heel chords in successive operations between the ages of 18 months and three years. I spent most of that time in the hospital. When I was six years old, a specialist told my parents that the doctors had cut too much and that I would never be able to walk. Nowadays a malpractice suit might have been brought against the surgeons or even the doctor who delivered me, but not in the 1950s and certainly not by my parents!

When I was seven years old I entered the Jesse Spalding School for the Crippled, a venerable institution even then of the Chicago public school system which is still in existence today. I always attended segregated



schools, rode to and from school in a cab (paid for by the school system) and had little or none of the usual childhood activities, especially those involving socialization. As an only child, I had no sibling to play with, to interact with, to learn from, or just to be with. The few school activities that did occur, my parents did not encourage me to attend. And shopping expeditions -- which all children love -- were not often possible. Twice a year I went to the dentist, went shopping, and to a restaurant. Otherwise I saw little of the "outside world" and they saw little of me, as was the custom. The accessibility of public accommodations, especially in public meeting places, will open the doors for all people with disabilities and the general public will finally begin to see us as we are and learn not to stare, cringe, or otherwise react to our mere presence among them. But, back to school, the teachers in the sight saving class were unable to show a pupil with one usable hand how to form the letters of the alphabet. The embarrassment of trying to write on the blackboard in front of the other students who could write is something I still dread to remember. After the teachers had declared me unable to acquire writing skills, my patient aunt taught me how to use a typewriter during my tenth summer. A lack of training in activities of daily living skills meant that I had to learn them on my own.

The years from my graduation from high school in 1951 until 1987 are one big blur of discrimination. In 1951 I studied history by a correspondence course. Each of the two courses took two years to finish because I had not learned correct study habits in the public school system. Over those many years I have managed to acquire sixty-one hours of college credit, much of it when accessible public transportation finally became available through the Rail Corridor Access System. The regional transit authority provides a lift equipped bus that will travel along the same route

as the suburban train system. However, at this time I am unable to enroll in a four year college and complete my degree because of the inability of the transit systems to cooperate within the same regional authority! I want to complete my degree so that I can go to Director Jim DeJong of the Coalition of Citizens with Disabilities in Illinois and ask him for the most precious thing in the world, a paying job! More than anything else I want to devote the rest of my life to the Coalition and its work on behalf of people with disabilities.

I beg you to pass this bill. Let each of us make as tangible a contribution to American society as we can. The ADA will make things possible for today's children with disabilities that I never even dreamed were possible for me. It is deeply needed for many reasons, chief among these is that it will show people with disabilities, as well as the whole community, that we are entitled to become full human beings, participating in our community. No longer will a person need to grow up without knowing how to write because teachers did not take the time to show them how to form their letters. The increased transportation services demanded under ADA will make possible much greater integration of the whole community. There will be no cases like mine where the disability alone determines where we live and what we do. God only knows how many contributions society has missed because there were no provisions for the disabled to move about freely and to determine their own lives. I pray that the Americans with Disabilities Act will be passed as soon as possible so that we may become another melted minority. Thank you very much for your patience and for this opportunity to speak today.



Senator WEICKER. Mary, I thank you. That is courage and optimism. Just great. Just great.

Our next witness is Jade Caleyory from Corona Del Mar. Jade, nice to have you with us.

Mr. CALEGORY. Thanks.

Hi. My name is Jade Caleyory. I am 12 years old and I go to Corona Del Mar High School, CDM for short, in California. I am in the seventh grade and I just started this new school last week. I have been mainstreamed since the second grade.

You see, I was born with spina bifida and I have had lots of operations. I started kindergarten on a gurney and had to go to a separate school. But now that I am OK enough, I go to a regular school. So I wanted to thank you all for passing that law, 94-142, so I can go to a school with all of my friends.

CDM is my third regular school. When I was a little kid, I got called names and was teased a lot because of my disability. I know now that it was just because those kids did not understand, but the kids at my new school are smart enough to know that I am not different because of my disability.

But still, sometimes when I meet new people, I wish they would talk to me first, before they ask what is wrong with me, or what happened to me. It makes me feel like my wheelchair is more important than I am.

Anyway, I was born in 1976, 200 years after the Constitution promised freedom and independence for all of us, no matter what. Thanks to you, and the people who sat in those seats before you, I am lucky to grow up in a world that is different than when you folks were kids. Thanks to you, people are not separated as much by their age, religion, color of their skin, disability, whether they are men or women, stuff like that. Things are getting better, but it sure does take a long time.

Even though some things have gotten better, there is more that can and should be done. It is kind of like my grades in school. They are good, but I know that if I work harder, they can get even better. [Applause.]

I guess that is why I am here today, not because America's 36 million citizens are physically challenged, but because we are also politically challenged.

Although there are over 4.5 million other kids with disabilities, there are only a few of us who have the chance to work and pay taxes. I guess I am luckier than a lot of other kids with disabilities, I work as an actor.

My movie, "Mac and Me" is out right now. Maybe you have seen it. I like it because it shows that kids with disabilities are not any different and can do the same things as other kids without disabilities, if given a chance. It is the first movie to star a kid with a disability, and it is a great family film full of adventures. I even got to do some of my own stunts.

I also think "Mac and Me" is terrific because it shows a kid with a disability giving help instead of just getting help, and nobody tries to cure me, or take away my disability by the end of the movie. [Applause.]

That gives people the idea that it is okay to be disabled and just be accepted for who you are. I hope there will be more non-disabled

movie roles for disabled actors. We could be anybody, because after all we are, in real life.

R.J. Louis, who produced "Mac and Me", auditioned only disabled kids for the role. He knew disabled kids could be good actors. He gave us a chance.

At least one-half million dollars from "Mac and Me" is going to the Ronald McDonald Children's Charities to help kids with cancer. McDonald's is a good friend to the disability community. McJobs helps mentally retarded people train for a job. McDonald's has made seven TV commercials with disabled actors and was the first to have braille menus for blind customers.

McDonald's is a great company. They are a good example of how a big company should help people with disabilities become more independent. But if other companies cannot learn from McDonald's, then this American With Disabilities Act can teach them that 36 million Americans with disabilities are an important part of this world, too.

Orion Pictures wanted to advertise those theaters showing "Mac and Me" that were accessible to people using wheelchairs, but the theater owners would not let them. Here is this great family movie and a lot of people from the disability community do not even know if they can get into the theater to see it. I do not think that is fair.

I learned in my school that you are the Congress and that you have the power and the responsibility to change the laws that make life better for everyone. TV and movies have the power and responsibility to change the attitudes that also makes life better for those of us with disabilities. Without new laws like this one, and new attitudes, 36 million of America's citizens will be stuck without equal rights, and that is not fair.

Aside from acting, I like racing in my wheelchair. I have won 5K and 10K races. After my mom and I go jogging on the beach back in California, we sometimes take the bus back home, or at least we try to. Most of the buses do not have lifts on them. Some of the drivers are very rude and get mad if I want to take the bus. Can you believe that?

I work and part of my taxes pay for public buses and then they get mad just because I am using a wheelchair. I do not think that is fair or right. I am important, too.

If I really have to, I could get out of my wheelchair and climb up the stairs, but I do not think I should have to. Maybe another person using a wheelchair is trying to go to work or school and they should not have to crawl up the stairs and get dirty. Or maybe they cannot even get out of their wheelchair by themselves.

Anyway, I was thinking, if all of the buses had lifts on them, it would be better for all of us. It is hard for people to feel good about themselves if they have to crawl up the stairs of a bus, or if the driver passes by without stopping. They could be late to work or school and that is not even their fault.

I guess my teacher was right about history repeating itself. I learned in school that black people had problems with buses, too. They had to sit in the back of the bus, but some of us with disabilities cannot even get on the bus at all. Black people had to use sep-



arate drinking fountains and those of us using wheelchairs cannot even reach some drinking fountains. We get thirsty, too.

Black people had to go to separate theaters, schools, restaurants, and some of us have to, also. That is not because we want to, but because we cannot get in. That means that we do not have a choice. I think that everybody should be able to have choices, do you not?

In "Mac and Me", my family moves from Chicago to Los Angeles, and as we talk about the new house, we talk about lowered counters, no stairs, and wide hallways. I am excited that Congress has already dealt with things like accessible housing in passing the Fair Housing Act. That is neat. Thanks.

Because of "Mac and Me", I have been traveling around the country and I noticed that Chicago and New York are harder to get around. There are not as many cuts in the curbs, and the bathrooms in the hotels are not made for those of us using wheelchairs. I hope that you will help us make this world more open to people with disabilities.

You can help us make that happen. We have a right to have a world where people do not build houses and schools with steps and no ramps, buses without lifts, curbs without cuts, TV and movies without captions. I am not old enough to vote yet, but if I were, I would vote for this bill. I am sure that some of the people from your States and hometowns who voted for you were disabled. They would vote for this bill, too.

This is our future and just like Martin Luther King 25 years ago, we have a dream, too. The Americans with Disabilities Act of 1988 can help to make that dream a reality. Thanks for listening and helping us with our political challenge to make this world a better place to live for all of us with disabilities. [Applause.]

Senator HARKIN [presiding]. Thank you very much.

Bobby Silverstein, who a lot of you know here, our staff director, saw the movie last weekend. I have two young kids and this weekend I am home, so I get to go see it this weekend. Now I really want to see it.

I apologize to many of you for having been gone for a short period of time, especially those who have testified. As so often happens around here, things conflict. I am on the Appropriations Committee and we had to wrap up a certain item that I was involved in, so I apologize for having been gone for a small amount of time.

I also want to do two more things. I want to recognize a group of individuals, citizens, who have come down here from New Jersey. I understand they all got on the train this morning and came down here, a group of about 40 or more citizens, some of whom use chairs. Over 100, 170.

Raise your hands. All of those of you who came down on that train this morning. Look at that.

[A show of hands.] [Applause.]

I welcome you here and we really thank you for taking the time and the energy to come down to this important hearing.

Second, I do not know what your time element is right here, but I want to publicly say thank you to Senator Weicker for his many years of championing the cause of many Americans, not just those with disabilities, but those who perhaps find themselves at a disad-

vantage one way or another, and fighting for the underdog. I know of no more eloquent nor determined individual in the entire Congress than Senator Weicker, in what I call fighting for the underdog and not the topdog.

I just want to publicly say thank you for your many years of service and thank you for chairing this subcommittee before I took over, and also for you and your staff's work in really making this subcommittee work well and getting this legislation through. He really deserves our thanks. [Applause.]

Now I would like to turn to two individuals that I hold in very high esteem, Dan Piper and his mother, Sylvia, from Ankeny, IA.

I want you to know, Dan, that I often use you as an example when I go around the country, talking about what early intervention can do. Dan, to me, represents a prime example of why we must push very hard on early intervention. I think you will shortly see what I mean.

We welcome you here, Dan, and welcome your mother, Sylvia. Please proceed as you so desire.

Ms. PIPER. OK. Dan, how old are you?

Mr. PIPER. I am 17.

Ms. PIPER. What is your address?

Mr. PIPER. 406 N.E. Sherman Drive, Ankeny, Iowa.

Ms. PIPER. Dan, you attend Ankeny High School. Do you have friends at Ankeny High School?

Mr. PIPER. Yes. I have Jeff Bachman, Cory Heagle, Jayme Martin, Chris Piper, Aaron Baugher, Melissa Berry and Melissa Berry is a nice girl.

Ms. PIPER. That is Dan's girlfriend and he is also mentioning his brother. It is interesting to note, he considers him a friend today. Dan, have you had any jobs?

Mr. PIPER. Yes. I work at a job. I work at Parkview Junior High.

Ms. PIPER. Where else have you worked?

Mr. PIPER. I worked at Walmart, Hardee's, Dillows other stuff.

Ms. PIPER. When you are an adult, and you are not going to school anymore, do you want to work?

Mr. PIPER. Yes.

Ms. PIPER. Where would you like to work when you are an adult, and earn some money?

Mr. PIPER. I want to earn money in a video store.

Ms. PIPER. Dan, where would you like to live?

Mr. PIPER. I want to live in an apartment, number 3999.

Ms. PIPER. Where would the apartment be?

Mr. PIPER. Des Moines.

Ms. PIPER. That is interesting. Dan's father and I are kind of gearing his adult life in Ankeny, but he is obviously choosing otherwise.

I would like to share with you and do appreciate the opportunity. At the time of Dan's birth in 1979, his father and I were advised by the attending physician and pediatrician to place Dan in an institution. It was a very difficult time for his father and I and the grief overrode logical decision making.

Dan's development was described as hopeless. His dad and I rejected this recommendation, and Dan has been living at home with his family since his birth. I might mention here that his birthday is



Sunday, and that is a really important moment to him. He will be turning 18, age of majority.

Dan received services through the Child Study Center at 6 months of age. Our area education agency provided an in-home teacher until age 4, when Dan was enrolled in a segregated preschool program in Des Moines. His integrated educational experience began at 8 years of age until the present.

Dan, despite an IQ of 39, is a typical teenager who has just entered his fourth year of quality integrated special education in the Ankeny School District, which is his home community. This was only achieved through intense advocacy efforts by his father and me, coupled with representatives from ARC/Iowa, the Association for Retarded Citizens.

In Ankeny, Dan finally has had the opportunity to form friendships with his nondisabled peers who live in his community. He serves as manager for the football team. He was elected as his regular ed homeroom representative for the Pep Club. He attends all school and community functions. Dan participates in music, art, physical education, industrial arts, and home economics in regular classrooms with his nondisabled peers.

Since Dan is now rapidly approaching the end of his school years, the major thrust of his educational experience is onsite vocational training within cooperative businesses in Ankeny.

Positive relationships with regular education high school students resulted in Dan's favorite activity, The Greasers, a lip sync group of high school students featuring Dan as lead performer. The group makes appearances at various functions within the Des Moines area. This is an ideal opportunity for a young man who has speech problems to express himself with the arts.

Dan, a young man with Down Syndrome, is considered medically fragile. He is dependent upon insulin and a rigid diet to respond to his diabetic condition. Dan has learned to administer his own injections in spite of the doubts held by the adults in his life, and his parents are included as doubters.

Transition into adulthood holds many fears for Dan's father, his brothers Larry and Chris, and me. Dan can work and can live independently in the community with services, but how many doors will be closed to employment and community living when his parents are no longer around to break down those barriers?

Our family has served as effective advocates for Dan. Many children, with whom I have contact, do not have the luxury of consistent support. The reality is that, while our advocacy has proven successful, we will soon face the private sector where there are no assurances.

We have invested in Dan's future. The State of Iowa has invested in Dan's future. And the Ankeny Public School District has made an investment in Dan's future. We fear that he will be denied employment based on disability rather than capability. He has already encountered discrimination with employment.

Dan indicates that he chooses to live in an apartment, of course in Des Moines as opposed to our choice in Ankeny. Will the landlord decide, because Dan has mental retardation, that he is incapable of independent living? Will he be denied access to transporta-

tion? Will restaurants refuse service? Will hotels refuse accommodations?

Senators and Representatives, are we going to allow this investment of time, energy and dollars, not to mention Dan's ability and quality of life, to cease when he reaches age 21? Over a decade ago, the U.S. Congress enacted Public Law 94-142, which guaranteed Dan the right to special education, and 504 to address disabilities in the public sector. It is now time to expand handicapped antidiscrimination to the private sector so that Dan's and our visions for his adult life and the lives of many others can finally become a reality.

We implore you to enact the Americans With Disabilities Act as quickly as possible. Thank you. [Applause.]

Senator HARKIN. We are going to hold the questions until we finish the panel, but I just say that I saw Dan this summer at the fair grounds. Jade, you better look out, he is coming.

Our last witness is Lakisha Griffin from the Alabama School for the Blind in Talladega, AL. Lakisha will describe her background. She's had no schooling until recently. Her positive experience at her current school, where she is an A student, and her hopes for the future.

Lakisha, I hope I pronounced your first name correctly. We welcome you here and you are among friends. Please proceed to tell us about your experiences and what you would like us to know about this bill.

Ms. GRIFFIN. Good morning, Mr. Chairman. My name is Lakisha Griffin from Lafayette, AL. I am 14 years old and a seventh grader at the Alabama School for the Deaf and Blind in Talladega, AL. With me today is Ms. Dot Nelson, who is a house parent at my school.

I am glad to talk with you today regarding the need for the Americans with Disabilities Act. I understand that this proposed law would protect blind and other disabled people from being treated badly because of our handicap. Discrimination is a big word, but I can tell you that it is real, and I hope Congress will do something about it.

I am the youngest of six children. Until 2 years ago, I was educated at home by my two older sisters. Lafayette is a small rural town in Alabama, and my family did not know much about opportunities for blind people like me. All of my friends at home were sighted. Sometimes the other kids would not want to play with me, and sometimes even their parents acted sort of funny toward me.

I am not sure why this happened, except that many people sometimes do not like people who are different.

My life changed a lot in 1986, when I enrolled at the Alabama School for the Deaf and Blind in Talladega. I made many new friends, both blind and sighted, and I have been on both the A and B honor rolls. I also learned braille at the Alabama School, and that has opened up a new world of knowledge for me. I also like math and English.

When I grow up, I want to go to college to become a teacher. I want to teach braille to other blind people, since the knowledge of braille has been so useful to me.



I know that I can become a braille teacher if I study hard. My parents have worked hard in the textile mill, and I know that I must also work hard to get ahead in life. I hope to be the first person in my family to go to college. I am worried, however, that people will treat me differently because I am blind, black, and female. Some people will think that I cannot be a teacher, but I know I can.

I do not need sympathy. I do not need prejudice. I do need a fair chance to get a job and live independently. Discrimination against blind and other disabled people must be eliminated, and the Americans With Disabilities Act will help that happen. People pay attention when it is the law.

Please pass the Americans with Disabilities Act now so that I and other young people can look forward to a fair chance tomorrow.

Thank you. [Applause.]

Senator HARKIN. I think for the benefit of those who are sitting back there in the back, Lakisha went through that whole thing from her memory. That is really brilliant.

Well, you are just all outstanding. What can I say? You are tremendously outstanding, every one of you.

I would recognize, if you want to, Senator Weicker for any questions or comments you might have for the panel.

Senator WEICKER. I have no questions at all. I cannot say anything that will better express to America what needs to be done and what each of our panelists has stated. I am so proud of you. I really am.

Senator HARKIN. Congressman Owens.

Mr. OWENS. I have no questions. I want to just congratulate and thank the witnesses. Your being here will help us a great deal in the passage of this legislation. Thank you very much.

Senator HARKIN. Congressman Jeffords.

Mr. JEFFORDS. I just have one question. One of the most controversial aspects of 94-142 was the mainstreaming aspect. I wondered if you could give us some reflections on the reaction to the mainstreaming and whether it has improved, from your observations, as far as the acceptability in the schools, since the initiation of the 94-142 from your own history? Jade.

Mr. CALEGORY. You mean, like is it easy to get into the school?

Mr. JEFFORDS. How are the young people reacting, perhaps from your observations not only to yourself, but other disabled that might have come into your school since the time you started?

Mr. CALEGORY. How did the young people react to me?

Mr. JEFFORDS. Yes, and others that you have observed? And has it improved over the course of time?

Mr. CALEGORY. In junior high and in my new school, they do not treat me different or anything. They just treat me like I am one of them.

Mr. JEFFORDS. Did you observe any change in the other schools that you were in, over the course of time, or were you still kind of treated different?

Mr. CALEGORY. Any other of my schools, was I treated differently?

Mr. JEFFORDS. Yes.

Mr. CALEGORY. I think so. I was a little bit teased, like I said in my speech, that I was teased because of my disability and just stuff like that, in some of my elementary schools. But the teachers were good about it, and stuff like that. It was just the kids did not understand.

I am with the Easter Seals now and I think what we are trying to do is educate them so they will not tease kids with disabilities, so they will not tease them anymore, so they know what is going on and they can make friends with them.

Mr. JEFFORDS. Thank you.

Senator HARKIN. Thank you. I just have a couple of questions, maybe just to further elaborate on a couple of things, and why this bill is so necessary.

Mary, I am sorry I missed your testimony. However, I have read it. You have really had a rough time. What I would like to ask you is you are now 58 years young?

Ms. LINDEN. Yes, I just turned.

Senator HARKIN. How would your life be different today?

Ms. LINDEN. I think I would be a 30-year veteran of the Chicago school system, or one from the suburbs, because my family, my mother, my father and all my aunts, were teachers. Of course, you follow in your family's profession. By now I would be worried about my retirement.

I think I would have been in one of the teacher's union because I love politics, but I do not know. That is about it.

If the transportation were better, I would right now be too busy to come here because I would be working for my degree at Northeastern, because I want to go up and get my job. And Mr. DeJong needs a fully educated woman, not a half one. That is where I would be right now.

Senator HARKIN. So I guess, Mary, what you are saying is that not only will future generations benefit from this bill, but you will, also?

Ms. LINDEN. Oh, yes, sir. The day the bill is passed, the very day that you gentlemen have fixed it up so they can use it, my attorney will put a lawsuit through the Federal courts to sue the RTA and the CTA for whatever I have to.

Senator HARKIN. I like your attitude.

Ms. LINDEN. I will get my education, I swear. I would intend to sue them, because there is no reason for this. They have a transit authority and it provides provisions for handicapped people in the city of Chicago and the suburbs, but there is no way in the world that we can get into the city of Chicago or out of it.

And would you believe we have to be home at seven o'clock at night? My gosh, the shows do not even start until 8:30. [Applause.]

Senator HARKIN. Mary, I just had a letter here.

Mr. Chairman, I hope you will express my deep regret for missing the hearing this morning. I am particularly sorry not to be able to welcome Mary Linden, the witness from Illinois. I had the opportunity to meet her yesterday, and I know the committee will benefit from her testimony.

The subject of this hearing is important, not just for Americans with disabilities, but to all Americans. I look forward to reading the testimony of all the witnesses. Thank you very much, Senator Paul Simon from Illinois.

He could not be here, but you saw him yesterday, right?



Ms. LINDEN. Yes, we did and I thank him very, very much.

Senator HARKIN. Jade, do you see the day coming when you will get a role that will be advertised as child actor and not as child actor with disability?

Mr. CALEGORY. Right now my mom had my agent, if she got information for a part for someone with blue eyes or someone to play basketball or something, that she would send me out for it. So right now I am going out for any part that comes out, whether it is for someone with blue eyes, or something like that.

Senator HARKIN. I am going to see that movie this weekend. It is down in our neighborhood and I am going to go see it. "Mac and Me."

Lakisha, I was very moved by your testimony and by what you have had to overcome and what you are overcoming. I have all the confidence in the world that you are going to be the first person in your family to go to college, and that you will indeed be a braille teacher. We know you are going to do it, do we not? [Applause.]

Is this your first trip to Washington?

Ms. GRIFFIN. Yes, it is.

Senator HARKIN. I want you to know that within the last year, we have prevailed upon the Sergeant of Arms and we now have braille maps of the entire Capitol and indeed of all of the downtown monuments and surrounding area. Have you gotten those yet?

Ms. GRIFFIN. No, I have not.

Senator HARKIN. As soon as you get done here, how about getting a set of those, OK?

Ms. GRIFFIN. OK.

Senator HARKIN. I am sure that you can get taken around the Capitol and make sure that you take in everything that you can while you are here, OK?

Ms. GRIFFIN. OK.

Senator HARKIN. We have those for anyone else here who needs them, we have braille maps now of the entire Capitol and of all the downtown monuments and the mall. If you have any problems getting them, you come see me or see one of my staff. I will make sure you get them.

Dan Piper, like I said, Dan, I use you a lot in my speeches around the country. You are getting to be pretty famous, Dan Piper from Ankeny, IA. I just have to tell you, you are not only a source of pride and joy to your parents, but a unique sense of pride and joy to me and to a lot of people.

The State of Iowa has had an early intervention program—I hope you do not mind if I be a little chauvinistic here—since 1975, I think. Since the mid-1970's anyway. We have got a good support group in Iowa. This is a great example of what can be done with early intervention.

Dan, I know from your mother, and also from your own testimony, that you are going to be 18 pretty soon and you are thinking of moving away. Are you not kind of afraid that might break your mother's heart, moving away from Ankeny?

Mr. PIPER. Oh, no. Just me and my dad is.

Ms. PIPER. I did not know he was taking his father with him.

Senator HARKIN. At least you will invite her to come visit you, right?

Mr. PIPER. Yes, and my girlfriend.

Senator HARKIN. I will not get into that, all right?

I just want you to know I am the father of two young people, and I am not looking forward to the day when they leave home either, so I know how your mother feels.

Dan, your hopes for the future are real hopes, and I know that you can accomplish a lot. Let me ask your mother a question.

Mr. PIPER. All right, go ahead.

Senator HARKIN. Is that OK?

Mr. PIPER. Sure.

Senator HARKIN. Ms. Piper, do you agree with Ms. Parrino, when she says that the Americans With Disabilities Act should be looked at as bringing about cost savings to our Nation, rather than additional costs?

Ms. PIPER. Definitely. In our circumstances, we certainly have spent a lot of time and energy, as I stated, in seeing to it that Dan is appropriately trained to be a tax payer rather than a tax recipient. However, with discrimination, we are looking at a future that may very well hold nothing more than sheltered employment for him, which is certainly an opportunity for some people.

However, he has a desperate need for growth and is capable. Our concern is that he will be sitting at home, on our living room couch, watching television for the rest of his life. That is not acceptable, with all of the money that has been poured into his education. There is no reason he cannot be a tax payer.

Senator HARKIN. And it is not acceptable with—look at him. My gosh, look how good he is. Danny, you can do a lot of things.

Mr. PIPER. That is right.

Senator HARKIN. You sure can. We are going to make sure that you are able to do those things, too. You are a great source of pride.

Is this your first trip to Washington? This is your first time here, is it not?

Mr. PIPER. Yes.

Senator HARKIN. I think so, yes. Make sure you get around and see the monuments and everything like that, OK?

Mr. PIPER. Yes.

Senator HARKIN. You do not mind if I keep using you as an example, do you? You do not mind if I keep talking about you, do you?

Mr. PIPER. Yes.

Senator HARKIN. As long as I say good things, right?

Mr. PIPER. Yes, you got it. [Laughter.]

Senator HARKIN. All of you are just great. Thank you so much. You have made our day and made our year and hopefully we will make this bill get through next year.

Thank you all, and now we will call our second panel. [Applause.]

Our second panel is Judith Heumann, World Institute on Disability at Berkeley, CA; Gregory Hlibok—if I mispronounce that, you tell me—Gregory Hlibok from Gallaudet University; Belinda



Mason, Tobinsport, IN; and W Mitchell from Denver, CO. Please come up.

We welcome you all to the hearing, and some of you for coming a long, long distance. I will just go in the order in which I called you. Judith Heumann. Judy is the mother of the disability rights and independent living movement. She has a masters in public health and she's going to discuss the history of the movements and personal examples of discrimination and the need for the bill.

**STATEMENTS OF JUDITH HEUMANN, WORLD INSTITUTE ON DISABILITY, BERKELEY, CA; GREGORY HLIBOK, GALLAUDET UNIVERSITY, WASHINGTON, DC; BELINDA MASON, TOBINSPO, IN; AND W. MITCHELL, DENVER CO**

Ms. HEUMANN. Good morning, Senator. I got a little alarmed. I thought you were about to tell me I was a mother. I did not know I had any children.

Senator HARKIN. No, I wondered what that momentary disturbance was. No, the mother of the disability rights and independent living movement.

Ms. HEUMANN. After taking a redeye here, I did not know something had happened.

It is really a privilege to be here with all of you today. My name is Judy Heumann. I am the oldest of three children born to an immigrant family. Like most other Americans, I was born without a disability. When I was 1½ years old, I contracted polio. Becoming disabled changed my family's life and mine forever.

My disability has made me a target for arbitrary and capricious prejudices from any person with whom I come into contact. Over the years, experience has taught us that we must be constantly aware of people's attempts to discriminate against us. We must be prepared at every moment to fight this discrimination.

The average American is not, nor should they have to be, prepared to fight every day of their life for basic civil rights. All too many incidents of discrimination have gone by undefended because of lack of protection under the law.

In the past, disability has been a cause for shame. This forced acceptance of second-class citizenship has stripped us as disabled people of pride and dignity. This is not the way we, as Americans, should have to live our lives.

When I was 5 my mother proudly pushed my wheelchair to our local public school, where I was promptly refused admission because the principal ruled that I was "a fire hazard." I was forced to go onto home instruction, receiving 1 hour of education twice a week for 3½ years. Was this the America of my parents' dreams?

My entrance into mainstream society was blocked by discrimination and segregation. Segregation was not only on an institutional level, but also acted as an obstruction to social integration. As a teenager, I could not travel with my friends on the bus because it was not accessible. At my graduation from high school, the principal attempted to prevent me from accepting an award in a ceremony on stage simply because I was in a wheelchair.

When I was 19, the house mother of my college dormitory refused me admission into the dorm because I was in a wheelchair

and needed assistance. When I was 21 years old, I was denied an elementary school teaching credential because of "paralysis of both lower extremities sequelae of poliomyelitis." At the time I did not know what sequelae meant. I went to the dictionary and looked it up and found out that it was because of. So it was obviously because of my disability that I was discriminated against.

At the age of 25, I was told to leave a plane on my return trip to my job here in the U.S. Senate because I was flying without an attendant. In 1981, an attempt was made to forceably remove me and another disabled friend from an auction house because we were "disgusting to look at." In 1983, a manager at a movie theater attempted to keep my disabled friend and myself out of his theater because we could not transfer out of our wheelchairs.

These are only a few examples of discrimination I have faced in my 40-year life. I successfully fought all of these attempted actions of discrimination through immediate aggressive confrontation or litigation. But this stigma scars for life. Many disabled persons experience discrimination of the same magnitude but not every one of us possesses the intestinal fortitude and has the support of family and friends required to face up to these daily societal barriers.

Sadly, these are not isolated examples true only in the past tense. This is an ongoing social phenomenon which haunts our lives at every minute.

I have been told throughout my life to be understanding of these people's actions. "They do not know any better." Neither I nor any one of the 42 million other people with disabilities can wait for the 200 million nondisabled Americans to become educated to the fact that disability does not negate our entitlement to the same constitutional rights as they have.

Just as other civil rights legislation has made previously sanctioned discrimination illegal, so too will the passage of the Americans With Disabilities Act of 1988 outlaw protectivist, paternalistic, ignorant discrimination against all persons with disabilities.

We, as disabled persons, are here today to ensure for the class of disabled Americans the ordinary daily life that non-disabled Americans too often take for granted: the right to ride a bus or a train; the right to any job for which we are qualified; the right to enter any theater, restaurant or public accommodation; the right to purchase a home or rent an apartment; the right to appropriate communication.

Whether you have HIV infection, cancer, heart disease, back problems, epilepsy, diabetes, polio, muscular dystrophy, cerebral palsy, multiple sclerosis, are deaf or blind, discrimination affects all of us the same. Simply put, we are here today to say that people in our society have been raised with prejudicial attitudes that have resulted in extreme discrimination against the 42 million persons with disabilities in the United States.

Discrimination is intolerable. The U.S. Congress is to be commended for its introduction of the Americans With Disabilities Act. The passage of this monumental legislation will make it clear that our Government will not longer allow the largest minority group in the United States to be denied equal opportunity.



You have all heard our testimony today. But you have also been aware of these stories for many years. As elected Representatives, you must act without delay to end these reprehensible acts of discrimination. To do any less is immoral. [Applause.]

Senator HARKIN. Belinda Mason from Tobinsport, IN. Welcome, Belinda, and please proceed.

Ms. MASON. That is Tobinsport, IN.

Senator HARKIN. What is it?

Ms. MASON. Tobinsport. The 75 citizens of Tobinsport would be awful disappointed if word got out in the U.S. Senate that they were in Tobinsport.

Senator HARKIN. We will correct the record, be assured. Tobinsport lives on.

Ms. MASON. Thank you. I thank you all for having me today and I hope you all are listening good and taking note of all this, because we represent a part of society that is unfortunately often invisible, particularly the disability that I am speaking out, HIV infection is invisible and a hidden disability.

I am just going to read from prepared stuff because I am recovering from a stroke and my brain will not let me remember anything for long enough to really spit it out well unless it is written down and I can read it.

My name is Belinda Mason and I live in Tobinsport, IN. I am 30 years old and I work as a free-lance writer. My husband, who is a college instructor, and I have two small children, a daughter who is 5 and a son almost 2.

Until early last year, my family and I had an average life near one of America's thousands of average small country towns. We juggled our jobs, our daughter, and our credit card payments. Our pleasures were simple and common, a walk in the woods, a new song on the radio, or a cookout with other young families.

But then my life changed dramatically. While delivering our healthy son, I suffered serious complications, including cardiac arrest and a stroke. Because of massive hemorrhaging, I received numerous transfusions of blood products. One unit was later found HIV positive and in March 1987, my own blood first tested positive for antibodies to the HIV virus, the virus that causes AIDS.

I also maintained residual damage from my stroke in the form of partial paralysis on my left side, and a tendency to be stupid when I am tired. That is a joke. [Laughter.] Thank you.

With that diagnosis, I became a person with a "hidden disability," a disability just like epilepsy and diabetes and tens of other disabilities. And just like people with those other hidden disabilities, I became subject to irrational and unjustified discrimination.

The average life I once enjoyed has vanished. And since I have been living with HIV, I have learned a terrible truth about America, that it is not a good place to be different or to be ill, in spite of what we teach in government class.

Shortly before the news of my HIV infection became public, but long after the rumor mill had assured that everyone in town already knew about it, I took my girl to the local public pool. I remember the day very well because we had something to celebrate. I had learned that I was sick enough to qualify for AZT, a drug that

has been found to prolong the lives of people with HIV infection. It was our first breath of hope.

I was still recovering from the stroke, but I could drive again. I could not swim yet, but I slid into the children's pool for a couple of hours and watched my daughter play. I remember thinking that maybe I would live, and that maybe my life would settle back to normal.

I was recognized by most of the adults in the town because I had worked as a reporter and was therefore visible in a place where everyone knew everybody else anyway. This was the other adults at the pool. Later I learned that the town closed the pool for a week. The official story was that a cigarette butt had been found in the filter. I have always thought that it was because I was in the water for a few hours, though, just watching my daughter swim.

There are other incidents like this that I have submitted in my written testimony.

A woman in another part of Kentucky had managed a school cafeteria for a number of years. Her adult son, who was living in California, became ill with AIDS. The woman went to California to bring her son home, so she could care for him. But when she returned, she was abruptly fired from her job.

Apparently, even the perception that you are associated somehow with HIV, whether or not you have it, is grounds for ill treatment. This has to change. We need a law that will protect all people, even those perceived to be infected simply because they are helping those who are ill.

A man passing through a central Kentucky town was stopped for drunk driving. After he told the arresting officers that he had AIDS, the man's car was driven to a parking lot of the jail. Instead of putting the man in jail, the officers locked him inside his car to spend the night. The car was eventually surrounded by sightseers, staring and pointing at the man.

As a board member of the National Association of People with AIDS, I know these and many other stories.

When we look in the mirror that AIDS and HIV holds up to our society, we can see how scared we are of each other, of death and even of life. We can see how little tolerance, let alone compassion, that we often show.

HIV disease is blind to race, age, gender, and sexual orientation. It no longer affects other people. Beyond risk groups, immune deficiency is a disease of individuals, our friends, our sisters, our lovers, and our children. People who are just like us because they are us. And because HIV affects us all, it makes no difference how one gets HIV. The fact is that the discrimination is the same and the protections must be the same.

Living with HIV is particularly stressful for people in America's small towns and rural communities. Until we can be counted on to demonstrate fair and equitable treatment, legislation like this is essential.

There are some things that legislation, by its nature, cannot and will not do. For example, this bill probably will not change anything for Stella McKee, a Kentucky woman whose husband David, a hemophiliac, died just when we were learning about what AIDS



was all about. Stella carried home many bowls of untouched food from church potluck dinners.

And this bill probably would not have helped me when my next door neighbor in Indiana, a registered nurse, carried a petition to every neighbor on the block, demanding that my family and I move. You cannot legislate good manners. But you can legislate recourse for some forms of discrimination. By legislating that protection, perhaps you may also help promote reason and foster more decent treatment. The truth is that sometimes legislation precedes and enhances humanity.

I thank you for having me here today and I urge you to pass the Americans with Disabilities Act as quickly as possible. It will make a real and incredible difference in the lives of millions of people, and just some of those are the ones you see today. Thank you. [Applause.]

Senator HARKIN. Greg Hlibok, a student leader from Gallaudet University, welcome to the subcommittee and please proceed.

Mr. HLIBOK. Thank you very much for giving me the opportunity to testify here today. As she just said, people who have HIV are often invisible because you cannot tell by their race or their appearance. It applies to deaf people as well. You cannot tell if a person is deaf unless you see them signing.

My name is Greg Hlibok. I am president of the student body government at Gallaudet University. Last March's victory in getting a deaf president for Gallaudet sent a message to the world. The focus was on what deaf people can do, and not what they cannot do.

As Dr. King Jordan says, "deaf people can do everything, except hear." How can we prove ourselves that we are capable if we are not given equal opportunities. It is society itself that creates the barriers by not giving us these opportunities.

Very often discrimination appears on a daily basis in our lives. We face that all the time, every day. We have many experiences in being turned down for jobs, denied promotions. For example, my own deaf brother had to hire and pay for an interpreter himself so he could interview for a job.

I have been denied medical treatment because doctors misunderstood us and could not communicate with us. They refuse to hire a qualified interpreter. We have tried contacting police stations very often, but often they do not know how to use TTYs, or they do not have it in our stations.

I remember when I was young and I was going home, and I did not have any money with me. I was going home from school. I tried to contact my parents through public service, but there was no way to do that, no relay service. There were no TTYs around, so I had to walk the 3 miles in the snow to get home. Good thing I did not get pneumonia. Also, in San Diego, CA, there is a deaf woman there who died of a heart attack because her husband tried to reach the police through 911 but could not get through.

We have waited for 124 years to get a deaf president at Gallaudet, but we were still told that we were not ready. Hearing people told us that we were not ready and were unable to communicate and work through Congress and work with the hearing world. In the past we felt that there was nothing that we could do, that we

had to accept this fate, and that those were just false excuses and discrimination. We put up with this for a very long time.

Last March showed that our tolerance and patience has run out. I said last March that we wanted a deaf president and we got one. President King's appointment shows that deaf people are capable of holding a responsible job and leading us. He has already proven his success in the past six months.

Now we want our civil rights. The Americans with Disabilities Act would give us the legal tools to fight discrimination. Legal rights women and minorities have already been brought to bear, and now it is time to remove communication barriers and provide reasonable accommodation.

For example, captions, TTYs, qualified interpreters, note takers, and visual aids, and these type of things would reduce the communication barriers that we face. It is not simply just accommodations, but we would like to participate equally and to be effective in society, not to be ignored.

We do not want sympathy, we want support. Because we can help ourselves if things are accessible for us. All we ask for is that you let us guide our own destinies. We urge that communication barriers be identified and the kinds of situations be specified. For example, there are people who have many different disabilities all over the world, and they are fighting against discrimination of all kinds. We can no longer wait. Civil rights must happen now.

[The prepared statement of Mr. Hlibok follows:]



STATEMENT OF GREG HLIBOK, PRESIDENT OF THE STUDENT BODY GOVERNMENT  
AT GALLAUDET UNIVERSITY, BEFORE THE SENATE SUBCOMMITTEE ON THE  
HANDICAPPED ON THE AMERICANS WITH DISABILITIES ACT OF 1988

My name is Greg Hlibok and I am President of the Student Body Government at Gallaudet University. Our victory at Gallaudet last March resulting in the appointment of our first deaf president sent the world a message. Focus on what deaf people can do - not what we can't do. As Dr. King Jordan said "Deaf People Can Do Anything...Except Hear". How can we prove ourselves that we are capable if we are not being given an equal opportunity. Its society that has created barriers.

Many of us confront discrimination every day. We have experienced the disappointment of being turned down for a job or promotion because we were told the communication barriers were too great. My own deaf brother was told he had to pay for his own interpreter on his job. We have been denied medical treatment at hospitals because the staff could not understand us and refused to provide qualified interpreters. We have tried to call the police for help using our telecommunications devices for the deaf, but the police hang up on us, because they had no TDDs. I remember when I was fifteen I left school without money to take the bus home. I had no way to call my parents or the police. I had to walk the 3 miles home in the snow. In one case in San Diego, a deaf woman died of a heart attack because the police did not respond when her husband called 911. We have waited for 124 years to have a deaf President chosen at Gallaudet. But we were told we were not ready, and that we could not work with Congress and the hearing world. In the past we felt there

was nothing we could do but accept these false excuses and discrimination and keep patiently plodding on. But, as we showed vividly last March, our patience has run out. I said last March, "we want a deaf president who can show the world a deaf person can lead a major university. We want one now". And we got it! President King's appointment shows that deaf people are capable of holding responsible jobs and of leadership. King Jordan has shown for 6 months that he is successful.

Now we want our civil rights. The Americans with Disabilities Act will give us the legal tools to fight discrimination, the legal rights woman and minorities already have. This bill would require removal of communication barriers and "reasonable accommodation to assure effective communication." The kinds of accommodations listed in the Act such as captioning, TDDs, qualified interpreters and note takers, and visual aids like flashing alarms would greatly reduce communication barriers. With simple accommodations, we can participate equally. We can be effective. We will not be excluded or ignored. We don't need any pity, we need your support. Because we can help ourselves only if things are accessible for us! I would urge that the Communication Barriers Section identify the kinds of situations where specific accommodations are required. Our example last March has inspired deaf people and all disabled people everywhere to fight against discrimination of any kind. We will no longer wait. We want our civil rights now.



Senator HARKIN. Thank you very much. I am going to take the opportunity to introduce to you first about whom Greg spoke, who has really showed us that there are no barriers that deaf people cannot overcome. The new president of Gallaudet University, Dr. King Jordan. Stand up, will you please. [Applause.]

Thank you very much. Next, W Mitchell from Denver, CO. Mr. Mitchell, welcome to the subcommittee and again, please proceed as you so desire.

Mr. MITCHELL. Thank you very much, Mr. Chairman. Good morning, Congressman. It is a pleasure being in front of you today. I am W Mitchell. I am the former mayor of Crested Butte, CO, a very beautiful town high in the mountains of Colorado. Do not get confused with Mount Crested Butte. That is the town that Bo Calloway owns. No, we are Crested Butte. We have a lot of Democrats in Crested Butte.

It is a little town that is nestled in the mountains of Colorado, about 9,000 feet above sea level. We are kind of at the end of a paved road, surrounded by all these 14,000 foot mountains. One of the things that is often said in Crested Butte is that you cannot get there from here.

It is very tough to get to other places in Colorado. Aspen is just 30 miles across the mountains, and yet it is about a 250 mile drive to get around all those mountains. You cannot get there from here. That's the challenge for millions of disabled Americans today—they can't get there from here.

In 1984, I ran for Congress. I was the Democratic nominee for the Third Congressional District in Colorado and I had to adopt a campaign that said "Oh yes, he can." In a lot of people's minds, a man who has been burned and who is in a wheelchair may not be able to represent them very well.

In fact, one of the charges that was first leveled at me was yes, Mitchell is a nice guy and perhaps speaks well, but what is he going to do to get to vote? How is he going to get to vote for our issues? How is he going to get to the floor of the House of Representatives in time? He will not even make the votes to stand up for our issues.

Well, having been back to Washington a number of times, I explained to those good people that most freshmen Congressmen wind up in the Cannon House Office Building. Between the Cannon House Office Building and the House of Representatives is a tunnel. The tunnel is mostly downhill going toward the House. I explained to them that the only Member of Congress that was going to beat me to vote for their interests was one on a skateboard. [Laughter.]

I did not get the most votes that year, my opponent did, a very worthy fellow. Fortunately, he was retired in the next election and now we have a good Democrat back there again.

Senator HARKIN. This is a nonpartisan hearing.

Mr. MITCHELL. Very nonpartisan, Senator. And if Senator Weicker and some of the other Republicans were still here, I would be singing a different tune, you can be sure of it.

I talk today to groups all over the country. I speak about the fact that it is not what happens to you, it is what you do in life. It is not the circumstances of birth or the accidents or injuries or ill-

nesses that we contract in life, it is what we do with the equipment that is given us, with the opportunities that are given us.

But unfortunately, I am one of the lucky ones. Fortunately for me, and fortunately for so many others, I had role models when I was growing up, of other people in wheelchairs. I knew you could become successful and be in a wheelchair. I had education and training before I was burned in 1971 and, as a result of an insurance settlement, was able to start a very successful business. So that when I was paralyzed, in 1975, I had wealth and I had income and I had opportunities already available to me.

But what about all of those who were not blessed with the good fortune that I have had in my life? What happens to all of those who do not have the luxury of a vehicle or an airplane or a business or means of support? What happens to those who, like the young man in Phoenix, AZ, who I visited recently, who was paralyzed on the day of his graduation from high school. But having no insurance and no money, is now in a nursing home instead of a spinal cord injury rehab hospital? What happens to him? Where does he get his education? Where does he get the tools and equipment that he will need to make himself a taxpayer, as we heard earlier, and not a tax receiver for the rest of his life?

What about all of those who, because of the absence of transportation or the absence of communication facilities, cannot even find the employer to present themselves as a qualified candidate for a job? How do they function in our society?

So I come today, Mr. Chairman, to speak for the Americans With Disabilities Act legislation. I cannot speak more eloquently than the witnesses who have proceeded me. All of them are more qualified, more capable of stating the case that all of us need to hear today.

But I would like to say to you that, while the 1970's were very much the age of the me-too-ism, of I've got mine, of all of the conflicts in this country, and while the 1980's are very much an era of great change in our society, with new technologies and new opportunities, the 1990's will be the era of creativity.

We must be creative as a society, creative in taking full use of all of our citizens and their great capabilities. As you and the Congressman have seen today, we have been presented with probably more talent than you were faced with in almost any other hearing that you may preside over. How are we going to use that talent and how are we going to realize that talent?

Mr. Chairman, I will remind you today, in my closing remark, the quote of Albert Schweitzer, who said to all humanity, "We do not live in a world all alone. Our brothers are here, too."

Please carry to your colleagues in the Senate and your colleagues in the House the message that we do not want a handout. We do not want a free ride. We just want to act normal in an amazing situation. Thank you, sir. [Applause.]

[The prepared statement of Mr. Mitchell follows:]



W MITCHELL  
Denver, Colorado

Statement to the Senate Subcommittee on the Handicapped, and  
the House Subcommittee on Select Education

September 27, 1988

It is often said that you can't get there from here. That seems to be the situation facing millions of Americans with disabilities. It isn't that once they get there they can't do the job. Often a lack of adequate training, transportation, communications or other factors -- discrimination being one of them -- perfectly capable and talented, but disabled, people are unable to get to a place from which they can lead productive lives. I count myself as one of the fortunate ones.

While growing up in a suburb of Philadelphia, two of my neighbors were war veterans with disabilities. One was a First World War veteran who had had both his legs amputated; the other was a man who had served in the Korean war and who had become paralyzed. Both had the benefit of training, vehicles, and accessible housing provided to them by their government. Both were able to go on to lead constructive and productive lives, contributing to their communities, and acting as role models to people like me so that later when I became disabled, I knew what could be done; I knew of the potentials and possibilities still open to me from having watched my neighbors all those years; I knew I had not come to a dead end.

When my disabilities occurred, I was able to overcome them through a combination of insurance, previous education and training, family and social support and success in business. Many others are not so lucky. Without the tools that I was equipped with, today I could very well be -- without adequate legislation to guarantee my civil rights-- among those who are tax receivers instead of tax payers.

In 1984 I ran for and won the Democratic nomination for Colorado's third congressional district. My campaign slogan was "Oh yes he can!" It was a statement to those who observed my campaign that my physical limitations were in fact, not a hindrance to my ability to represent the voters were they to send me to Washington. While my opponent received more votes than me that November, it was clear to me that both those voting for me and for my opponent did so not as a statement of my physical disability. In 1984 I asked people not to vote for me (or not to

not vote for me) because of my physical limitations. I told them I was just trying to act normal in an amazing situation.

Today I come before you to ask you to give millions of others like me not a special privilege, but just the same privilege afforded to all Americans, so that all of us here, now, and the millions that will follow can enjoy the same opportunities so many other Americans take for granted every day. But how does someone -- unable to get to school because of a lack of transportation, or to get to work because of inaccessible mass transit, or even find out about a job in the absence of communications equipment -- how does that someone become a participant in the American dream?

So many of the changes we need in order to correct discrimination and barriers to full opportunities are simple but yet often ignored: such as the southwest corner of the Capitol Building plaza where the lack of a curb cut requires someone in a wheelchair to compete with automobiles in the street for access to that building. In other cases it's just a matter of oversight. For instance, the hotel at which I'm staying spent \$56 million just two years ago on renovations. Yet there is not one accessible restaurant in the entire hotel.

I'm from Denver, Colorado, which has been doing a great job in making buildings and transportation more accessible. Still, many public officials continue to be insensitive to what life is like when you're unable to get a ride to work because of a broken lift on a bus or because an untrained operator driving that bus doesn't know how to manage the life.

Other times, lost opportunities can be blamed on insufficient funding for appropriate programs. One young man was paralyzed on his graduation day in Phoenix, Arizona this year but because of inadequate insurance he is in a nursing home instead of a spinal cord rehabilitation facility. That false economy may cost taxpayers literally hundreds of thousands of dollars, on just the one man, over the coming years. There are countless other examples that I know Congressman Coelho and the other sponsors of the ADA bill can make you aware of, though a simple trip home to your own states and districts and to visit with disabled persons will set the record straight: we aren't asking for a hand out. We're not even asking for a helping hand. We're just asking for the same opportunities so many Americans without disabilities take for granted and that Americans with disabilities deserve.



Senator HARKIN. That was very eloquent. What the heck, if you cannot get into the House, how about a run for the Senate? We could sure use you here, I will tell you that. Major would like to have you in the House, too.

Again, thank you all. I just have a couple of questions that I want to ask for record purposes, and to further get some thoughts from you on this.

Judith, I just wanted to ask you, do you, and if you do, why do you believe that we can now pass legislation like the ADA act, when previous attempts to expand antidiscrimination protections to cover the private sector have been unsuccessful?

Ms. HEUMANN. I personally think that the Gallaudet experience and the 1977 demonstrations in relationship to 504 and the subsequent Development of Independent Living centers and community-based organizations around the United States, and the real true emergency of a rights movement are going to compel the United States to recognize its responsibility.

It was mentioned by one of the speakers that disability has touched every person's life. I think that what is important for us to recognize is that when we go and work with various organizations who potentially are opponents to this form of legislation, that we need to make them recognize that the discrimination that affects us is also very directly affecting their family and very likely to affect them personally.

I think that all of you have seen that in the last 20 years there has been a monumental change throughout the United States and throughout the world. Disabled people are no longer going to allow ourselves to be discriminated against. The meetings that Justin Dart is holding around the United States, I think are quite compelling. States where you never found a lot of disabled people coming out, speaking on behalf of themselves, are having 200, 300, and 400 people coming out to meetings when there is no accessible transportation, little accessibility in their homes, lack of attendant services. People are still somehow getting out to talk about why we believe it is time for us to have our rights.

That is why I think this bill is going to pass.

Senator HARKIN. Mr. Mitchell, do you have any observations on that question? About the time being right, right now, to pass this one? You have been involved, obviously, in politics, which I was not aware of before. Would you agree with Judith that there has been enough changes, there is enough of a force, enough of a movement out there, that we have made enough minor steps that we can finally take a major step here?

Mr. MITCHELL. Senator, I absolutely agree. Going back to the different eras I talked about, we lived in the 1950's. The 1950's were a very secure era in this country. We really were able to function on a very small part of our potential in the 1950's and still dominate the world. We were number one. We drove American cars. We led the world in every single way and we were secure in every single way, using a very small part of our potential because we had such an overabundance of resources, whether it was natural or human resources, that no one could compete with us anywhere in the world.

Today we are not allowed that luxury. Today we have to use all of America's resources to be great. The resource that exists—and I hear the various numbers of 36 million or 42 million—but a giant portion of our population that is untapped today is the resource that is going to make the difference between America falling into a second position and no longer the leader of the world, and staying number one. We have to use every single ounce of energy that we have.

Again, just look at the people you have seen this morning and they are representative, not spectacularly better than the people that they are speaking for.

Senator HARKIN. Judy, you mentioned Justin Dart. I thought I saw him earlier. Justin Dart, a great leader in this effort, was former Commissioner of the Rehabilitation Services Administration, now chairing a task force.

Ms. HEUMANN. He was here, he had to leave, Mr. Chairman.

Senator HARKIN. He may have had to leave. Tell him we said hello. I just wanted to recognize him here in the audience.

Greg, it goes without saying that not only were a lot of us watching last spring, but I think the world indeed was watching. In fact, I must tell you a story.

I just recently returned from a trip to Europe in August. I had an occasion to meet a small group of deaf individuals who were in Europe at that time. This took place in Portugal. They were with some Portugese who were deaf. It was just happenstance that I ran into them.

The first thing, when they found out who I was and where I was from, the first thing they wanted to talk about was what happened at Gallaudet University. These are people in Europe that knew of this, so it had a world-wide impact.

I just cannot tell you how proud we are of you and the student body, of Dr. Jordan, and what has transpired there.

As you know, my brother is deaf, and so I have, perhaps of all the disabilities, I am more cognizant of that than I am of perhaps others. I am aware of how deaf people have been discriminated against and how, in terms of accommodations and things.

I saw my brother last weekend, and I was staying in a hotel room and I noticed a little red light on. I wondered what that little red light was after I turned the lights out. It was to show that the smoke alarm was activated. But then I got to thinking, if I were deaf and the smoke alarm went off, I would never know it. I mean, I could tell it worked, but I could never know if it ever went off. Just another one of those things in accommodations where a small change would really help.

Let me just ask you a question about the bill, and about reasonable accommodations. How important, to ensuring equal opportunity for deaf people, is the provision of reasonable accommodations which are in the bill, reasonable accommodations? Have you had any experiences that you could relate to us?

Mr. HLIBOK. Sure. I have already given some examples about public services, how they should provide accommodations for deaf people. At Gallaudet University, that is a very good example, because they have all these accommodations for deaf people. For example, flashing lights in the rooms. There is a switch that you



could flash a light. So if a visitor comes, you flash a light from the outside of the door instead of knocking. It is very important for us.

We need accessibility in order to reach out to all of the people right now. There is a wall, a barrier, between us, between the deaf and hearing worlds. We are trying to break down that wall. So far, we have been doing it little by little. Once we completely destroy that wall, that barrier, then I think that we will be able to contribute a lot more.

There are 6,000 deaf Federal employees who contribute to the Federal Government, and there are many more hearing impaired people who could contribute to the private sector, if they are given the opportunity through Government tax revenues. They would be able to use the accommodations and be contributing members.

Senator HARKIN. Thank you. Where are you from?

Mr. HLIBOK. New York City.

Senator HARKIN. Thank you.

Belinda, you face many challenges as a person infected with HIV. How do you perceive the importance of this anti-discrimination legislation?

Ms. MASON. I think, like everybody else has already said, when you have a disability, you just have to overcome so much junk every day of your life, that having extra junk in your way is no good. I do not want to sound like a whiner about it, but it looks like to me that it would not be unreasonable to think that I could go to the cement pond with my daughter and swim and not have to have the whole community penalized for it and have to be made such an example of.

There are so many ways that we separate ourselves from each other, and as Admiral Watkins testified, people living with HIV have to overcome barriers every day that are imposed, that we have no control over, because we cannot make the research move any faster.

It is sad, but it is true, that people in agencies in the private sector, will not always do the right thing just because it is the right thing. Sometimes we have to make them. There is a lot of people in my area of the country living with HIV who face a lot more discriminatory acts than I have. One of those most important ones is jobs. People have lost their jobs.

It is enough that you got this lousy disease. It is like Congressman Coelho said, you come home from an office and you are still the same, but the whole world just shifts around you. You are not like a Kentucky basketball fan anymore. You are not a writer. You are not anything else. You turn into a person with a disease, a person with a disability. Whatever else that there was about you is just ignored.

If there are laws that make people treat you normally, then maybe they will. Maybe they will. I hope they will.

Ms. HEUMANN. Senator, I think that the law at least will give us protection. I do not think the law is going to change people overnight. But the laws, in fact, give us as disabled people the rights, and we then know that we can go out and speak to other disabled people and tell them that if these things happen to them, they should no longer turn around and leave, but there is an action that they can take.

I think actions and filing complaints and lawsuits begin to teach people right from wrong, which they have not learned in the past. I think 504 and 94-142 and many of these other pieces of legislation have begun to teach America that we are more like them. They still might not want to marry us or be with us, but they know that they cannot keep us out any longer. Most importantly, we will not let them. [Applause.]

Mr. OWENS. I think that would be a very good note to end on. I want to thank the witness and all of the witnesses that came before. We learned a great deal from you today. I hope that you understand that, just as Senator Kennedy said, we will pass this bill. It will become law. But I hope you will remember also the caution of Congressman Coelho, that it is not going to be easy.

It will not be easy to pass this bill because there are large numbers of Americans who consider themselves decent and reasonable people who, whenever you mention anything that might raise the cost of housing or public transportation, et cetera, begin to react in a mean-spirited way.

Some of these people are in very high places. In fact, one of our categories of great opposition is local administrators, local elected officials. The mayor of the city of New York sometimes conducts crusades against people with disabilities, when it comes to transportation access and housing access. They do it and appeal to the worst in people.

This we have ahead of us, and I hope you understand that. The bill now has 130 sponsors in the House of Representatives. To pass, a bill requires 218 people to vote yes. We have 130 at a point where the opposition has not yet openly manifested itself.

As we move closer toward passage, or toward the debate on the bill, you will have the people who will come forward with all the statistics to prove that it is far too costly. You will have the disabling amendments, amendments attempting to gut the heart of the bill. All those things are going to happen. We will need a great deal of support. I hope you understand that. There are difficult days ahead of us.

My final question to all of you is what can you do? In the spirit of Gallaudet, in terms of people with disabilities and the concerns of people with disabilities, there is a before Gallaudet and an after Gallaudet. After Gallaudet, the spirit has to keep moving on. The momentum is with us.

I want to congratulate Justin Dart, who is the chairman of a task force that, as I mentioned before, has been around the country. He has told me that the spirit of Gallaudet lives on. It is going to escalate as time goes on. We must make sure it escalates. I hope that you will understand.

I have one specific question to the hero of Gallaudet. Gregory Hlibok. What can we expect in terms of leadership from people of your generation, from students? A lot of energy is going to be needed, a lot of continued courage is going to be needed as we push forward for passage of this legislation. Are students prepared to continue to offer leadership? Are there efforts being made to guarantee that people of your generation are fully involved in this effort, understand what the bill is about, and are going forward to help us to mobilize to get its passage?



Mr. HLIBOK. I am sure, yes. One example, that happened last Thursday, was with 200 to 300 students at Gallaudet who took time off of their classes to go to Capitol Hill to pressure the legislature and the Congressmen to pass a bill, H.R. 4992, perhaps you have heard of that yourself?

Mr. OWENS. Yes, I have.

Mr. HLIBOK. I am sure that we are ready, when the time is right.

Mr. OWENS. Thank you very much. I want to again thank all of you and tell you there are difficult days ahead. We will be closely working with you. The energy, the creativity, all that is needed to get passage of this bill, exists among you. That leadership is there and we appreciate it and will be expecting to work in partnership with you. Thank you.

Senator HARKIN. Thank you very much, Congressman Owens. [Applause.]

I see some people want to say something. I am going to have to exercise a little bit of jurisdiction here. I would like to hear from some people just for a few minutes, but I will tell you that we have to cut this off shortly, and I will tell you why.

The buses to Gallaudet for the task force meeting will be departing from Second Street and Constitution at 1 p.m. That is now. Where is Second and Constitution? That is right outside. Traffic will be stopped until the boarding is complete, so I do have to wrap this up. I am sure the bus will be there for a little bit, for those of you, but you are very anxious to say something.

Please identify yourself for the record.

Ms. COOPER. I am Assemblywoman Delores Cooper, Second District Atlantic, representing the State of New Jersey and all of the New Jersey delegation. New Jersey, will you stand up, please?

Senator, on behalf of the New Jersey delegation and all of the professionals, providers, care givers, I have a little gift for you. New Jersey and you, perfect together, because we know that bill is going to pass. Am I right. [Applause.]

Senator HARKIN. Thank you, very much. That is wonderful. And thank you for coming down.

Yes, right here.

Ms. SHAPIRO. I would like to say something. My name is Mary Shapiro. I saw "Mac and Me" and I think you should all see it because it will get more people to understand about people in wheelchairs and understand what they are going through.

Plus, I think the bill should go through because it will make the other people understand about us and all, because I went to a thing in Philadelphia, PA, I got a shirt that says "A real difference." That is a project in every state, about being a nation and about what we have and all that stuff. [Applause.]

Senator HARKIN. Thank you very much.

Two more. This guy over here has been trying to get my attention for a long time.

Mr. ROSENFELD. I am Ed Rosenfeld with the Spinal Cord Injury Network, Metropolitan Washington. I would like to know who is pro and who is on the fence or just not doing anything, and we will get to work on them.

Senator HARKIN. If you did not hear the question, he wanted to know—I did not catch your name.

Mr. ROSENFELD. Ed Rosenfeld.

Senator HARKIN. Ed Rosenfeld from where?

Mr. ROSENFELD. The Spinal Cord Injury Network, Metropolitan Washington.

Senator HARKIN. He wanted to know about who is not on board and who is on the fence and everything. We have a list here. I would hope that it would be made available to you someplace here, maybe going out the door or something, of all the cosponsors of the bill in the House and in the Senate.

We have 25 cosponsors in the Senate and 113 in the House. You can see we are missing 75 in the Senate and about 300 and some in the House. All I can tell you is that we will try to get these lists out to you. You should contact those who are not on the list to have them get on it as a cosponsor.

You may hear, well, it is not going anywhere this year. That is not the point. Get on it this year, you are on it, and we will get it back in the new Congress next year.

But we do have these lists and they are available to you if you just ask Bobby or someone here, we will get you the list of the cosponsors. Who is not on here is who you have to go after.

Senator HARKIN. Yes, the woman in white.

Ms. STOW. I am Florence Stow from Bancroft School in Hanfield, NJ. I think that capabilities should be acknowledged just like we, treated like us, not carried down half ramps, treated just like normal people. They should have respect and should go and live where they want to, and do what we do.

They should have a great deal of respect. Thank you. [Applause.]

Senator HARKIN. Thank you all very much for your eloquence, and for coming. Let me just say this.

This bill is not going anywhere this year. The Congress, the 100th Congress is about to adjourn. But we enter into the 101st Congress next year and the bill will be reintroduced right away.

We have a long road to go. I am not going to sit here or stand here and kid you that somehow this thing is going to get through right away. There are roadblocks and a lot of problems out there.

So what it is going to take is it is going to take persistence. A lot of persistence on my part, a lot of persistence on your part. You are the ones who can make this bill happen. You have to connect up with your friends, your families, the different agencies, organizations that you belong to, and you have got to make this your top priority.

It is going to be a tough battle. I am convinced we can do it. The history of the United States has been a constant evolution of opening more doors, of breaking down barriers, of extending basic human rights to more and more people. Sometimes we do not always live up to those words that we have in the Declaration of Independence and in our Bill of Rights. But we constantly try to live up to them. We said that all men, and I am sure they meant all women, too, if they were here today, were created equal.

And yet, for almost 100 years after, we had slavery. We did not even get the Civil Rights Act until 1964. Women did not have the right to vote until what, 1920, was it not?

But it has been a constant progress towards expanding our concept of basic human rights. But with each one of those hurdles we



had to cross, it took a lot of effort, a lot of time. I am hopeful it will not take that time for this bill. We have laid the groundwork. We have made the initial steps. Now we just need to take that final step of breaking down the final barrier in our country of discrimination.

I guess I am reminded that when I think about how tough it is going to be, and how much work it is going to take, I am reminded of Rosa Parks who got off that bus in Alabama and said she was not going to ride in the back of the bus anymore. She led the bus boycott as some of you remember, at least those of you who are as old as I am. I do not know how long that bus boycott went on, but they all walked to work. They walked to their places of employment and they walked home, some of them 3, 4, 5 miles a day, rather than take the buses.

After it was all over with, they broke the back of the bus company and were entitled to sit anywhere they wanted to on the bus. When it was all over with, someone asked Rosa Parks how she felt. She said well, "it has been a long tough battle, my feet are tired but my soul is at rest."

Let us work hard so that when we finally win this battle, we can all say together, and paraphrase Rosa Parks, our bodies are tired, but our soul is at rest.

Thank you. [Applause.]

[Additional material supplied for the record follows:]

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BEFORE THE  
JOINT HEARING

SENATE SUBCOMMITTEE ON THE HANDICAPPED

HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON SELECT EDUCATION

TESTIMONY OF THE ORGANIZATION FOR USE OF THE TELEPHONE (OUT)  
ON SENATE BILL 2345 AND HOUSE BILL 4498

On behalf of The Organization for Use of the Telephone (OUT), I express our appreciation for the opportunity to testify on this landmark legislation. My name is David Saks. I serve as Director of OUT.

OUT is an all-volunteer non-profit national advocacy organization working on behalf of people with impaired hearing. We have focused our efforts primarily on improving telephone reception with hearing aids. Since our members have various degrees of hearing loss, we have a direct interest in the above referenced Joint Hearing. We will confine our testimony to the provisions of S. 2345 and H.R. 4498 which deal with hearing and communication.



People whose hearing impairments are to varying degrees compensated for by the use of hearing aids are the victims of discrimination in many aspects of their lives. Of the issues being addressed by this legislation, discrimination in places of public accommodation and employment are particularly critical to them. Hospital patients who find themselves in rooms with unusable telephones because the phones are not hearing aid-compatible (HAC)--or, depending on severity of hearing loss, not equipped with amplifiers or telecommunications devices for the deaf (TDD). Hotel and motel guests who, although paying for rooms with telephone service, find the same discriminatory lack of usable means of communication. Picture the hapless restaurant patron or airport customer who, upon being paged, is confronted with an unusable telephone while non-impaired passengers all around him enjoy convenient telephone communication.

Since we are especially concerned with the removal of these barriers to telephone communication, we urge the subcommittees to make more specific the provisions which bear on the use of voice telephones. Neither the Telecommunications for the Disabled Act of 1982 (Disabled Act) nor the Hearing Aid Compatibility Act of 1988 (HAC Act) remove pre-existing communication barriers, except for emergency phones and coin-operated payphones. There are an estimated 50,000,000 voice telephones in use in the United States which are not HAC, thus unusable with telecoil-equipped hearing aids. These are not touched by the two laws cited above. (See attachment A)

Many of these non-HAC phones are necessarily in places of

Senator HARKIN. The hearing will be adjourned. We will see you early next year, when we really start moving this.

[Whereupon, at 1:06 p.m., the subcommittee hearing was adjourned.]Folios 174 to 176 Insert here



public accommodation. We hope and believe that it is the committees' intent to remove as many of these discriminatory barriers as are within their reach. To enhance chances of this coming about, we make the following recommendations:

1. At Section 8(h)(3)(A) TYPES OF REQUIREMENTS--add "hearing aid-compatible telephones." This will assure that places of public accommodation, transportation terminals and facilities, employers and others will provide usable voice telephones to patrons, travelers and employees, thereby rectifying present serious discrimination.
2. At Section 8(h)(3)(C)--Please make stronger the language requiring assistive listening systems, particularly induction loop amplification (ILA). People who need and use telecoil-equipped hearing aids in order to hear in hearing rooms and other facilities where public business is conducted and decided upon, conference rooms, auditoria, theaters, houses of worship, etc. are denied access to these places by the absence of assistive listening systems. ILA is the least expensive of the more desirable systems and the only system which can be used without an external receiver. The listener merely flips the hearing aid switch from M (microphone) to T (telephone) and receives a clear, sharp signal. External ILA receivers are available for people who do not have telecoil-equipped aids. (See attachment B)
3. At Section 8(h)(3)(E)--delete "handsets" at end of paragraph. Amplifiers no longer are confined to handsets: one piece phones have built-in amplifiers, public payphones have case-mounted amplifiers; many phones still use amplifier handsets. The use of "telephone handsets" will limit the applicability of the provision. (See attachment C)
4. We urge you to consider some such word as "effective" or "required" or "necessary" in place of "reasonable" when used in the phrase "reasonable accommodation." "Reasonable" gives to anti-consumer regulatory agencies broad leeway for interpretation. In some cases, you will find your actual intent thwarted by convoluted interpretation which barely stays within the letter of the law. The legislation needs a more specific and stronger word than "reasonable."  
In summary, we urge you to make more specific, at least as

specific as other requirements, the provisions designed to eliminate communication barriers which daily face people who use voice telephones with hearing aids.

Respectfully submitted.

Organization for Use of  
the Telephone, Inc.



David Saks, Director

September 27, 1988

(Note: In the interest of economy, appendix material accompanying this statement was retained in the files of the committee.)



101ST CONGRESS  
1ST SESSION

# S. 933

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

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## IN THE SENATE OF THE UNITED STATES

MAY 9 (legislative day, JANUARY 3), 1989

Mr. HARKIN (for himself, Mr. KENNEDY, Mr. DURENBERGER, Mr. SIMON, Mr. JEFFORDS, Mr. CRANSTON, Mr. MCCAIN, Mr. MITCHELL, Mr. CHAFEE, Mr. LEAHY, Mr. STEVENS, Mr. INOUE, Mr. COHEN, Mr. GORE, Mr. PACKWOOD, Mr. RIEGLE, Mr. GRAHAM, Mr. PELL, Mr. DODD, Mr. ADAMS, Ms. MIKULSKI, Mr. METZENBAUM, Mr. MATSUNAGA, Mr. WIRTH, Mr. BINGAMAN, Mr. CONRAD, Mr. BURDICK, Mr. LEVIN, Mr. LIEBERMAN, Mr. MOYNIHAN, Mr. KERRY, Mr. SARBANES, Mr. BOSCHWITZ, and Mr. HEINZ) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To establish a clear and comprehensive prohibition of discrimination on the basis of disability.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Americans with Disabilities Act of 1989”.

6 (b) TABLE OF CONTENTS.—The table of contents is as  
7 follows:



- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

TITLE I—GENERAL PROHIBITION AGAINST DISCRIMINATION

Sec. 101. Forms of discrimination prohibited.

TITLE II—EMPLOYMENT

- Sec. 201. Definitions.
- Sec. 202. Discrimination.
- Sec. 203. Posting notices.
- Sec. 204. Regulations.
- Sec. 205. Enforcement.

TITLE III—PUBLIC SERVICES

- Sec. 301. Definition of qualified individual with a disability.
- Sec. 302. Discrimination.
- Sec. 303. Actions applicable to public transportation considered discriminatory.
- Sec. 304. Regulations.
- Sec. 305. Enforcement.

TITLE IV—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

- Sec. 401. Definitions.
- Sec. 402. Prohibition of discrimination by public accommodations.
- Sec. 403. Prohibition of discrimination in public transportation services provided by private entities.
- Sec. 404. Regulations.
- Sec. 405. Enforcement.

TITLE V—TELECOMMUNICATIONS RELAY SERVICES

- Sec. 501. Definitions.
- Sec. 502. Telecommunications relay services.
- Sec. 503. Regulations.
- Sec. 504. Enforcement.

TITLE VI—MISCELLANEOUS PROVISIONS

- Sec. 601. Construction.
- Sec. 602. Prohibition against retaliation.
- Sec. 603. State immunity.
- Sec. 604. Regulations by the Architectural and Transportation Barriers Compliance Board.
- Sec. 605. Attorney's fees.
- Sec. 606. Effective date.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress finds that—

1 (1) some 43,000,000 Americans have one or more  
2 physical or mental disabilities, and this number is in-  
3 creasing as the population as a whole is growing older;

4 (2) historically, society has tended to isolate and  
5 segregate individuals with disabilities, and, despite  
6 some improvements, such forms of discrimination  
7 against individuals with disabilities continue to be a se-  
8 rious and pervasive social problem;

9 (3) discrimination against individuals with disabil-  
10 ities persists in such critical areas as employment,  
11 housing, public accommodations, education, transporta-  
12 tion, communication, recreation, institutionalization,  
13 health services, voting, and access to public services;

14 (4) unlike individuals who have experienced dis-  
15 crimination on the basis of race, sex, national origin,  
16 religion, or age, individuals who have experienced dis-  
17 crimination on the basis of disability have often had no  
18 legal recourse to redress such discrimination;

19 (5) individuals with disabilities continually encoun-  
20 ter various forms of discrimination, including outright  
21 intentional exclusion, the discriminatory effects of  
22 architectural, transportation, and communication bar-  
23 riers, overprotective rules and policies, failure to make  
24 modifications to existing facilities and practices, exclu-  
25 sionary qualification standards and criteria, segrega-



1 tion, and relegation to lesser services, programs, activi-  
2 ties, benefits, jobs, or other opportunities;

3 (6) census data, national polls, and other studies  
4 have documented that people with disabilities, as a  
5 group, occupy an inferior status in our society, and are  
6 severely disadvantaged socially, vocationally, economi-  
7 cally, and educationally;

8 (7) individuals with disabilities are a discrete and  
9 insular minority who have been faced with restrictions  
10 and limitations, subjected to a history of purposeful un-  
11 equal treatment, and relegated to a position of political  
12 powerlessness in our society, based on characteristics  
13 that are beyond the control of such individuals and re-  
14 sulting from stereotypic assumptions not truly indica-  
15 tive of the individual ability of such individuals to par-  
16 ticipate in, and contribute to, society;

17 (8) the Nation's proper goals regarding individuals  
18 with disabilities are to assure equality of opportunity,  
19 full participation, independent living, and economic  
20 self-sufficiency for such individuals; and

21 (9) the continuing existence of unfair and unneces-  
22 sary discrimination and prejudice denies people with  
23 disabilities the opportunity to compete on an equal  
24 basis and to pursue those opportunities for which our  
25 free society is justifiably famous, and costs the United

1 State billions of dollars in unnecessary expenses result-  
2 ing from dependency and nonproductivity.

3 (b) PURPOSE.—It is the purpose of this Act—

4 (1) to provide a clear and comprehensive national  
5 mandate for the elimination of discrimination against  
6 individuals with disabilities;

7 (2) to provide clear, strong, consistent, enforceable  
8 standards addressing discrimination against individuals  
9 with disabilities;

10 (3) to ensure that the Federal Government plays a  
11 central role in enforcing the standards established in  
12 this Act on behalf of individuals with disabilities; and

13 (4) to invoke the sweep of congressional authority,  
14 including its power to enforce the fourteenth amend-  
15 ment and to regulate commerce in order to address the  
16 major areas of discrimination faced day-to-day by  
17 people with disabilities.

18 **SEC. 3. DEFINITIONS.**

19 As used in this Act:

20 (1) **AUXILIARY AIDS AND SERVICES.**—The term  
21 “auxiliary aids and services” shall include—

22 (A) qualified interpreters or other effective  
23 methods of making aurally delivered materials  
24 available to individuals with hearing impairments;



1 (B) qualified readers, taped texts, or other ef-  
2 fective methods of making visually delivered ma-  
3 terials available to individuals with visual impair-  
4 ments;

5 (C) acquisition or modification of equipment  
6 or devices; and

7 (D) other similar services and actions.

8 (2) DISABILITY.—The term “disability” means,  
9 with respect to an individual—

10 (A) a physical or mental impairment that  
11 substantially limits one or more of the major life  
12 activities of such individual;

13 (B) a record of such an impairment; or

14 (C) being regarded as having such an impair-  
15 ment.

16 (3) REASONABLE ACCOMMODATION.—The term  
17 “reasonable accommodation” shall include—

18 (A) making existing facilities used by em-  
19 ployees readily accessible to and usable by indi-  
20 viduals with disabilities; and

21 (B) job restructuring, part-time or modified  
22 work schedules, reassignment, acquisition or  
23 modification of equipment or devices, appropriate  
24 adjustment or modifications of examinations and  
25 training materials, adoption or modification of pro-

1 cedures or protocols, the provision of qualified  
2 readers or interpreters, and other similar accom-  
3 modations.

4 (4) STATE.—The term “State” means each of the  
5 several States, the District of Columbia, the Common-  
6 wealth of Puerto Rico, Guam, American Samoa, the  
7 Virgin Islands, the Canal Zone, the Trust Territory of  
8 the Pacific Islands, and the Commonwealth of the  
9 Northern Mariana Islands.

## 10 TITLE I—GENERAL PROHIBITION 11 AGAINST DISCRIMINATION

### 12 SEC. 101. FORMS OF DISCRIMINATION PROHIBITED.

13 (a) IN GENERAL.—

14 (1) SERVICES, PROGRAMS, ACTIVITIES, BENE-  
15 FITS, JOBS, OR OTHER OPPORTUNITIES.—Subject to  
16 the standards and procedures established in titles II  
17 through V, it shall be discriminatory to subject an indi-  
18 vidual or class of individuals, directly or through con-  
19 tractual, licensing, or other arrangements, on the basis  
20 of disability, to any of the following:

21 (A) Denying the opportunity to participate in  
22 or benefit from a service, program, activity, bene-  
23 fit, job, or other opportunity.

24 (B) Affording an opportunity to participate in  
25 or benefit from a service, program, activity, bene-



1 fit, job, or other opportunity that is not equal to  
2 that afforded others.

3 (C) Providing a service, program, activity,  
4 benefit, job, or other opportunity that is less effec-  
5 tive than that provided to others.

6 (D) Providing a service, program, activity,  
7 benefit, job, or other opportunity that is different  
8 or separate, unless such action is necessary to  
9 provide the individual or class of individuals with  
10 a service, program, activity, benefit, job, or other  
11 opportunity that is as effective as that provided to  
12 others.

13 (E) Aiding or perpetuating discrimination by  
14 providing significant assistance to an agency, or-  
15 ganization, or individual that discriminates.

16 (F) Denying the opportunity to participate as  
17 a member of boards or commissions.

18 (G) Otherwise limiting the enjoyment of any  
19 right, privilege, advantage, or opportunity enjoyed  
20 by others.

21 (2) EQUAL OPPORTUNITY.—For purposes of this  
22 Act, aids, benefits, and services to be equally effective,  
23 must afford an individual with a disability an equal op-  
24 portunity to obtain the same result, to gain the same  
25 benefit, or to reach the same level of achievement, in

1 the most integrated setting appropriate to the individ-  
2 ual's needs.

3 (3) OPPORTUNITY TO PARTICIPATE.—Notwith-  
4 standing the existence of separate or different programs  
5 or activities provided in accordance with this section,  
6 an individual with a disability shall not be denied the  
7 opportunity to participate in such programs or activi-  
8 ties that are not separate or different.

9 (4) ADMINISTRATIVE METHODS.—An individual  
10 or entity shall not, directly or through contractual or  
11 other arrangements, utilize standards or criteria or  
12 methods of administration—

13 (A) that have the effect of discrimination on  
14 the basis of disability;

15 (B) that have the purpose or effect of defeat-  
16 ing or substantially impairing the accomplishment  
17 of the objectives of the services, programs, activi-  
18 ties, benefits, jobs, or other opportunities provided  
19 with respect to an individual with a disability; or

20 (C) that perpetuate the discrimination of  
21 others who are subject to common administrative  
22 control or are agencies of the same State.

23 (5) RELATIONSHIPS OR ASSOCIATIONS.—It shall  
24 be discriminatory to exclude or otherwise deny equal  
25 services, programs, activities, benefits, jobs, or other



1 opportunities to an individual or entity because of the  
2 relationship to, or association of, that individual or  
3 entity with another individual with a disability.

4 (b) DEFENSES.—

5 (1) IN GENERAL.—It shall be a defense to a  
6 charge of discrimination under this Act that an alleged  
7 application of qualification standards, selection criteria,  
8 performance standards or eligibility criteria that ex-  
9 clude or deny services, programs, activities, benefits,  
10 jobs, or other opportunities to an individual with a dis-  
11 ability has been demonstrated by the covered entity to  
12 be both necessary and substantially related to the abil-  
13 ity of an individual to perform or participate, or take  
14 advantage of the essential components of such particu-  
15 lar program, activity, job, or other opportunity and  
16 such performance, participation, or taking advantage of  
17 such essential components cannot be accomplished by  
18 applicable reasonable accommodations, modifications,  
19 or the provision of auxiliary aids or services.

20 (2) QUALIFICATION STANDARDS.—The term  
21 “qualification standards” may include—

22 (A) requiring that the current use of alcohol  
23 or drugs by an alcoholic or drug abuser not pose a  
24 direct threat to property or the safety of others in  
25 the workplace or program; and

1 (B) requiring that an individual with a cur-  
2 rently contagious disease or infection not pose a  
3 direct threat to the health or safety of other indi-  
4 viduals in the workplace or program.

5 **TITLE II—EMPLOYMENT**

6 **SEC. 201. DEFINITIONS.**

7 As used in this title:

8 (1) COMMISSION.—The term “Commission”  
9 means the Equal Employment Opportunity Commis-  
10 sion established by section 705 of the Civil Rights Act  
11 of 1964 (42 U.S.C. 2000e-4).

12 (2) EMPLOYEE.—

13 (A) IN GENERAL.—The term “employee”  
14 means an individual employed by an employer.

15 (B) EXCEPTION.—The term “employee”  
16 shall not include any individual elected to public  
17 office in any State or political subdivision of any  
18 State by the qualified voters thereof, or any indi-  
19 vidual chosen by such officer to be on such offi-  
20 cer’s personal staff, or an appointee on the policy  
21 making level or an immediate adviser with respect  
22 to the exercise of the constitutional or legal  
23 powers of the office.

24 (C) LIMITATION ON EXCEPTION.—The ex-  
25 ception contained in subparagraph (B) shall not



1 include employees subject to the civil service laws  
2 of a State government, governmental agency, or  
3 political subdivision.

4 (3) EMPLOYER.—

5 (A) IN GENERAL.—The term “employer”  
6 means a person engaged in an industry affecting  
7 commerce who has 15 or more employees for  
8 each working day in each of 20 or more calendar  
9 weeks in the current or preceding calendar year,  
10 and any agent of such a person.

11 (B) EXCEPTIONS.—The term “employer”  
12 does not include—

13 (i) the United States, a corporation  
14 wholly owned by the government of the  
15 United States, or an Indian tribe; or

16 (ii) a bona fide private membership club  
17 (other than a labor organization) that is  
18 exempt from taxation under section 501(c) of  
19 the Internal Revenue Code of 1986.

20 (4) PERSON, ETC.—The terms “person”, “labor  
21 organization”, “employment agency”, “commerce”,  
22 and “industry affecting commerce”, shall have the  
23 same meaning given such terms in section 701 of the  
24 Civil Rights Act of 1964 (42 U.S.C. 2000e).

1 (5) QUALIFIED INDIVIDUAL WITH A DISABIL-  
2 ITY.—The term “qualified individual with a disability”  
3 means an individual with a disability who, with or  
4 without reasonable accommodation, can perform the  
5 essential functions of the employment position that  
6 such individual holds or desires.

7 SEC. 202. DISCRIMINATION.

8 (a) GENERAL RULE.—No employer, employment  
9 agency, labor organization, or joint labor-management com-  
10 mittee shall discriminate against any qualified individual with  
11 a disability because of such individual’s disability in regard to  
12 job application procedures, the hiring or discharge of employ-  
13 ees, employee compensation, advancement, job training, and  
14 other terms, conditions, and privileges of employment.

15 (b) CONSTRUCTION.—As used in subsection (a), the  
16 term “discrimination” includes—

17 (1) the failure by an employer, employment  
18 agency, labor organization, or joint labor-management  
19 committee to make reasonable accommodations to the  
20 known physical or mental limitations of a qualified in-  
21 dividual with a disability who is an applicant or em-  
22 ployee unless such entity can demonstrate that the ac-  
23 commodation would impose an undue hardship on the  
24 operation of its business;



1 (2) the denial of employment opportunities by a  
2 covered employer, employment agency, labor organiza-  
3 tion, or joint labor-management committee to an appli-  
4 cant or employee who is a qualified individual with a  
5 disability if the basis for such denial is because of the  
6 need of the individual for reasonable accommodation;  
7 and

8 (3) the imposition or application by a covered em-  
9 ployer, employment agency, labor organization or joint  
10 labor-management committee of qualification standards,  
11 tests, selection criteria or eligibility criteria that iden-  
12 tify or limit, or tend to identify or limit, a qualified in-  
13 dividual with a disability, or any class of qualified indi-  
14 viduals with disabilities, unless such standards, tests or  
15 criteria can be shown by such entity to be necessary  
16 and substantially related to the ability of an individual  
17 to perform the essential functions of the particular em-  
18 ployment position.

19 **SEC. 203. POSTING NOTICES.**

20 Every employer, employment agency, labor organiza-  
21 tion, or joint labor-management committee covered under  
22 this title shall post notices in an accessible format to appli-  
23 cants, employees, and members describing the applicable pro-  
24 visions of this Act, in the manner prescribed by section 711  
25 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

1 **SEC. 204. REGULATIONS.**

2 Not later than 180 days after the date of enactment of  
3 this Act, the Commission shall issue regulations in an acces-  
4 sible format to carry out this title in accordance with sub-  
5 chapter II of chapter 5 of title 5, United States Code.

6 **SEC. 205. ENFORCEMENT.**

7 The remedies and procedures set forth in sections 706,  
8 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C.  
9 2000e-5, 2000e-8, and 2000e-9), and the remedies and pro-  
10 cedures available under section 1981 of the Revised Statutes  
11 (42 U.S.C. 1981) shall be available, with respect to any indi-  
12 vidual who believes that he or she is being or about to be  
13 subjected to discrimination on the basis of disability in viola-  
14 tion of any provisions of this Act, or regulations promulgated  
15 under section 204, concerning employment.

16 **TITLE III—PUBLIC SERVICES**

17 **SEC. 301. DEFINITION OF QUALIFIED INDIVIDUAL WITH A**  
18 **DISABILITY.**

19 As used in this title, the term “qualified individual with  
20 a disability” means an individual with a disability who, with  
21 or without reasonable modifications to rules, policies and  
22 practices, the removal of architectural, communication, and  
23 transportation barriers, or the provision of auxiliary aids and  
24 services, meets the essential eligibility requirements for the  
25 receipt of services or the participation in programs or activi-  
26 ties provided by a State or agency or political subdivision of a



1 State or board, commission or other instrumentality of a  
2 State and political subdivision.

3 **SEC. 302. DISCRIMINATION.**

4 No qualified individual with a disability shall, by reason  
5 of his or her disability, be excluded from the participation in,  
6 be denied the benefits of, or be subjected to discrimination by  
7 a State, or agency or political subdivision of a State or board,  
8 commission, or other instrumentality of a State and political  
9 subdivision.

10 **SEC. 303. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION**  
11 **CONSIDERED DISCRIMINATORY.**

12 (a) **DEFINITION.**—As used in this title, the term “public  
13 transportation” means transportation by bus or rail, or by  
14 any other conveyance (other than air travel) that provides the  
15 general public with general or special service (including char-  
16 ter service) on a regular and continuing basis.

17 (b) **VEHICLES.**—

18 (1) **NEW BUSES, RAIL VEHICLES, AND OTHER**  
19 **FIXED ROUTE VEHICLES.**—It shall be considered dis-  
20 crimination for purposes of this Act and section 504 of  
21 the Rehabilitation Act of 1973 (29 U.S.C. 794) for an  
22 individual or entity to purchase or lease a new fixed  
23 route bus of any size, a new intercity rail vehicle, a  
24 new commuter rail vehicle, a new rapid rail vehicle, a  
25 new light rail vehicle to be used for public transporta-

1 tion, or any other new fixed route vehicle to be used  
2 for public transportation and for which a solicitation by  
3 such individual or entity is made later than 30 days  
4 after the date of enactment of this Act, if such bus,  
5 rail, or other vehicle is not readily accessible to and  
6 usable by individuals with disabilities, including individ-  
7 uals who use wheelchairs.

8 (2) **USED VEHICLES.**—If an individual or entity  
9 purchases or leases a used vehicle after the date of en-  
10 actment of this Act, such individual or entity shall  
11 make demonstrated good faith efforts to purchase or  
12 lease a used vehicle that is readily accessible to and  
13 usable by individuals with disabilities, including individ-  
14 uals who use wheelchairs.

15 (3) **REMANUFACTURED VEHICLES.**—If an individ-  
16 ual or entity remanufactures a vehicle, or purchases or  
17 leases a remanufactured vehicle, so as to extend its  
18 usable life for 5 years or more, the vehicle shall, to the  
19 maximum extent feasible, be readily accessible to and  
20 usable by individuals with disabilities, including individ-  
21 uals who use wheelchairs.

22 (c) **PARATRANSIT AS A SUPPLEMENT TO FIXED**  
23 **ROUTE PUBLIC TRANSPORTATION SYSTEM.**—If an individ-  
24 ual or entity operates a fixed route public transportation  
25 system to provide public transportation, it shall be considered



1 discrimination, for purposes of this Act and section 504 of the  
2 Rehabilitation Act of 1973 (29 U.S.C. 794), for such individ-  
3 ual or entity to fail to provide paratransit or other special  
4 transportation services sufficient to provide a comparable  
5 level of services as is provided to individuals using fixed route  
6 public transportation to individuals with disabilities, including  
7 individuals who use wheelchairs, who cannot otherwise use  
8 fixed route public transportation and to other individuals as-  
9 sociated with such individuals with disabilities in accordance  
10 with service criteria established under regulations promulgat-  
11 ed by the Secretary of Transportation.

12 (d) COMMUNITY OPERATING DEMAND RESPONSIVE  
13 SYSTEMS FOR THE GENERAL PUBLIC.—If an individual or  
14 entity operates a demand responsive system that is used to  
15 provide public transportation for the general public, it shall  
16 be considered discrimination, for purposes of this Act and  
17 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.  
18 794), for such individual or entity to purchase or lease a new  
19 vehicle, for which a solicitation is made later than 30 days  
20 after the date of enactment of this Act, that is not readily  
21 accessible to and usable by individuals with disabilities, in-  
22 cluding individuals who use wheelchairs unless the entity can  
23 demonstrate that such system, when viewed in its entirety,  
24 provides a level of service to individuals with disabilities  
25 equivalent to that provided to the general public.

1 (e) NEW FACILITIES.—For purposes of this Act and  
2 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.  
3 794), it shall be considered discrimination for an individual or  
4 entity to build a new facility that will be used to provide  
5 public transportation services, including bus service, intercity  
6 rail service, rapid rail service, commuter rail service, light  
7 rail service, and other service used for public transportation  
8 that is not readily accessible to and usable by individuals with  
9 disabilities, including individuals who use wheelchairs.

10 (f) ALTERATIONS OF EXISTING FACILITIES.—With re-  
11 spect to a facility or any part thereof that is used for public  
12 transportation and that is altered by, on behalf of, or for the  
13 use of an individual or entity later than 1 year after the date  
14 of enactment of this Act, in a manner that affects or could  
15 affect the usability of the facility or part thereof, it shall be  
16 considered discrimination, for purposes of this Act and sec-  
17 tion 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794),  
18 for such individual or entity to fail to make the alterations in  
19 such a manner that, to the maximum extent feasible, the al-  
20 tered portion of the facility, the path of travel to the altered  
21 area, and the bathrooms, telephones, and drinking fountains  
22 serving the remodeled area are readily accessible to and  
23 usable by individuals with disabilities, including individuals  
24 who use wheelchairs.



1 (g) EXISTING FACILITIES, INTERCITY RAIL, RAPID  
2 RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND  
3 KEY STATIONS.—

4 (1) EXISTING FACILITIES.—Except as provided  
5 in paragraph (3), with respect to existing facilities used  
6 for public transportation, it shall be considered discrim-  
7 ination, for purposes of this Act and section 504 of the  
8 Rehabilitation Act of 1973 (29 U.S.C. 794), for an in-  
9 dividual or entity to fail to operate such public trans-  
10 portation program or activity conducted in such facili-  
11 ties so that, when viewed in the entirety, it is readily  
12 accessible to and usable by individuals with disabilities,  
13 including individuals who use wheelchairs.

14 (2) INTERCITY, RAPID, LIGHT, AND COMMUTER  
15 RAIL SYSTEMS.—With respect to vehicles operated by  
16 intercity, light, rapid and commuter rail systems, for  
17 purposes of this Act and section 504 of the Rehabilita-  
18 tion Act of 1973 (29 U.S.C. 794), it shall be consid-  
19 ered discrimination for an individual or entity to fail to  
20 have at least one car per train that is accessible to in-  
21 dividuals with disabilities, including individuals who use  
22 wheelchairs, as soon as practicable but in any event in  
23 no less than 5 years.

24 (3) KEY STATIONS.—For purposes of this Act  
25 and section 504 of the Rehabilitation Act of 1973 (29

1 U.S.C. 794), it shall be considered discrimination for  
2 an individual or entity to fail to make stations in inter-  
3 city rail systems and key stations in rapid rail, com-  
4 muter rail and light rail systems readily accessible to  
5 and usable by individuals with disabilities, including in-  
6 dividuals who use wheelchairs, as soon as practicable  
7 but in no event later than 3 years after the date of en-  
8 actment of this Act, except that the time limit may be  
9 extended by the Secretary of Transportation up to 20  
10 years for extraordinarily expensive structural changes  
11 to, or replacement of, existing facilities necessary to  
12 achieve accessibility.

13 SEC. 304. REGULATIONS.

14 (a) ATTORNEY GENERAL.—Not later than 180 days  
15 after the date of enactment of this Act, the Attorney General  
16 shall promulgate regulations in an accessible format that im-  
17 plement this title (other than section 303), and such regula-  
18 tions shall be consistent with this title and with the coordina-  
19 tion regulations under part 41 of title 28, Code of Federal  
20 Regulations (as in existence on January 13, 1978), applicable  
21 to recipients of Federal financial assistance under section 504  
22 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

23 (b) SECRETARY OF TRANSPORTATION.—

24 (1) IN GENERAL.—Not later than 240 days after  
25 the date of enactment of this Act, the Secretary of



1 Transportation shall promulgate regulations in an ac-  
2 cessible format that include standards applicable to fa-  
3 cilities and vehicles covered under section 303.

4 (2) CONFORMANCE OF STANDARDS.—Such stand-  
5 ards shall be consistent with the minimum guidelines  
6 and requirements issued by the Architectural and  
7 Transportation Barriers Compliance Board in accord-  
8 ance with section 604(b).

9 **SEC. 305. ENFORCEMENT.**

10 The remedies, procedures, and rights set forth in section  
11 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall  
12 be available with respect to any individual who believes that  
13 he or she is being or about to be subjected to discrimination  
14 on the basis of disability in violation of any provisions of this  
15 Act, or regulations promulgated under section 304, concern-  
16 ing public services.

17 **TITLE IV—PUBLIC ACCOMMODA-**  
18 **TIONS AND SERVICES OPER-**  
19 **ATED BY PRIVATE ENTITIES**

20 **SEC. 401. DEFINITIONS.**

21 As used in this title:

22 (1) COMMERCE.—The term “commerce” means  
23 travel, trade, traffic, commerce, transportation, or com-  
24 munication among the several States, or between the  
25 District of Columbia and any State or between any for-

1 eign country or any territory or possession and any  
2 State or the District of Columbia or between points in  
3 the same State but through another State or the Dis-  
4 trict of Columbia or foreign country.

5 (2) PUBLIC ACCOMMODATION.—

6 (A) IN GENERAL.—The term “public accom-  
7 modation” means privately operated establish-  
8 ments—

9 (i)(I) that are used by the general public  
10 as customers, clients, or visitors; or

11 (II) that are potential places of employ-  
12 ment; and

13 (ii) whose operations affect commerce.

14 (B) INCLUSIONS.—Public accommodations  
15 referred to in clause (i)(I) include auditoriums,  
16 convention centers, stadiums, theaters, restau-  
17 rants, shopping centers, inns, hotels, and motels  
18 (other than inns, hotels, and motels exempt under  
19 section 201(b)(1) of the Civil Rights Act of 1964  
20 (42 U.S.C. 2000a(b)(1))), terminals used for public  
21 transportation, passenger vehicle service stations,  
22 professional offices of health care providers, office  
23 buildings, sales establishments, personal and  
24 public service businesses, parks, private schools,  
25 and recreation facilities.



1 (3) PUBLIC TRANSPORTATION.—The term  
2 “public transportation” means transportation by bus or  
3 rail, or by any other conveyance (other than by air  
4 travel) that provides the general public with general or  
5 special service (including charter service) on a regular  
6 and continuing basis.

7 SEC. 402. PROHIBITION OF DISCRIMINATION BY PUBLIC  
8 ACCOMMODATIONS.

9 (a) GENERAL RULE.—No individual shall be discrimi-  
10 nated against in the full and equal enjoyment of the goods,  
11 services, facilities, privileges, advantages, and accommoda-  
12 tions of any place of public accommodation, on the basis of  
13 disability.

14 (b) CONSTRUCTION.—As used in subsection (a), the  
15 term “discriminated against” includes—

16 (1) the imposition or application of eligibility crite-  
17 ria that identify or limit, or tend to identify or limit, an  
18 individual with a disability or any class of individuals  
19 with disabilities from fully and equally enjoying any  
20 goods, services, facilities, privileges, advantages, and  
21 accommodations;

22 (2) a failure to make reasonable modifications in  
23 rules, policies, practices, procedures, protocols, or serv-  
24 ices when such modifications may be necessary to  
25 afford such privileges, advantages, and accommodations

1 unless the entity can demonstrate that making such  
2 modifications would fundamentally alter the nature of  
3 such privileges, advantages, and accommodations;

4 (3) a failure to take such steps as may be neces-  
5 sary to ensure that no individual with a disability is ex-  
6 cluded, denied services, segregated or otherwise treat-  
7 ed differently than other individuals because of the ab-  
8 sence of auxiliary aids and services, unless the entity  
9 can demonstrate that taking such steps would result in  
10 undue burden;

11 (4)(A) a failure to remove architectural and com-  
12 munication barriers that are structural in nature in ex-  
13 isting facilities, and transportation barriers in existing  
14 vehicles used by an establishment for transporting indi-  
15 viduals (not including barriers that can only be re-  
16 moved through the retrofitting of vehicles by the instal-  
17 lation of a hydraulic or other lift), where such removal  
18 is readily achievable; and

19 (B) where an entity can demonstrate that removal  
20 of a barrier under subparagraph (A) is not readily  
21 achievable, a failure to make such goods, services, fa-  
22 cilities, privileges, advantages, and accommodations  
23 available through alternative methods if such methods  
24 are readily achievable;



1 (5) with respect to a facility or part thereof that is  
2 altered by, on behalf of, or for the use of an establish-  
3 ment later than one year after the date of enactment of  
4 this Act in a manner that affects or could affect the  
5 usability of the facility or part thereof, a failure to  
6 make the alterations in such a manner that, to the  
7 maximum extent feasible, the altered portion of the fa-  
8 cility, the path of travel to the altered area, and the  
9 bathrooms, telephones, and drinking fountains serving  
10 the remodeled area, are readily accessible to and  
11 usable by individuals with disabilities;

12 (6) a failure to make facilities constructed for first  
13 occupancy later than 30 months after the date of en-  
14 actment of this Act readily accessible to and usable by  
15 individuals with disabilities, except where an entity can  
16 demonstrate that it is structurally impracticable to do  
17 so, in accordance with standards set forth or incorpo-  
18 rated by reference in regulations issued under this title;  
19 and

20 (7) in the case of an entity that uses a vehicle to  
21 transport individuals not covered under section 303 or  
22 403—

23 (A) a failure to provide a level of transporta-  
24 tion services to individuals with disabilities, in-

1 including individuals who use wheelchairs, equiva-  
2 lent to that provided for the general public; and  
3 (B) purchasing or leasing a new bus, or vehi-  
4 cle that can carry in excess of 12 passengers, for  
5 which solicitations are made later than 30 days  
6 after the date of enactment of this Act, that is not  
7 readily accessible to and usable by individuals  
8 with disabilities, including individuals who use  
9 wheelchairs.

10 **SEC. 403. PROHIBITION OF DISCRIMINATION IN PUBLIC**  
11 **TRANSPORTATION SERVICES PROVIDED BY**  
12 **PRIVATE ENTITIES.**

13 (a) **GENERAL RULE.**—No individual shall be discrimi-  
14 nated against on the basis of disability in the full and equal  
15 enjoyment of public transportation services provided by a pri-  
16 vately operated entity that is primarily engaged in the busi-  
17 ness of transporting people, but is not in the principal busi-  
18 ness of providing air transportation, and whose operations  
19 affect commerce.

20 (b) **CONSTRUCTION.**—As used in subsection (a), the  
21 term “discrimination against” includes—

22 (1) the imposition or application by an entity of  
23 eligibility criteria that identify or limit, or tend to iden-  
24 tify or limit, an individual with a disability or any class



1 of individuals with disabilities from fully enjoying the  
2 public transportation services provided by the entity;

3 (2) the failure of an entity to—

4 (A) make reasonable modifications consistent  
5 with those required under section 402(b)(2);

6 (B) provide auxiliary aids and services con-  
7 sistent with the requirements of section 402(b)(3);  
8 and

9 (C) remove barriers consistent with the re-  
10 quirements of section 402(b)(4); and

11 (3) the purchase or lease of a new vehicle (other  
12 than an automobile) that is to be used to provide public  
13 transportation services, and for which a solicitation is  
14 made later than 30 days after the date of enactment of  
15 this Act, that is not readily accessible to and usable by  
16 individuals with disabilities, including individuals who  
17 use wheelchairs.

18 **SEC. 404. REGULATIONS.**

19 (a) **ACCESSIBILITY STANDARDS.**—Not later than 240  
20 days after the date of enactment of this Act, the Secretary of  
21 Transportation shall issue regulations in an accessible format  
22 that shall include standards applicable to facilities and vehi-  
23 cles covered under section 403.

24 (b) **OTHER PROVISIONS.**—Not later than 240 days after  
25 the date of enactment of this Act, the Attorney General shall

1 issue regulations in an accessible format to carry out the re-  
2 maining provisions of this title not referred to in subsection  
3 (a) that include standards applicable to facilities and vehicles  
4 covered under section 402.

5 (c) **STANDARDS.**—Standards included in regulations  
6 issued under subsections (a) and (b) shall be consistent with  
7 the minimum guidelines and requirements issued by the Ar-  
8 chitectural and Transportation Barriers Compliance Board in  
9 accordance with section 604(b).

10 **SEC. 405. ENFORCEMENT.**

11 Sections 802(i), 813, and 814 (a) and (d) of the Fair  
12 Housing Act (42 U.S.C. 3602(i), 3613, and 3614 (a) and (d))  
13 shall be available with respect to any aggrieved individual,  
14 except that—

15 (1) any reference to a discriminatory housing  
16 practice or breach of a conciliation agreement shall be  
17 considered to be a reference to a practice that is dis-  
18 criminatory under this title concerning a public accom-  
19 modation or public transportation service operated by a  
20 private entity; and

21 (2) subparagraph (B) of paragraph (1) and para-  
22 graphs (2) and (3) of subsection (a) of section 813 shall  
23 not apply.



1 **TITLE V—TELECOMMUNICATIONS**  
2 **RELAY SERVICES**

3 **SEC. 501. DEFINITIONS.**

4 As used in this title:

5 (1) **COMMISSION.**—The term “Commission”  
6 means the Federal Communications Commission.

7 (2) **TELECOMMUNICATIONS RELAY SERVICES.**—  
8 The term “telecommunications relay services” means  
9 services that enable simultaneous communication to  
10 take place between individuals who use TDDs or other  
11 nonvoice terminal devices and individuals who do not  
12 use such devices.

13 (3) **TDD.**—The term “TDD” means a Telecom-  
14 munication Device for the Deaf, a machine that em-  
15 ploys graphic communications in the transmission of  
16 coded signals through the nationwide telecommunica-  
17 tions system.

18 **SEC. 502. TELECOMMUNICATIONS RELAY SERVICES.**

19 (a) **GENERAL RULE.**—It shall be considered discrimina-  
20 tion for purposes of this Act for any common carrier, as de-  
21 fined in section 3(h) of the Communications Act of 1934 (47  
22 U.S.C. 153(h)), that offers telephone services to the general  
23 public, to fail to provide, not later than 1 year after the date  
24 of enactment of this Act, interstate or intrastate telecom-  
25 munication relay services so that such services provide indi-

1 viduals who use nonvoice terminal devices because of disabil-  
2 ities with opportunities for communications that are equal to  
3 those provided to their customers who are able to use voice  
4 telephone services, except that it shall not be considered dis-  
5 crimination for such a common carrier to fail to provide such  
6 services in any State to which subsection (b) applies if such  
7 services are provided under subsection (b).

8 (b) **STATE DISCRIMINATION.**—It shall be considered  
9 discrimination by a State, that designates an entity to provide  
10 interstate or intrastate telecommunication relay services to  
11 individuals throughout the entire State in a manner consist-  
12 ent with regulations issued by the Commission, for purposes  
13 of this Act, for such State, through the designated entity, to  
14 fail to provide, not later than 1 year after the date of enact-  
15 ment of this Act, interstate or intrastate telecommunication  
16 relay services so that such services provide individuals who  
17 use nonvoice terminal devices because of disabilities with op-  
18 portunities for communications that are equal to those provid-  
19 ed to their customers who are able to use voice telephone  
20 services.

21 (c) **CONSTRUCTION.**—Nothing in this title shall be con-  
22 strued to discourage or impair the development of improved  
23 or future technology designed to improve access to telecom-  
24 munication services for individuals with disabilities.



1 SEC. 503. REGULATIONS.

2 Not later than 180 days after the date of enactment of  
3 this Act, the Commission shall issue regulations to carry out  
4 this title, and such regulations shall establish minimum stand-  
5 ards and guidelines for telecommunications relay services.

6 SEC. 504. ENFORCEMENT.

7 (a) CIVIL ACTIONS.—Section 802(i), 813, and 814 (a)  
8 and (d) of the Fair Housing Act (42 U.S.C. 3602(i), 3613,  
9 and 3614 (a) and (d)) shall be available with respect to any  
10 aggrieved individual, except that—

11 (1) any reference to a discriminatory housing  
12 practice or breach of a conciliation agreement shall be  
13 considered to be a reference to a practice that is dis-  
14 criminatory under this title concerning the provision of  
15 an appropriate interstate or intrastate telecommunica-  
16 tion relay service; and

17 (2) subparagraph (B) of paragraph (1) and para-  
18 graphs (2) and (3) of subsection (a) and subsection (d)  
19 of section 813 shall not apply.

20 (b) ADMINISTRATIVE ENFORCEMENT.—

21 (1) IN GENERAL.—The Commission shall enforce  
22 the provisions of this title.

23 (2) APPLICABLE ENFORCEMENT PROVISIONS.—

24 The remedies, procedures, and rights set forth in sec-  
25 tions 206, 207, 208, and 209 of the Communications  
26 Act of 1934 (47 U.S.C. 206, 207, 208, and 209) and

1 in title IV of the Communications Act of 1934 (47  
2 U.S.C. 401 et seq.) shall apply with respect to the en-  
3 forcement of this title, except that nothing in this sub-  
4 section shall be construed to limit or restrict in any  
5 manner the remedies, procedures, or rights set forth in  
6 subsection (a).

7 (3) CEASE AND DESIST ORDERS.—Whenever,  
8 after full opportunity for hearing, on a complaint or  
9 under an order for investigation and hearing made by  
10 the Commission on the initiative of the Commission,  
11 the Commission shall be of the opinion that any car-  
12 rier, or any State as described in section 502(b), is or  
13 will be in violation of this title or of any regulation  
14 issued under this title, the Commission shall—

15 (A) order that the carrier or State cease and  
16 desist from such violation to the extent that the  
17 Commission finds that such violation exists or will  
18 exist; and

19 (B) take other actions as it finds appropriate  
20 and necessary.

21 (4) PENALTIES.—

22 (A) IN GENERAL.—Any carrier or State to  
23 which section 502(b) applies that knowingly fails  
24 or neglects to comply with this title or of any reg-  
25 ulation or order made by the Commission in car-



1 rying out this title shall forfeit to the United  
2 States the sum of \$10,000 for each such offense.

3 (B) SEPARATE OFFENSES.—Each distinct  
4 violation of the provisions of this title shall be a  
5 separate offense under subparagraph (A). In case  
6 of a continuing violation, each day shall be con-  
7 sidered a separate offense.

8 (C) RECOVERING FORFEITURES.—Such for-  
9 feitures shall be payable and recoverable in the  
10 same manner as prescribed in section 504 of the  
11 Communications Act of 1934 (47 U.S.C. 504).

## 12 TITLE VI—MISCELLANEOUS 13 PROVISIONS

### 14 SEC. 601. CONSTRUCTION.

15 (a) REHABILITATION ACT OF 1973.—Nothing in this  
16 Act shall be construed to reduce the scope of coverage or  
17 apply a lesser standard than the coverage required or the  
18 standards applied under title V of the Rehabilitation Act of  
19 1973 (29 U.S.C. 790 et seq.) or the regulations issued by  
20 Federal agencies pursuant to such title.

21 (b) OTHER LAWS.—Nothing in this Act shall be con-  
22 strued to invalidate or limit any other Federal law or law of  
23 any State or political subdivision of any State or jurisdiction  
24 that provides greater protection for the rights of individuals  
25 with disabilities than are afforded by this Act.

1 (c) RELATIONSHIP AMONG TITLES.—The require-  
2 ments contained in titles I through V shall be construed in a  
3 manner that is consistent with the other provisions of this  
4 Act, and any apparent conflict between provisions of this Act  
5 shall be resolved by reference to the title that specifically  
6 covers the type of action in question.

### 7 SEC. 602. PROHIBITION AGAINST RETALIATION.

8 No individual shall discriminate against any other indi-  
9 vidual because such other individual has opposed any act or  
10 practice made unlawful by this Act or because such other  
11 individual made a charge, testified, assisted, or participated  
12 in any manner in an investigation, proceeding, or hearing  
13 under this Act.

### 14 SEC. 603. STATE IMMUNITY.

15 A State shall not be immune under the eleventh amend-  
16 ment to the Constitution of the United States from an action  
17 in Federal court for a violation of this Act. In any action  
18 against a State for a violation of the requirements of this Act,  
19 remedies (including remedies both at law and in equity) are  
20 available for such a violation to the same extent as such rem-  
21 edies are available for such a violation in an action against  
22 any public or private entity other than a State.



1 **SEC. 604. REGULATIONS BY THE ARCHITECTURAL AND TRANS-**  
2 **PORTATION BARRIERS COMPLIANCE BOARD.**

3 (a) **ISSUANCE OF GUIDELINES.**—Not later than 6  
4 months after the date of enactment of this Act, the Architec-  
5 tural and Transportation Barriers Compliance Board shall  
6 issue minimum guidelines that shall supplement the existing  
7 Minimum Guidelines and Requirements for Accessible Design  
8 for purposes of sections 304 and 404.

9 (b) **CONTENTS OF GUIDELINES.**—The guidelines issued  
10 under subsection (a) shall establish additional requirements,  
11 consistent with this Act, to ensure that buildings, facilities,  
12 and vehicles are accessible, in terms of architecture and  
13 design, transportation, and communication, to individuals  
14 with disabilities.

15 **SEC. 605. ATTORNEY'S FEES.**

16 In any action or administrative proceeding commenced  
17 pursuant to this Act, the court, or agency, in its discretion,  
18 may allow the prevailing party, other than the United States,  
19 a reasonable attorney's fee, including litigation expenses, and  
20 costs, and the United States shall be liable for the foregoing  
21 the same as a private individual.

22 **SEC. 606. EFFECTIVE DATE.**

23 This Act shall become effective on the date of  
24 enactment.

○



## Printed as Passed

October 16 (legislative day, September 18), 1989

Ordered to be printed as passed

101ST CONGRESS  
1ST SESSION

# S. 933

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## AN ACT

To establish a clear and comprehensive prohibition of  
discrimination on the basis of disability.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Americans with Disabilities Act of 1989”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is as  
7 follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.



TITLE I—EMPLOYMENT

- Sec. 101. Definitions.
- Sec. 102. Discrimination.
- Sec. 103. Defenses.
- Sec. 104. Illegal drugs and alcohol.
- Sec. 105. Posting notices.
- Sec. 106. Regulations.
- Sec. 107. Enforcement.
- Sec. 108. Effective date.

TITLE II—PUBLIC SERVICES

- Sec. 201. Definition.
- Sec. 202. Discrimination.
- Sec. 203. Actions applicable to public transportation provided by public entities considered discriminatory.
- Sec. 204. Regulations.
- Sec. 205. Enforcement.
- Sec. 206. Effective date.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

- Sec. 301. Definitions.
- Sec. 302. Prohibition of discrimination by public accommodations.
- Sec. 303. New construction in public accommodations and potential places of employment.
- Sec. 304. Prohibition of discrimination in public transportation services provided by private entities.
- Sec. 305. Study.
- Sec. 306. Regulations.
- Sec. 307. Exemptions for private clubs and religious organizations.
- Sec. 308. Enforcement.
- Sec. 309. Effective date.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

- Sec. 401. Telecommunication services for hearing-impaired and speech-impaired individuals.

TITLE V—MISCELLANEOUS PROVISIONS

- Sec. 501. Construction.
- Sec. 502. Prohibition against retaliation and coercion.
- Sec. 503. State immunity.
- Sec. 504. Regulations by the Architectural and Transportation Barriers Compliance Board.
- Sec. 505. Attorney's fees.
- Sec. 506. Technical assistance.
- Sec. 507. Federal wilderness areas.
- Sec. 508. Transvestites.
- Sec. 509. Congressional inclusion.
- Sec. 510. Illegal drug use.
- Sec. 511. Definitions.
- Sec. 512. Amendments to the Rehabilitation Act.
- Sec. 513. Severability.

1 SEC. 2. FINDINGS AND PURPOSES.

2 (a) FINDINGS.—Congress finds that—

3 (1) some 43,000,000 Americans have one or more  
4 physical or mental disabilities, and this number is in-  
5 creasing as the population as a whole is growing older;

6 (2) historically, society has tended to isolate and  
7 segregate individuals with disabilities, and, despite  
8 some improvements, such forms of discrimination  
9 against individuals with disabilities continue to be a se-  
10 rious and pervasive social problem;

11 (3) discrimination against individuals with disabil-  
12 ities persists in such critical areas as employment,  
13 housing, public accommodations, education, transporta-  
14 tion, communication, recreation, institutionalization,  
15 health services, voting, and access to public services;

16 (4) unlike individuals who have experienced dis-  
17 crimination on the basis of race, sex, national origin,  
18 religion, or age, individuals who have experienced dis-  
19 crimination on the basis of disability have often had no  
20 legal recourse to redress such discrimination;

21 (5) individuals with disabilities continually encoun-  
22 ter various forms of discrimination, including outright  
23 intentional exclusion, the discriminatory effects of ar-  
24 chitectural, transportation, and communication barriers,  
25 overprotective rules and policies, failure to make modi-  
26 fications to existing facilities and practices, exclusion-



1 ary qualification standards and criteria, segregation,  
2 and relegation to lesser services, programs, activities,  
3 benefits, jobs, or other opportunities;

4 (6) census data, national polls, and other studies  
5 have documented that people with disabilities, as a  
6 group, occupy an inferior status in our society, and are  
7 severely disadvantaged socially, vocationally, economi-  
8 cally, and educationally;

9 (7) individuals with disabilities are a discrete and  
10 insular minority who have been faced with restrictions  
11 and limitations, subjected to a history of purposeful un-  
12 equal treatment, and relegated to a position of political  
13 powerlessness in our society, based on characteristics  
14 that are beyond the control of such individuals and re-  
15 sulting from stereotypic assumptions not truly indica-  
16 tive of the individual ability of such individuals to par-  
17 ticipate in, and contribute to, society;

18 (8) the Nation's proper goals regarding individuals  
19 with disabilities are to assure equality of opportunity,  
20 full participation, independent living, and economic  
21 self-sufficiency for such individuals; and

22 (9) the continuing existence of unfair and unneces-  
23 sary discrimination and prejudice denies people with  
24 disabilities the opportunity to compete on an equal  
25 basis and to pursue those opportunities for which our

1 free society is justifiably famous, and costs the United  
2 States billions of dollars in unnecessary expenses re-  
3 sulting from dependency and nonproductivity.

4 (b) PURPOSE.—It is the purpose of this Act—

5 (1) to provide a clear and comprehensive national  
6 mandate for the elimination of discrimination against  
7 individuals with disabilities;

8 (2) to provide clear, strong, consistent, enforceable  
9 standards addressing discrimination against individuals  
10 with disabilities;

11 (3) to ensure that the Federal Government plays a  
12 central role in enforcing the standards established in  
13 this Act on behalf of individuals with disabilities; and

14 (4) to invoke the sweep of congressional authority,  
15 including its power to enforce the fourteenth amend-  
16 ment and to regulate commerce, in order to address  
17 the major areas of discrimination faced day-to-day by  
18 people with disabilities.

19 **SEC. 3. DEFINITIONS.**

20 As used in this Act:

21 (1) **AUXILIARY AIDS AND SERVICES.**—The term  
22 “auxiliary aids and services” includes—

23 (A) qualified interpreters or other effective  
24 methods of making aurally delivered materials  
25 available to individuals with hearing impairments;



1 (B) qualified readers, taped texts, or other ef-  
2 fective methods of making visually delivered ma-  
3 terials available to individuals with visual impair-  
4 ments;

5 (C) acquisition or modification of equipment  
6 or devices; and

7 (D) other similar services and actions.

8 (2) **DISABILITY.**—The term “disability” means,  
9 with respect to an individual—

10 (A) a physical or mental impairment that  
11 substantially limits one or more of the major life  
12 activities of such individual;

13 (B) a record of such an impairment; or

14 (C) being regarded as having such an impair-  
15 ment.

16 (3) **STATE.**—The term “State” means each of the  
17 several States, the District of Columbia, the Common-  
18 wealth of Puerto Rico, Guam, American Samoa, the  
19 Virgin Islands, the Trust Territory of the Pacific Is-  
20 lands, and the Commonwealth of the Northern Mariana  
21 Islands.

22 **TITLE I—EMPLOYMENT**

23 **SEC. 101. DEFINITIONS.**

24 As used in this title:

1 (1) **COMMISSION.**—The term “Commission”  
2 means the Equal Employment Opportunity Commis-  
3 sion established by section 705 of the Civil Rights Act  
4 of 1964 (42 U.S.C. 2000e-4).

5 (2) **COVERED ENTITY.**—The term “covered  
6 entity” means an employer, employment agency, labor  
7 organization, or joint labor-management committee.

8 (3) **EMPLOYEE.**—The term “employee” means an  
9 individual employed by an employer.

10 (4) **EMPLOYER.**—

11 (A) The term “employer” means a person  
12 engaged in an industry affecting commerce who  
13 has 15 or more employees for each working day  
14 in each of 20 or more calendar weeks in the cur-  
15 rent or preceding calendar year, and any agent of  
16 such person, except that, for two years following  
17 the effective date of this title, an employer means  
18 a person engaged in an industry affecting com-  
19 merce who has 25 or more employees for each  
20 working day in each of 20 or more calendar  
21 weeks in the current or preceding year, and any  
22 agent of such person.

23 (B) **EXCEPTIONS.**—The term “employer”  
24 does not include—



1 (i) the United States, a corporation  
2 wholly owned by the government of the  
3 United States, or an Indian tribe; or

4 (ii) a bona fide private membership club  
5 (other than a labor organization) that is  
6 exempt from taxation under section 501(c) of  
7 the Internal Revenue Code of 1986.

8 (5) ILLEGAL DRUG.—The term “illegal drug”  
9 means a controlled substance, as defined in schedules I  
10 through V of section 202 of the Controlled Substances  
11 Act (21 U.S.C. 812), the possession or distribution of  
12 which is unlawful under such Act. The term “illegal  
13 drug” does not mean the use of a controlled substance  
14 pursuant to a valid prescription or other uses author-  
15 ized by this Act.

16 (6) PERSON, ETC.—The terms “person”, “labor  
17 organization”, “employment agency”, “commerce”,  
18 and “industry affecting commerce”, shall have the  
19 same meaning given such terms in section 701 of the  
20 Civil Rights Act of 1964 (42 U.S.C. 2000e).

21 (7) QUALIFIED INDIVIDUAL WITH A DISABIL-  
22 ITY.—The term “qualified individual with a disability”  
23 means an individual with a disability who, with or  
24 without reasonable accommodation, can perform the

1 essential functions of the employment position that  
2 such individual holds or desires.

3 (8) REASONABLE ACCOMMODATION.—The term  
4 “reasonable accommodation” may include—

5 (A) making existing facilities used by em-  
6 ployees readily accessible to and usable by indi-  
7 viduals with disabilities; and

8 (B) job restructuring, part-time or modified  
9 work schedules, reassignment to a vacant posi-  
10 tion, acquisition or modification of equipment or  
11 devices, appropriate adjustment or modifications of  
12 examinations, training materials or policies, the  
13 provision of qualified readers or interpreters, and  
14 other similar accommodations for individuals with  
15 disabilities.

16 (9) UNDUE HARDSHIP.—

17 (A) IN GENERAL.—The term “undue hard-  
18 ship” means an action requiring significant diffi-  
19 culty or expense.

20 (B) DETERMINATION.—In determining  
21 whether an accommodation would impose an  
22 undue hardship on a covered entity, factors to be  
23 considered include—

24 (i) the overall size of the business of a  
25 covered entity with respect to the number of



1 employees, number and type of facilities, and  
2 the size of the budget;

3 (ii) the type of operation maintained by  
4 the covered entity, including the composition  
5 and structure of the workforce of such entity;  
6 and

7 (iii) the nature and cost of the accom-  
8 modation needed under this Act.

9 **SEC. 102. DISCRIMINATION.**

10 (a) **GENERAL RULE.**—No covered entity shall discrimi-  
11 nate against a qualified individual with a disability because of  
12 the disability of such individual in regard to job application  
13 procedures, the hiring or discharge of employees, employee  
14 compensation, advancement, job training, and other terms,  
15 conditions, and privileges of employment.

16 (b) **CONSTRUCTION.**—As used in subsection (a), the  
17 term “discrimination” includes—

18 (1) limiting, segregating, or classifying a job appli-  
19 cant or employee in a way that adversely affects the  
20 opportunities or status of such applicant or employee  
21 because of the disability of such applicant or employee;

22 (2) participating in a contractual or other arrange-  
23 ment or relationship that has the effect of subjecting a  
24 qualified applicant or employee with a disability to the  
25 discrimination prohibited by this title (such relationship

1 includes a relationship with an employment or referral  
2 agency, labor union, an organization providing fringe  
3 benefits to an employee of the covered entity, or an or-  
4 ganization providing training and apprenticeship pro-  
5 grams);

6 (3) utilizing standards, criteria, or methods of  
7 administration—

8 (A) that have the effect of discrimination on  
9 the basis of disability; or

10 (B) that perpetuate the discrimination of  
11 others who are subject to common administrative  
12 control;

13 (4) excluding or otherwise denying equal jobs or  
14 benefits to a qualified individual because of the known  
15 disability of an individual with whom the qualified indi-  
16 vidual is known to have a relationship or association;

17 (5) not making reasonable accommodations to the  
18 known physical or mental limitations of a qualified in-  
19 dividual who is an applicant or employee, unless such  
20 covered entity can demonstrate that the accommoda-  
21 tion would impose an undue hardship on the operation  
22 of the business of such covered entity;

23 (6) denying employment opportunities to a job ap-  
24 plicant or employee who is a qualified individual with a  
25 disability, if such denial is based on the need of such



1 covered entity to make reasonable accommodation to  
2 the physical or mental impairments of the employee or  
3 applicant;

4 (7) using employment tests or other selection cri-  
5 teria that screen out or tend to screen out an individual  
6 with a disability or a class of individuals with disabili-  
7 ties unless the test or other selection criteria, as used  
8 by the covered entity, is shown to be job-related for  
9 the position in question and is consistent with business  
10 necessity; and

11 (8) failing to select and administer tests concern-  
12 ing employment in the most effective manner to ensure  
13 that, when such test is administered to a job applicant  
14 or employee who has a disability that impairs sensory,  
15 manual, or speaking skills, such test results accurately  
16 reflect the skills, aptitude, or whatever other factor of  
17 such applicant or employee that such test purports to  
18 measure, rather than reflecting the impaired sensory,  
19 manual, or speaking skills of such employee or appli-  
20 cant (except where such skills are the factors that the  
21 test purports to measure).

22 (c) MEDICAL EXAMINATIONS AND INQUIRIES.—

23 (1) IN GENERAL.—The prohibition against dis-  
24 crimination as referred to in subsection (a) shall include  
25 medical examinations and inquiries.

1 (2) PREEMPLOYMENT.—

2 (A) PROHIBITED EXAMINATION OR IN-  
3 QUIRY.—Except as provided in paragraph (3), a  
4 covered entity shall not conduct a medical exami-  
5 nation or make inquiries of a job applicant or em-  
6 ployee as to whether such applicant or employee  
7 is an individual with a disability or as to the  
8 nature or severity of such disability.

9 (B) ACCEPTABLE INQUIRY.—A covered  
10 entity may make preemployment inquiries into the  
11 ability of an applicant to perform job-related func-  
12 tions.

13 (3) EMPLOYMENT ENTRANCE EXAMINATION.—A  
14 covered entity may require a medical examination after  
15 an offer of employment has been made to a job appli-  
16 cant and prior to the commencement of the employ-  
17 ment duties of such applicant, and may condition an  
18 offer of employment on the results of such examination,  
19 if—

20 (A) all entering employees are subjected to  
21 such an examination regardless of disability;

22 (B) information obtained regarding the medi-  
23 cal condition or history of the applicant is collect-  
24 ed and maintained on separate forms and in sepa-



1 rate medical files and is treated as a confidential  
2 medical record, except that—

3 (i) supervisors and managers may be in-  
4 formed regarding necessary restrictions on  
5 the work or duties of the employee and nec-  
6 essary accommodations;

7 (ii) first aid and safety personnel may be  
8 informed, when appropriate, if the disability  
9 might require emergency treatment; and

10 (iii) government officials investigating  
11 compliance with this Act shall be provided  
12 relevant information on request; and

13 (C) the results of such physical examination  
14 are used only in accordance with this title.

15 (4) EXAMINATION AND INQUIRY.—

16 (A) PROHIBITED EXAMINATIONS AND IN-  
17 QUIRIES.—A covered entity shall not conduct or  
18 require a medical examination and shall not make  
19 inquiries of an employee as to whether such em-  
20 ployee is an individual with a disability or as to  
21 the nature or severity of the disability, unless  
22 such examination or inquiry is shown to be job-  
23 related and consistent with business necessity.

1 (B) ACCEPTABLE INQUIRIES.—A covered  
2 entity may make inquiries into the ability of an  
3 employee to perform job-related functions.

4 SEC. 103. DEFENSES.

5 (a) IN GENERAL.—It may be a defense to a charge of  
6 discrimination under this Act that an alleged application of  
7 qualification standards, tests, or selection criteria that screen  
8 out or tend to screen out or otherwise deny a job or benefit to  
9 an individual with a disability has been shown to be job-relat-  
10 ed and consistent with business necessity, and such  
11 performance cannot be accomplished by reasonable  
12 accommodation.

13 (b) QUALIFICATION STANDARDS.—The term “qualifi-  
14 cation standards” may include a requirement that an individ-  
15 ual with a currently contagious disease or infection shall not  
16 pose a direct threat to the health or safety of other individ-  
17 uals in the workplace.

18 (c) RELIGIOUS ENTITIES.—

19 (1) IN GENERAL.—This title shall not prohibit a  
20 religious corporation, association, educational institu-  
21 tion, or society from giving preference in employment  
22 to individuals of a particular religion to perform work  
23 connected with the carrying on by such corporation,  
24 association, educational institution, or society of its  
25 activities.



1 (2) QUALIFICATION STANDARD.—Under this title,  
2 a religious organization may require, as a qualification  
3 standard to employment, that all applicants and em-  
4 ployees conform to the religious tenets of such  
5 organization.

6 SEC. 104. ILLEGAL DRUGS AND ALCOHOL.

7 (a) QUALIFIED INDIVIDUAL WITH A DISABILITY.—

8 For purposes of this title, the term “qualified individual with  
9 a disability” shall not include any employee or applicant who  
10 is a current user of illegal drugs, except that an individual  
11 who is otherwise handicapped shall not be excluded from the  
12 protections of this Act if such individual also uses or is also  
13 addicted to drugs.

14 (b) AUTHORITY OF COVERED ENTITY.—A covered  
15 entity—

16 (1) may prohibit the use of alcohol or illegal drugs  
17 at the workplace by all employees;

18 (2) may require that employees shall not be under  
19 the influence of alcohol or illegal drugs at the work-  
20 place;

21 (3) may require that employees behave in con-  
22 formance with the requirements established under the  
23 Drug-Free Workplace of 1988 (41 U.S.C. 701 et seq.)  
24 and that transportation employees meet requirements

1 established by the Secretary of Transportation with re-  
2 spect to drugs and alcohol; and

3 (4) may hold an employee who is a drug user or  
4 alcoholic to the same qualification standards for em-  
5 ployment or job performance and behavior that such  
6 entity holds other employees, even if any unsatisfactory  
7 performance or behavior is related to the drug use or  
8 alcoholism of such employee.

9 (c) DRUG TESTING.—

10 (1) IN GENERAL.—For purposes of this title, a  
11 test to determine the use of illegal drugs shall not be  
12 considered a medical examination.

13 (2) CONSTRUCTION.—Nothing in this title shall  
14 be construed to encourage, prohibit, or authorize the  
15 conducting of drug testing of job applicants or employ-  
16 ees or making employment decisions based on such test  
17 results.

18 SEC. 105. POSTING NOTICES.

19 Every employer, employment agency, labor organiza-  
20 tion, or joint labor-management committee covered under  
21 this title shall post notices in an accessible format to appli-  
22 cants, employees, and members describing the applicable pro-  
23 visions of this Act, in the manner prescribed by section 711  
24 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).



1 SEC. 106. REGULATIONS.

2 Not later than 1 year after the date of enactment of this  
3 Act, the Commission shall issue regulations in an accessible  
4 format to carry out this title in accordance with subchapter II  
5 of chapter 5 of title 5, United States Code.

6 SEC. 107. ENFORCEMENT.

7 The remedies and procedures set forth in sections 706,  
8 707, 709, and 710 of the Civil Rights Act of 1964 (42  
9 U.S.C. 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be  
10 available, with respect to the Commission or any individual  
11 who believes that he or she is being subjected to discrimina-  
12 tion on the basis of disability in violation of any provisions of  
13 this Act, or regulations promulgated under section 106, con-  
14 cerning employment.

15 SEC. 108. EFFECTIVE DATE.

16 This title shall become effective 24 months after the  
17 date of enactment.

18 **TITLE II—PUBLIC SERVICES**

19 SEC. 201. DEFINITION.

20 As used in this title, the term "qualified individual with  
21 a disability" means an individual with a disability who, with  
22 or without reasonable modifications to rules, policies, and  
23 practices, the removal of architectural, communication, and  
24 transportation barriers, or the provision of auxiliary aids and  
25 services, meets the essential eligibility requirements for the  
26 receipt of services or the participation in programs or activi-

1 ties provided by a department, agency, special purpose  
2 district, or other instrumentality of a State or a local  
3 government.

4 SEC. 202. DISCRIMINATION.

5 No qualified individual with a disability shall, by reason  
6 of such disability, be excluded from the participation in, be  
7 denied the benefits of, or be subjected to discrimination by a  
8 department, agency, special purpose district, or other instru-  
9 mentality of a State or a local government.

10 SEC. 203. ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION

11 PROVIDED BY PUBLIC ENTITIES CONSIDERED  
12 DISCRIMINATORY.

13 (a) DEFINITION.—As used in this title, the term "public  
14 transportation" means transportation by bus or rail, or by  
15 any other conveyance (other than air travel) that provides the  
16 general public with general or special service (including char-  
17 ter service) on a regular and continuing basis.

18 (b) VEHICLES.—

19 (1) NEW BUSES, RAIL VEHICLES, AND OTHER  
20 FIXED ROUTE VEHICLES.—It shall be considered dis-  
21 crimination for purposes of this Act and section 504 of  
22 the Rehabilitation Act of 1973 (29 U.S.C. 794) for a  
23 public entity to purchase or lease a new fixed route bus  
24 of any size, a new intercity rail vehicle, a new com-  
25 muter rail vehicle, a new rapid rail vehicle, a new light



1 rail vehicle to be used for public transportation, or any  
2 other new fixed route vehicle to be used for public  
3 transportation and for which a solicitation is made later  
4 than 30 days after the date of enactment of this Act, if  
5 such bus, rail, or other vehicle is not readily accessible  
6 to and usable by individuals with disabilities, including  
7 individuals who use wheelchairs.

8 (2) USED VEHICLES.—If a public entity purchases  
9 or leases a used vehicle to be used for public transpor-  
10 tation after the date of enactment of this Act, such in-  
11 dividual or entity shall make demonstrated good faith  
12 efforts to purchase or lease such a used vehicle that is  
13 readily accessible to and usable by individuals with dis-  
14 abilities, including individuals who use wheelchairs.

15 (3) REMANUFACTURED VEHICLES.—If a public  
16 entity remanufactures a vehicle, or purchases or leases  
17 a remanufactured vehicle to be used for public trans-  
18 portation, so as to extend its usable life for 5 years or  
19 more, the vehicle shall, to the maximum extent feasi-  
20 ble, be readily accessible to and usable by individuals  
21 with disabilities, including individuals who use wheel-  
22 chairs.

23 (c) PARATRANSIT AS A SUPPLEMENT TO FIXED  
24 ROUTE PUBLIC TRANSPORTATION SYSTEM.—

1 (1) IN GENERAL.—If a public entity operates a  
2 fixed route public transportation system to provide  
3 public transportation, it shall be considered discrimina-  
4 tion, for purposes of this Act and section 504 of the  
5 Rehabilitation Act of 1973 (29 U.S.C. 794), for a  
6 public transit entity that is responsible for providing  
7 public transportation to fail to provide paratransit or  
8 other special transportation services sufficient to pro-  
9 vide a comparable level of services as is provided to  
10 individuals using fixed route public transportation to in-  
11 dividuals with disabilities, including individuals who use  
12 wheelchairs, who cannot otherwise use fixed route  
13 public transportation and to other individuals associated  
14 with such individuals with disabilities in accordance  
15 with service criteria established under regulations pro-  
16 mulgated by the Secretary of Transportation unless the  
17 public transit entity can demonstrate that the provision  
18 of paratransit or other special transportation services  
19 would impose an undue financial burden on the public  
20 transit entity.

21 (2) UNDUE FINANCIAL BURDEN.—If the provision  
22 of comparable paratransit or other special transporta-  
23 tion services would impose an undue financial burden  
24 on the public transit entity, such entity must provide  
25 paratransit and other special transportation services to



1 the extent that providing such services would not  
2 impose an undue financial burden on such entity.

3 (3) REGULATIONS.—

4 (A) FORMULA.—Regulations promulgated by  
5 the Secretary of Transportation to determine what  
6 constitutes an undue financial burden, for pur-  
7 poses of this subsection, may include a flexible nu-  
8 merical formula that incorporates appropriate  
9 local characteristics such as population.

10 (B) ADDITIONAL PARATRANSIT SERV-  
11 ICES.—Notwithstanding paragraphs (1) and (2),  
12 the Secretary may require, at the discretion of the  
13 Secretary, a public transit authority to provide  
14 paratransit services beyond the amount deter-  
15 mined by such formula.

16 (d) COMMUNITY OPERATING DEMAND RESPONSIVE  
17 SYSTEMS FOR THE GENERAL PUBLIC.—If a public entity  
18 operates a demand responsive system that is used to provide  
19 public transportation for the general public, it shall be consid-  
20 ered discrimination, for purposes of this Act and section 504  
21 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such  
22 individual or entity to purchase or lease a new vehicle, for  
23 which a solicitation is made later than 30 days after the date  
24 of enactment of this Act, that is not readily accessible to and  
25 usable by individuals with disabilities, including individuals

1 who use wheelchairs, unless the entity can demonstrate that  
2 such system, when viewed in its entirety, provides a level of  
3 service to individuals with disabilities equivalent to that pro-  
4 vided to the general public.

5 (e) TEMPORARY RELIEF WHERE LIFTS ARE UN-  
6 AVAILABLE.—With respect to the purchase of new buses, a  
7 public entity may apply for, and the Secretary of Transporta-  
8 tion may temporarily relieve such public entity from the obli-  
9 gation to purchase new buses of any size that are readily  
10 accessible to and usable by individuals with disabilities if such  
11 public entity demonstrates—

12 (1) that the initial solicitation for new buses made  
13 by the public entity specified that all new buses were  
14 to be lift-equipped and were to be otherwise accessible  
15 to and usable by individuals with disabilities;

16 (2) the unavailability from any qualified manufac-  
17 turer of hydraulic, electro-mechanical, or other lifts for  
18 such new buses;

19 (3) that the public entity seeking temporary relief  
20 has made good faith efforts to locate a qualified manu-  
21 facturer to supply the lifts to the manufacturer of such  
22 buses in sufficient time to comply with such solicita-  
23 tion; and

24 (4) that any further delay in purchasing new buses  
25 necessary to obtain such lifts would significantly impair



1 transportation services in the community served by the  
2 public entity.

3 (f) CONSTRUCTION.—

4 (1) IN GENERAL.—Any relief granted under sub-  
5 section (e) shall be limited in duration by a specified  
6 date and the appropriate committees of the Congress  
7 shall be notified of any such relief granted.

8 (2) FRAUDULENT APPLICATION.—If, at any time,  
9 the Secretary of Transportation has reasonable cause  
10 to believe that such relief was fraudulently applied for,  
11 the Secretary of Transportation shall—

12 (A) cancel such relief, if such relief is still in  
13 effect; and

14 (B) take other steps that the Secretary of  
15 Transportation considers appropriate.

16 (g) NEW FACILITIES.—For purposes of this Act and  
17 section 504 of the Rehabilitation Act of 1973 (29 U.S.C.  
18 794), it shall be considered discrimination for a public entity  
19 to build a new facility that will be used to provide public  
20 transportation services, including bus service, intercity rail  
21 service, rapid rail service, commuter rail service, light rail  
22 service, and other service used for public transportation that  
23 is not readily accessible to and usable by individuals with  
24 disabilities, including individuals who use wheelchairs.

1 (h) ALTERATIONS OF EXISTING FACILITIES.—With  
2 respect to a facility or any part thereof that is used for public  
3 transportation and that is altered by, on behalf of, or for the  
4 use of a public entity in a manner that affects or could affect  
5 the usability of the facility or part thereof, it shall be consid-  
6 ered discrimination, for purposes of this title and section 504  
7 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such  
8 individual or entity to fail to make the alterations in such a  
9 manner that, to the maximum extent feasible, the altered  
10 portions of the facility are readily accessible to and usable by  
11 individuals with disabilities, including individuals who use  
12 wheelchairs. If such public entity is undertaking major struc-  
13 tural alterations that affect or could affect the usability of the  
14 facility (as defined under criteria established by the Secretary  
15 of Transportation), such public entity shall also make the al-  
16 terations in such a manner that, to the maximum extent fea-  
17 sible, the path of travel to the altered area, and the bath-  
18 rooms, telephones, and drinking fountains serving such area,  
19 are readily accessible to and usable by individuals with dis-  
20 abilities, including individuals who use wheelchairs.

21 (i) EXISTING FACILITIES, INTERCITY RAIL, RAPID  
22 RAIL, LIGHT RAIL, AND COMMUTER RAIL SYSTEMS, AND  
23 KEY STATIONS.—

24 (1) EXISTING FACILITIES.—Except as provided  
25 in paragraph (3), with respect to existing facilities used



1 — for public transportation, it shall be considered discrim-  
2 ination, for purposes of this Act and section 504 of the  
3 Rehabilitation Act of 1973 (29 U.S.C. 794), for a  
4 public entity to fail to operate such public transporta-  
5 tion program or activity conducted in such facilities so  
6 that, when viewed in the entirety, it is readily accessi-  
7 ble to and usable by individuals with disabilities, in-  
8 cluding individuals who use wheelchairs.

9 (2) INTERCITY, RAPID, LIGHT, AND COMMUTER  
10 RAIL SYSTEMS.—With respect to vehicles operated by  
11 intercity, light, rapid, and commuter rail systems, for  
12 purposes of this title and section 504 of the Rehabilita-  
13 tion Act of 1973 (29 U.S.C. 794), it shall be consid-  
14 ered discrimination for a public entity to fail to have at  
15 least one car per train that is accessible to individuals  
16 with disabilities, including individuals who use wheel-  
17 chairs, as soon as practicable but in any event in no  
18 less than 5 years.

19 (3) KEY STATIONS.—

20 (A) IN GENERAL.—For purposes of this title  
21 and section 504 of the Rehabilitation Act of 1973  
22 (29 U.S.C. 794), it shall be considered discrimina-  
23 tion for a public entity to fail to make stations in  
24 intercity rail systems and key stations in rapid  
25 rail, commuter rail, and light rail systems readily

1 accessible to and usable by individuals with dis-  
2 abilities, including individuals who use wheel-  
3 chairs.

4 (B) RAPID RAIL, COMMUTER RAIL, AND  
5 LIGHT RAIL SYSTEMS.—Key stations in rapid  
6 rail, commuter rail, and light rail systems shall be  
7 made readily accessible to and usable by individ-  
8 uals with disabilities, including individuals who  
9 use wheelchairs, as soon as practicable but in no  
10 event later than 3 years after the date of enact-  
11 ment of this Act, except that the time limit may  
12 be extended by the Secretary of Transportation  
13 up to 20 years for extraordinarily expensive struc-  
14 tural changes to, or replacement of, existing facili-  
15 ties necessary to achieve accessibility.

16 (C) INTERCITY RAIL SYSTEMS.—All stations  
17 in intercity rail systems shall be made readily ac-  
18 cessible to and usable by individuals with disabili-  
19 ties, including individuals who use wheelchairs,  
20 as soon as practicable, but in no event later than  
21 20 years after the date of enactment of this Act.

22 (D) PLANS AND MILESTONES.—The Secre-  
23 tary of Transportation shall require the appropri-  
24 ate public entity to develop a plan for compliance  
25 with this paragraph that reflects consultation with



1 individuals with disabilities affected by such plan  
2 and that establishes milestones for achievement of  
3 the requirements of this paragraph.

4 **SEC. 204. REGULATIONS.**

5 (a) **ATTORNEY GENERAL.**—Not later than 1 year after  
6 the date of enactment of this Act, the Attorney General shall  
7 promulgate regulations in an accessible format that imple-  
8 ment this title (other than section 203), and such regulations  
9 shall be consistent with this title and with the coordination  
10 regulations under part 41 of title 28, Code of Federal Regu-  
11 lations (as promulgated by the Department of Health, Educa-  
12 tion, and Welfare on January 13, 1978), applicable to recipi-  
13 ents of Federal financial assistance under section 504 of the  
14 Rehabilitation Act of 1973 (29 U.S.C. 794) except, with re-  
15 spect to “program accessibility, existing facilities”, and  
16 “communications”, such regulations shall be consistent with  
17 regulations and analysis as in part 39 of title 28 of the Code  
18 of Federal Regulations, applicable to federally conducted ac-  
19 tivities under section 504 of the Rehabilitation Act of 1973  
20 (29 U.S.C. 794).

21 (b) **SECRETARY OF TRANSPORTATION.**—

22 (1) **IN GENERAL.**—Not later than 1 year after the  
23 date of enactment of this Act, the Secretary of Trans-  
24 portation shall promulgate regulations in an accessible

1 format that include standards applicable to facilities  
2 and vehicles covered under section 203 of this title.

3 (2) **CONFORMANCE OF STANDARDS.**—Such stand-  
4 ards shall be consistent with the minimum guidelines  
5 and requirements issued by the Architectural and  
6 Transportation Barriers Compliance Board in accord-  
7 ance with section 504.

8 **SEC. 205. ENFORCEMENT.**

9 The remedies, procedures, and rights set forth in section  
10 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall  
11 be available with respect to any individual who believes that  
12 he or she is being subjected to discrimination on the basis of  
13 disability in violation of this Act, or regulations promulgated  
14 under section 204, concerning public services.

15 **SEC. 206. EFFECTIVE DATE.**

16 (a) **IN GENERAL.**—Except as provided in subsection (b),  
17 this title shall become effective 18 months after the date of  
18 enactment of this Act.

19 (b) **FIXED ROUTE VEHICLES.**—Section 203(b)(1), as  
20 regarding new fixed route vehicles, shall become effective on  
21 the date of enactment of this Act.



1 **TITLE III—PUBLIC ACCOMMODA-**  
2 **TIONS AND SERVICES OPERAT-**  
3 **ED BY PRIVATE ENTITIES**

4 **SEC. 301. DEFINITIONS.**

5 As used in this title:

6 (1) **COMMERCE.**—The term “commerce” means  
7 travel, trade, traffic, commerce, transportation, or com-  
8 munication—

9 (A) among the several States;

10 (B) between any foreign country or any terri-  
11 tory or possession and any State; or

12 (C) between points in the same State but  
13 through another State or foreign country.

14 (2) **POTENTIAL PLACES OF EMPLOYMENT.**—The  
15 term “potential places of employment” means facili-  
16 ties—

17 (A) that are intended for nonresidential use;

18 and

19 (B) whose operations will affect commerce.

20 Such term shall not include facilities that are covered  
21 or expressly exempted from coverage under the Fair  
22 Housing Act of 1968 (42 U.S.C. 3601 et seq.).

23 (3) **PUBLIC ACCOMMODATION.**—The following  
24 privately operated entities are considered public accom-

1 modations for purposes of this title, if the operations of  
2 such entities affect commerce—

3 (A) an inn, hotel, motel, or other similar  
4 place of lodging, except for an establishment lo-  
5 cated within a building that contains not more  
6 than five rooms for rent or hire and that is actual-  
7 ly occupied by the proprietor of such establish-  
8 ment as the residence of such proprietor;

9 (B) a restaurant, bar, or other establishment  
10 serving food or drink;

11 (C) a motion picture house, theater, concert  
12 hall, stadium, or other place of exhibition or  
13 entertainment;

14 (D) an auditorium, convention center, or lec-  
15 ture hall;

16 (E) a bakery, grocery store, clothing store,  
17 hardware store, shopping center, or other similar  
18 retail sales establishment;

19 (F) a laundromat, dry-cleaners, bank, barber  
20 shop, beauty shop, travel service, shoe repair  
21 service, funeral parlor, gas station, office of an ac-  
22 countant or lawyer, pharmacy, insurance office,  
23 professional office of a health care provider, hospi-  
24 tal, or other similar service establishment;

25 (G) a terminal used for public transportation;



1 (H) a museum, library, gallery, and other  
2 similar place of public display or collection;

3 (I) a park or zoo;

4 (J) a nursery, elementary, secondary, under-  
5 graduate, or postgraduate private school;

6 (K) a day care center, senior citizen center,  
7 homeless shelter, food bank, adoption program, or  
8 other similar social service center; and

9 (L) a gymnasium, health spa, bowling alley,  
10 golf course, or other similar place of exercise or  
11 recreation.

12 (4) PUBLIC TRANSPORTATION.—The term  
13 “public transportation” means transportation by bus or  
14 rail, or by any other conveyance (other than by air  
15 travel) that provides the general public with general or  
16 special service (including charter service) on a regular  
17 and continuing basis.

18 (5) READILY ACHIEVABLE.—

19 (A) IN GENERAL.—The term “readily  
20 achievable” means easily accomplishable and able  
21 to be carried out without much difficulty or  
22 expense.

23 (B) DETERMINATION.—In determining  
24 whether an action is readily achievable, factors to  
25 be considered include—

1 (i) the overall size of the covered entity  
2 with respect to number of employees,  
3 number and type of facilities, and the size of  
4 budget;

5 (ii) the type of operation of the covered  
6 entity, including the composition and struc-  
7 ture of the entity; and

8 (iii) the nature and cost of the action  
9 needed.

10 SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC AC-  
11 COMMODATIONS.

12 (a) GENERAL RULE.—No individual shall be discrimi-  
13 nated against on the basis of disability in the full and equal  
14 enjoyment of the goods, services, facilities, privileges, advan-  
15 tages, and accommodations of any place of public accommo-  
16 dation.

17 (b) CONSTRUCTION.—

18 (1) GENERAL PROHIBITION.—

19 (A) ACTIVITIES.—

20 (i) DENIAL OF PARTICIPATION.—It  
21 shall be discriminatory to subject an individ-  
22 ual or class of individuals on the basis of a  
23 disability or disabilities of such individual or  
24 class, directly, or through contractual, licens-  
25 ing, or other arrangements, to a denial of the



1 opportunity of the individual or class to par-  
2 ticipate in or benefit from the goods, serv-  
3 ices, facilities, privileges, advantages, and ac-  
4 commodations of an entity.

5 (ii) PARTICIPATION IN UNEQUAL BENE-  
6 FIT.—It shall be discriminatory to afford an  
7 individual or class of individuals, on the basis  
8 of a disability or disabilities of such individ-  
9 ual or class, directly, or through contractual,  
10 licensing, or other arrangements with the op-  
11 portunity to participate in or benefit from a  
12 good, service, facility, privilege, advantage,  
13 and accommodation that is not equal to that  
14 afforded to other individuals.

15 (iii) SEPARATE BENEFIT.—It shall be  
16 discriminatory to provide an individual or  
17 class of individuals, on the basis of a disabil-  
18 ity or disabilities of such individual or class,  
19 directly, or through contractual, licensing, or  
20 other arrangements with a good, service, fa-  
21 cility, privilege, advantage, or accommoda-  
22 tion that is different or separate from that  
23 provided to other individuals, unless such  
24 action is necessary to provide the individual  
25 or class of individuals with a good, service,

1 facility, privilege, advantage, or accommoda-  
2 tion, or other opportunity that is as effective  
3 as that provided to others.

4 (B) INTEGRATED SETTINGS.—Goods, facili-  
5 ties, privileges, advantages, accommodations, and  
6 services shall be afforded to an individual with a  
7 disability in the most integrated setting appropri-  
8 ate to the needs of the individual.

9 (C) OPPORTUNITY TO PARTICIPATE.—Not-  
10 withstanding the existence of separate or different  
11 programs or activities provided in accordance with  
12 this section, an individual with a disability shall  
13 not be denied the opportunity to participate in  
14 such programs or activities that are not separate  
15 or different.

16 (D) ADMINISTRATIVE METHODS.—An indi-  
17 vidual or entity shall not, directly or through con-  
18 tractual or other arrangements, utilize standards  
19 or criteria or methods of administration—

20 (i) that have the effect of discriminating  
21 on the basis of disability; or

22 (ii) that perpetuate the discrimination of  
23 others who are subject to common adminis-  
24 trative control.



1 (E) ASSOCIATION.—It shall be discriminato-  
2 ry to exclude or otherwise deny equal goods,  
3 services, facilities, privileges, advantages, and ac-  
4 commodations, or other opportunities to an indi-  
5 vidual or entity because of the known disability of  
6 an individual with whom the individual or entity  
7 is known to have a relationship or association.

8 (2) SPECIFIC PROHIBITIONS.—

9 (A) DISCRIMINATION.—As used in subsec-  
10 tion (a), the term “discrimination” shall include—

11 (i) the imposition or application of eligi-  
12 bility criteria that screen out or tend to  
13 screen out an individual with a disability or  
14 any class of individuals with disabilities from  
15 fully and equally enjoying any goods, serv-  
16 ices, facilities, privileges, advantages, and ac-  
17 commodations, unless such criteria can be  
18 shown to be necessary for the provision of  
19 the goods, services, facilities, privileges, ad-  
20 vantages, or accommodations being offered;

21 (ii) a failure to make reasonable modifi-  
22 cations in policies, practices, procedures,  
23 when such modifications are necessary to  
24 afford such goods, services, facilities, privi-  
25 leges, advantages, and accommodations to

1 individuals with disabilities, unless the entity  
2 can demonstrate that making such modifica-  
3 tions would fundamentally alter the nature of  
4 such goods, services, facilities, privileges, ad-  
5 vantages, and accommodations;

6 (iii) a failure to take such steps as may  
7 be necessary to ensure that no individual  
8 with a disability is excluded, denied services,  
9 segregated or otherwise treated differently  
10 than other individual because of the absence  
11 of auxiliary aids and services, unless the  
12 entity can demonstrate that taking such steps  
13 would fundamentally alter the nature of the  
14 good, service, facility, privilege, advantage,  
15 or accommodation being offered or would  
16 result in undue burden;

17 (iv) a failure to remove architectural  
18 barriers, and communication barriers that are  
19 structural in nature, in existing facilities, and  
20 transportation barriers in existing vehicles  
21 used by an establishment for transporting in-  
22 dividuals (not including barriers that can only  
23 be removed through the retrofitting of vehi-  
24 cles by the installation of a hydraulic or



1 other lift), where such removal is readily  
2 achievable;

3 (v) where an entity can demonstrate  
4 that the removal of a barrier under clause  
5 (iv) is not readily achievable, a failure to  
6 make such goods, services, facilities, privi-  
7 leges, advantages, and accommodations  
8 available through alternative methods if such  
9 methods are readily achievable;

10 (vi) with respect to a facility or part  
11 thereof that is altered by, on behalf of, or for  
12 the use of an establishment in a manner that  
13 affects or could affect the usability of the fa-  
14 cility or part thereof, a failure to make alter-  
15 ations in such a manner that, to the maxi-  
16 mum extent feasible, the altered portions of  
17 the facility are readily accessible to and  
18 usable by individuals with disabilities, includ-  
19 ing individuals who use wheelchairs, and  
20 where the entity is undertaking major struc-  
21 tural alterations that affect or could affect  
22 the usability of the facility (as defined under  
23 criteria established by the Attorney General),  
24 the entity shall also make the alterations in  
25 such a manner that, to the maximum extent

1 feasible, the path of travel to the altered  
2 area and the bathrooms, telephones, and  
3 drinking fountains serving the remodeled  
4 area, are readily accessible to and usable by  
5 individuals with disabilities, except that this  
6 paragraph shall not be construed to require  
7 the installation of an elevator for facilities  
8 that are less than three stories or that have  
9 less than 3,000 square feet per story unless  
10 the building is a shopping center, a shopping  
11 mall, or the professional office of a health  
12 care provider or unless the Attorney General  
13 determines that a particular category of such  
14 facilities requires the installation of elevators  
15 based on the usage of such facilities.

16 (B) FIXED ROUTE SYSTEM.—

17 (i) ACCESSIBILITY.—It shall be consid-  
18 ered discrimination for an entity that uses a  
19 vehicle for a fixed route system to transport  
20 individuals not covered under section 203 or  
21 304, to purchase or lease a bus or a vehicle  
22 that is capable of carrying in excess of 16  
23 passengers, for which solicitations are made  
24 later than 30 days after the effective date of  
25 this Act, that is not readily accessible to and



1 usable by individuals with disabilities (includ-  
2 ing individuals who use wheelchairs), except  
3 that over-the-road buses shall be subject to  
4 section 304(b)(4) and section 305.

5 (ii) EQUIVALENT SERVICE.—If such  
6 entity purchases or leases a vehicle carrying  
7 16 or less passengers after the effective date  
8 of this title that is not readily accessible to  
9 or usable by individuals with disabilities, it  
10 shall be discriminatory for such entity to fail  
11 to operate a system that, when viewed in its  
12 entirety, ensures a level of service to individ-  
13 uals with disabilities, including individuals  
14 who use wheelchairs, equivalent to the level  
15 of service provided to the general public.

16 (C) DEMAND RESPONSIVE SYSTEM.—As  
17 used in subsection (a), the term “discrimination”  
18 shall include, in the case of a covered entity that  
19 uses vehicles in a demand responsive system to  
20 transport individuals not covered under section  
21 203 or 304, an incident in which—

22 (i) such entity purchases or leases a ve-  
23 hicle carrying 16 or less passengers after the  
24 effective date of this title, a failure to operate  
25 a system that, when viewed in its entirety,

1 ensures a level of service to individuals with  
2 disabilities, including individuals who use  
3 wheelchairs, equivalent to the level of serv-  
4 ice provided to the general public; and

5 (ii) such entity purchases or leases a bus  
6 or a vehicle that can carry in excess of 16  
7 passengers for which solicitations are made  
8 later than 30 days after the effective date of  
9 this Act, that is not readily accessible to and  
10 usable by individuals with disabilities (includ-  
11 ing individuals who use wheelchairs) unless  
12 such entity can demonstrate that such  
13 system, when viewed in its entirety, already  
14 provides a level of service to individuals with  
15 disabilities equivalent to that provided to the  
16 general public, except that over-the-road  
17 buses shall be subject to section 304(b)(4)  
18 and section 305.

19 **SEC. 303. NEW CONSTRUCTION IN PUBLIC ACCOMMODATIONS**  
20 **AND POTENTIAL PLACES OF EMPLOYMENT.**

21 (a) APPLICATION OF TERM.—Except as provided in  
22 subsection (b), as applied to a—

- 23 (1) public accommodation; and  
24 (2) potential place of employment;



1 the term "discrimination" as used in section 302(a) shall  
2 mean a failure to design and construct facilities for first occu-  
3 pancy later than 30 months after the date of enactment of  
4 this Act that are readily accessible to and usable by individ-  
5 uals with disabilities, except where an entity can demonstrate  
6 that it is structurally impracticable to meet the requirements  
7 of such subsection in accordance with standards set forth or  
8 incorporated by reference in regulations issued under this  
9 title.

10 (b) ELEVATOR.—Subsection (a) shall not be construed  
11 to require the installation of an elevator for facilities that are  
12 less than three stories or have less than 3,000 square feet per  
13 story unless the building is a shopping center, a shopping  
14 mall, or the professional office of a health care provider or  
15 unless the Attorney General determines that a particular cat-  
16 egory of such facilities requires the installation of elevators  
17 based on the usage of such facilities.

18 **SEC. 304. PROHIBITION OF DISCRIMINATION IN PUBLIC**  
19 **TRANSPORTATION SERVICES PROVIDED BY**  
20 **PRIVATE ENTITIES.**

21 (a) GENERAL RULE.—No individual shall be discrimi-  
22 nated against on the basis of disability in the full and equal  
23 enjoyment of public transportation services provided by a pri-  
24 vately operated entity that is primarily engaged in the busi-  
25 ness of transporting people, but is not in the principal busi-

1 ness of providing air transportation, and whose operations  
2 affect commerce.

3 (b) CONSTRUCTION.—As used in subsection (a), the  
4 term "discrimination against" includes—

5 (1) the imposition or application by an entity of  
6 eligibility criteria that screen out or tend to screen out  
7 an individual with a disability or any class of individ-  
8 uals with disabilities from fully enjoying the public  
9 transportation services provided by the entity;

10 (2) the failure of an entity to—

11 (A) make reasonable modifications consistent  
12 with those required under section 302(b)(2)(A)(ii);

13 (B) provide auxiliary aids and services con-  
14 sistent with the requirements of section  
15 302(b)(2)(A)(iii); and

16 (C) remove barriers consistent with the re-  
17 quirements of section 302(b)(2)(A) (iv), (v), and  
18 (vi);

19 (3) the purchase or lease of a new vehicle (other  
20 than an automobile or an over-the-road bus) that is to  
21 be used to provide public transportation services, and  
22 for which a solicitation is made later than 30 days  
23 after the date of enactment of this Act, that is not  
24 readily accessible to and usable by individuals with dis-  
25 abilities, including individuals who use wheelchairs



1 (except in the case of a vehicle used in a demand re-  
2 sponse system, in which case the new vehicle need not  
3 be readily accessible to and usable by individuals with  
4 disabilities if the entity can demonstrate that such  
5 system, when viewed in its entirety, provides a level of  
6 service to individuals with disabilities equivalent to the  
7 level of service provided to the general public); and

8 (4) the purchase or lease of a new over-the-road  
9 bus that is used to provide public transportation serv-  
10 ices and for which a solicitation is made later than 7  
11 years after the date of enactment of this Act for small  
12 providers (as defined by the Secretary of Transporta-  
13 tion) and 6 years for other providers, except as provid-  
14 ed in section 305(d), that is not readily accessible to  
15 and usable by individuals with disabilities, including in-  
16 dividuals who use wheelchairs.

17 SEC. 305. STUDY.

18 (a) PURPOSE.—The Office of Technology Assessment  
19 shall undertake a study to determine—

20 (1) the access needs of individuals with disabilities  
21 to over-the-road buses; and

22 (2) the most cost effective methods for making  
23 over-the-road buses readily accessible to and usable by  
24 individuals with disabilities, particularly individuals  
25 who use wheelchairs.

1 (b) CONTENT.—The study shall analyze issues,  
2 including—

3 (1) the anticipated demand by individuals with dis-  
4 abilities for accessible over-the-road buses;

5 (2) the degree to which over-the road buses are  
6 readily accessible to and usable by individuals with dis-  
7 abilities;

8 (3) the cost of providing accessibility to over-the-  
9 road buses to individuals with disabilities, including  
10 recent technological and cost saving developments in  
11 equipment and devices providing such accessibility;

12 (4) possible design changes in over-the-road buses  
13 that could enhance such accessibility; and

14 (5) the impact of accessibility requirements on the  
15 continuation of inter-city bus service by over-the-road  
16 buses, with particular consideration of impact on rural  
17 service.

18 (c) ADVISORY COMMITTEE.—In conducting the study  
19 required by subsection (a), the Office of Technology Assess-  
20 ment shall establish an advisory committee, which shall con-  
21 sist of—

22 (1) members selected from among private opera-  
23 tors using over-the-road buses, bus manufacturers, and  
24 lift manufacturers;



1 (2) members selected from among individuals with  
2 disabilities, particularly individuals who use wheel-  
3 chairs, who are potential riders of such buses; and

4 (3) members selected for their technical expertise  
5 on issues included in the study.

6 The number of members selected under each of paragraphs  
7 (1) and (2) shall be equal, and the total number of members  
8 selected under paragraphs (1) and (2) shall exceed the  
9 number of members selected under paragraph (3).

10 (d) DEADLINE.—The study required by subsection (a),  
11 along with recommendations by the Office of Technology As-  
12 sessment, including any policy options for legislative action,  
13 shall be submitted to the President and the Congress within  
14 36 months after the date of enactment of this Act. If the  
15 President, after reviewing the study, determines that compli-  
16 ance with the requirements of section 304(a) on or before the  
17 applicable deadlines specified in section 304(b)(4) will result  
18 in a significant reduction in intercity bus service, each such  
19 deadline shall be extended by one additional year.

20 (e) REVIEW.—In developing the study required by sub-  
21 section (a), the Office of Technology Assessment shall pro-  
22 vide a preliminary draft of such study to the Architectural  
23 and Transportation Barriers Compliance Board established  
24 under section 502 of the Rehabilitation Act of 1973 (29  
25 U.S.C. 792). The Board shall have an opportunity to com-

1 ment on such draft study, and any such comments by the  
2 Board made in writing within 120 days after the Board's  
3 receipt of the draft study shall be incorporated as part of the  
4 final study required to be submitted under subsection (d).

5 **SEC. 306. REGULATIONS.**

6 (a) ACCESSIBILITY STANDARDS.—Not later than 1  
7 year after the date of enactment of this Act, the Secretary of  
8 Transportation shall issue regulations in an accessible format  
9 that shall include standards applicable to facilities and vehi-  
10 cles covered under section 302(b)(2) (B) and (C) and section  
11 304.

12 (b) OTHER PROVISIONS.—Not later than 1 year after  
13 the date of enactment of this Act, the Attorney General shall  
14 issue regulations in an accessible format to carry out the re-  
15 maining provisions of this title not referred to in subsection  
16 (a) that include standards applicable to facilities and vehicles  
17 covered under section 302.

18 (c) STANDARDS.—Standards included in regulations  
19 issued under subsections (a) and (b) shall be consistent with  
20 the minimum guidelines and requirements issued by the Ar-  
21 chitectural and Transportation Barriers Compliance Board in  
22 accordance with section 504.



1 SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS  
2 ORGANIZATIONS.

3 The provisions of this title shall not apply to private  
4 clubs or establishments exempted from coverage under title  
5 II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)) or  
6 to religious organizations or entities controlled by religious  
7 organizations, including places of worship.

8 SEC. 308. ENFORCEMENT.

9 (a) IN GENERAL.—

10 (1) AVAILABILITY OF REMEDIES AND PROCE-  
11 DURES.—The remedies and procedures set forth in sec-  
12 tion 204 of the Civil Rights Act of 1964 (42 U.S.C.  
13 sec. 2000a-3(a)) shall be available to any individual  
14 who is being or is about to be subjected to discrimina-  
15 tion on the basis of disability in violation of this title.

16 (2) INJUNCTIVE RELIEF.—In the case of viola-  
17 tions of section 302(b)(2)(A)(iv) and (vi) and section  
18 303(a), injunctive relief shall include an order to alter  
19 facilities to make such facilities readily accessible to  
20 and usable by individuals with disabilities to the extent  
21 required by this title. Where appropriate, injunctive  
22 relief shall also include requiring the provision of an  
23 auxiliary aid or service, modification of a policy, or  
24 provision of alternative methods, to the extent required  
25 by this title.

26 (b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

1 (1) DENIAL OF RIGHTS.—

2 (A) DUTY TO INVESTIGATE.—The Attorney  
3 General shall investigate alleged violations of this  
4 title, which shall include undertaking periodic re-  
5 views of compliance of covered entities under this  
6 title.

7 (B) POTENTIAL VIOLATION.—If the Attor-  
8 ney General has reasonable cause to believe that  
9 any person or group of persons is engaged in a  
10 pattern or practice of resistance to the full enjoy-  
11 ment of any of the rights granted by this title or  
12 that any person or group of persons has been  
13 denied any of the rights granted by such title, and  
14 such denial raises an issue of general public im-  
15 portance, the Attorney General may commence a  
16 civil action in any appropriate United States dis-  
17 trict court.

18 (2) AUTHORITY OF COURT.—In a civil action  
19 under paragraph (1), the court—

20 (A) may grant any equitable relief that such  
21 court considers to be appropriate, including grant-  
22 ing temporary, preliminary, or permanent relief,  
23 providing an auxiliary aid or service, modification  
24 of policy or alternative method, or making facili-  
25 ties readily accessible to and usable by individuals



1 with disabilities, to the extent required by this  
2 title;

3 (B) may award such other relief as the court  
4 considers to be appropriate, including monetary  
5 damages to persons aggrieved when requested by  
6 the Attorney General; and

7 (C) may, to vindicate the public interest,  
8 assess a civil penalty against the entity in an  
9 amount—

10 (i) not exceeding \$50,000 for a first vio-  
11 lation; and

12 (ii) not exceeding \$100,000 for any sub-  
13 sequent violation.

14 (3) JUDICIAL CONSIDERATION.—In a civil action  
15 under paragraph (1), the court, when considering what  
16 amount of civil penalty, if any, is appropriate, shall  
17 give consideration to any good faith effort or attempt  
18 to comply with this Act by the entity.

19 **SEC. 309. EFFECTIVE DATE.**

20 This title shall become effective 18 months after the  
21 date of enactment of this Act.

1 **TITLE IV—**  
2 **TELECOMMUNICATIONS**  
3 **RELAY SERVICES**

4 **SEC. 401. TELECOMMUNICATIONS SERVICES FOR HEARING-**  
5 **IMPAIRED AND SPEECH-IMPAIRED INDIVID-**  
6 **UALS.**

7 (a) TELECOMMUNICATIONS.—Title II of the Communi-  
8 cations Act of 1934 (47 U.S.C. 201 et seq.) is amended by  
9 adding at the end thereof the following new section:

10 **“SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-**  
11 **IMPAIRED AND SPEECH-IMPAIRED INDIVID-**  
12 **UALS.**

13 **“(a) DEFINITIONS.—As used in this section—**

14 **“(1) COMMON CARRIER OR CARRIER.—The term**  
15 **‘common carrier’ or ‘carrier’ includes any common car-**  
16 **rier engaged in interstate communication by wire or**  
17 **radio as defined in section 3(h), any common carrier**  
18 **engaged in intrastate communication by wire or radio,**  
19 **and any common carrier engaged in both interstate and**  
20 **intrastate communication, notwithstanding sections 2(b)**  
21 **and 221(b).**

22 **“(2) TDD.—The term ‘TDD’ means a Telecom-**  
23 **munications Device for the Deaf, which is a machine**  
24 **that employs graphic communication in the transmis-**



1 sion of coded signals through a wire or radio communi-  
2 cation system.

3 “(3) TELECOMMUNICATIONS RELAY SERVICES.—

4 The term ‘telecommunications relay services’ means  
5 telephone transmission services that provide the ability  
6 for an individual who has a hearing impairment or  
7 speech impairment to engage in communication by  
8 wire or radio with a hearing individual in a manner  
9 that is functionally equivalent to the ability of an indi-  
10 vidual who does not have a hearing impairment or  
11 speech impairment to communicate using voice commu-  
12 nication services by wire or radio. Such term includes  
13 services that enable two-way communication between  
14 an individual who uses a TDD or other nonvoice ter-  
15 minal device and an individual who does not use such  
16 a device.

17 “(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY  
18 SERVICES.—

19 “(1) IN GENERAL.—In order to carry out the pur-  
20 poses established under section 1, to make available to  
21 all individuals in the United States a rapid, efficient  
22 nationwide communication service, and to increase the  
23 utility of the telephone system of the Nation, the Com-  
24 mission shall ensure that interstate and intrastate tele-  
25 communications relay services are available, to the

1 extent possible and in the most efficient manner, to  
2 hearing-impaired and speech-impaired individuals in the  
3 United States.

4 “(2) REMEDIES.—For purposes of this section,  
5 the same remedies, procedures, rights, and obligations  
6 under this Act that are applicable to common carriers  
7 engaged in interstate communication by wire or radio  
8 are also applicable to common carriers engaged in  
9 intrastate communication by wire or radio and common  
10 carriers engaged in both interstate and intrastate com-  
11 munication by wire or radio.

12 “(c) PROVISION OF SERVICES.—Each common carrier  
13 providing telephone voice transmission services shall provide  
14 telecommunications relay services individually, through des-  
15 ignees, or in concert with other carriers not later than 3  
16 years after the date of enactment of this section.

17 “(d) REGULATIONS.—

18 “(1) IN GENERAL.—The Commission shall, not  
19 later than 1 year after the date of enactment of this  
20 section, prescribe regulations to implement this section,  
21 including regulations that—

22 “(A) establish functional requirements, guide-  
23 lines, and operations procedures for telecommuni-  
24 cations relay services;



1           “(B) establish minimum standards that shall  
2           be met by common carriers in carrying out sub-  
3           section (c);

4           “(C) require that telecommunications relay  
5           services operate every day for 24 hours per day;

6           “(D) require that users of telecommunica-  
7           tions relay services pay rates no greater than the  
8           rates paid for functionally equivalent voice com-  
9           munication services with respect to such factors  
10          as the duration of the call, the time of day, and  
11          the distance from point of origination to point of  
12          termination;

13          “(E) prohibit relay operators from refusing  
14          calls or limiting the length of calls that use tele-  
15          communications relay services;

16          “(F) prohibit relay operators from disclosing  
17          the content of any relayed conversation and from  
18          keeping records of the content of any such con-  
19          versation beyond the duration of the call; and

20          “(G) prohibit relay operators from intention-  
21          ally altering a relayed conversation.

22          “(2) TECHNOLOGY.—The Commission shall  
23          ensure that regulations prescribed to implement this  
24          section encourage the use of existing technology and

1          do not discourage or impair the development of im-  
2          proved technology.

3          “(3) JURISDICTIONAL SEPARATION OF COSTS.—

4                  “(A) IN GENERAL.—The Commission shall  
5                  prescribe regulations governing the jurisdictional  
6                  separation of costs for the services provided pur-  
7                  suant to this section.

8                  “(B) RECOVERING COSTS.—Such regulations  
9                  shall generally provide that costs caused by inter-  
10                 state telecommunications relay services shall be  
11                 recovered from the interstate jurisdiction and  
12                 costs caused by intrastate telecommunications  
13                 relay services shall be recovered from the intra-  
14                 state jurisdiction.

15                 “(C) JOINT PROVISION OF SERVICES.—To  
16                 the extent interstate and intrastate common carri-  
17                 ers jointly provide telecommunications relay serv-  
18                 ices, the procedures established in section 410  
19                 shall be followed, as applicable.

20                 “(4) FIXED MONTHLY CHARGE.—The Commis-  
21                 sion shall not permit carriers to impose a fixed monthly  
22                 charge on residential customers to recover the costs of  
23                 providing interstate telecommunication relay services.

24                 “(5) UNDUE BURDEN.—If the Commission finds  
25                 that full compliance with the requirements of this sec-



1 tion would unduly burden one or more common carri-  
2 ers, the Commission may extend the date for full com-  
3 pliance by such carrier for a period not to exceed 1 ad-  
4 ditional year.

5 “(e) ENFORCEMENT.—

6 “(1) IN GENERAL.—Subject to subsections (f) and  
7 (g), the Commission shall enforce this section.

8 “(2) COMPLAINT.—The Commission shall re-  
9 solve, by final order, a complaint alleging a violation of  
10 this section within 180 days after the date such com-  
11 plaint is filed.

12 “(f) CERTIFICATION.—

13 “(1) STATE DOCUMENTATION.—Each State may  
14 submit documentation to the Commission that describes  
15 the program of such State for implementing intrastate  
16 telecommunications relay services.

17 “(2) REQUIREMENTS FOR CERTIFICATION.—

18 After review of such documentation, the Commission  
19 shall certify the State program if the Commission de-  
20 termines that the program makes available to hearing-  
21 impaired and speech-impaired individuals either direct-  
22 ly, through designees, or through regulation of intra-  
23 state common carriers, intrastate telecommunications  
24 relay services in such State in a manner that meets the

1 requirements of regulations prescribed by the Commis-  
2 sion under subsection (d).

3 “(3) METHOD OF FUNDING.—Except as provided  
4 in subsection (d), the Commission shall not refuse to  
5 certify a State program based solely on the method  
6 such State will implement for funding intrastate tele-  
7 communication relay services.

8 “(4) SUSPENSION OR REVOCATION OF CERTIFI-  
9 CATION.—The Commission may suspend or revoke  
10 such certification if, after notice and opportunity for  
11 hearing, the Commission determines that such certifica-  
12 tion is no longer warranted.

13 “(g) COMPLAINT.—

14 “(1) REFERRAL OF COMPLAINT.—If a complaint  
15 to the Commission alleges a violation of this section  
16 with respect to intrastate telecommunications relay  
17 services within a State and certification of the program  
18 of such State under subsection (f) is in effect, the Com-  
19 mission shall refer such complaint to such State.

20 “(2) JURISDICTION OF COMMISSION.—After re-  
21 ferring a complaint to a State under paragraph (1), the  
22 Commission shall exercise jurisdiction over such com-  
23 plaint only if—



1 “(A) final action under such State program  
2 has not been taken on such complaint by such  
3 State—

4 “(i) within 180 days after the complaint  
5 is filed with such State; or

6 “(ii) within a shorter period as pre-  
7 scribed by the regulations of such State; or

8 “(B) the Commission determines that such  
9 State program is no longer qualified for certifica-  
10 tion under subsection (f).”.

11 (b) CONFORMING AMENDMENTS.—The Communica-  
12 tions Act of 1934 (47 U.S.C. 151 et seq.) is amended—

13 (1) in section 2(b) (47 U.S.C. 152(b)), by striking  
14 “section 224” and inserting “sections 224 and 225”;  
15 and

16 (2) in section 221(b) (47 U.S.C. 221(b)), by strik-  
17 ing “section 301” and inserting “sections 225 and  
18 301”.

19 **TITLE V—MISCELLANEOUS**  
20 **PROVISIONS**

21 **SEC. 501. CONSTRUCTION.**

22 (a) REHABILITATION ACT OF 1973.—Nothing in this  
23 Act shall be construed to reduce the scope of coverage or  
24 apply a lesser standard than the coverage required or the  
25 standards applied under title V of the Rehabilitation Act of

1 1973 (29 U.S.C. 790 et seq.) or the regulations issued by  
2 Federal agencies pursuant to such title.

3 (b) OTHER LAWS.—Nothing in this Act shall be con-  
4 strued to invalidate or limit any other Federal law or law of  
5 any State or political subdivision of any State or jurisdiction  
6 that provides greater or equal protection for the rights of  
7 individuals with disabilities than are afforded by this Act.

8 (c) INSURANCE.—Titles I through IV of this Act shall  
9 not be construed to prohibit or restrict—

10 (1) an insurer, hospital or medical service compa-  
11 ny, health maintenance organization, or any agent, or  
12 entity that administers benefit plans, or similar organi-  
13 zations from underwriting risks, classifying risks, or ad-  
14 ministering such risks that are based on or not incon-  
15 sistent with State law; or

16 (2) a person or organization covered by this Act  
17 from establishing, sponsoring, observing or administer-  
18 ing the terms of a bona fide benefit plan that are based  
19 on underwriting risks, classifying risks, or administer-  
20 ing such risks that are based on or not inconsistent  
21 with State law;

22 (3) a person or organization covered by this Act  
23 from establishing, sponsoring, observing or administer-  
24 ing the terms of a bona fide benefit plan that is not  
25 subject to State laws that regulate insurance:



1 *Provided*, That paragraphs (1), (2), and (3) are not used as a  
2 subterfuge to evade the purposes of title I and III.

3 **SEC. 502. PROHIBITION AGAINST RETALIATION AND COER-**  
4 **TION.**

5 (a) **RETALIATION.**—No individual shall discriminate  
6 against any other individual because such other individual  
7 has opposed any act or practice made unlawful by this Act or  
8 because such other individual made a charge, testified, assist-  
9 ed, or participated in any manner in an investigation, pro-  
10 ceeding, or hearing under this Act.

11 (b) **INTERFERENCE, COERCION, OR INTIMIDATION.**—It  
12 shall be unlawful to coerce, intimidate, threaten, or interfere  
13 with any person in the exercise or enjoyment of, or on ac-  
14 count of his or her having exercised or enjoyed, or on account  
15 of his or her having aided or encouraged any other person in  
16 the exercise or enjoyment of, any right granted or protected  
17 by this Act.

18 (c) **REMEDIES AND PROCEDURES.**—The remedies and  
19 procedures available under sections 107, 205, and 308 of this  
20 Act shall be available to aggrieved persons for violations of  
21 subsections (a) and (b).

22 **SEC. 503. STATE IMMUNITY.**

23 A State shall not be immune under the eleventh amend-  
24 ment to the Constitution of the United States from an action  
25 in Federal court for a violation of this Act. In any action

1 against a State for a violation of the requirements of this Act,  
2 remedies (including remedies both at law and in equity) are  
3 available for such a violation to the same extent as such rem-  
4 edies are available for such a violation in an action against  
5 any public or private entity other than a State.

6 **SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANS-**  
7 **PORTATION BARRIERS COMPLIANCE BOARD.**

8 (a) **ISSUANCE OF GUIDELINES.**—Not later than 6  
9 months after the date of enactment of this Act, the Architec-  
10 tural and Transportation Barriers Compliance Board shall  
11 issue minimum guidelines that shall supplement the existing  
12 Minimum Guidelines and Requirements for Accessible Design  
13 for purposes of titles II and III.

14 (b) **CONTENTS OF GUIDELINES.**—The guidelines issued  
15 under subsection (a) shall establish additional requirements,  
16 consistent with this Act, to ensure that buildings, facilities,  
17 and vehicles are accessible, in terms of architecture and  
18 design, transportation, and communication, to individuals  
19 with disabilities.

20 **SEC. 505. ATTORNEY'S FEES.**

21 In any action or administrative proceeding commenced  
22 pursuant to this Act, the court or agency, in its discretion,  
23 may allow the prevailing party, other than the United States,  
24 a reasonable attorney's fee, including litigation expenses, and



1 costs, and the United States shall be liable for the foregoing  
2 the same as a private individual.

3 SEC. 506. TECHNICAL ASSISTANCE.

4 (a) PLAN FOR ASSISTANCE.—

5 (1) IN GENERAL.—Not later than 180 days after  
6 the date of enactment of this Act, the Attorney Gener-  
7 al, in consultation with the Chairman of the Equal  
8 Employment Opportunity Commission, the Secretary of  
9 Transportation, the National Council on Disability, the  
10 Chairperson of the Architectural and Transportation  
11 Barriers Compliance Board, and the Chairman of Fed-  
12 eral Communications Commission, shall develop a plan  
13 to assist entities covered under this Act, along with  
14 other executive agencies and commissions, in under-  
15 standing the responsibility of such entities, agencies,  
16 and commissions under this Act.

17 (2) PUBLICATION OF PLAN.—The Attorney Gen-  
18 eral shall publish the plan referred to in paragraph (1)  
19 for public comment in accordance with the Administra-  
20 tive Procedure Act (5 U.S.C. 551 et seq.).

21 (b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney  
22 General is authorized to obtain the assistance of other Feder-  
23 al agencies in carrying out subsection (a), including the Na-  
24 tional Council on Disability, the President's Committee on

1 Employment of People with Disabilities, the Small Business  
2 Administration, and the Department of Commerce.

3 (c) IMPLEMENTATION.—

4 (1) AUTHORITY TO CONTRACT.—Each depart-  
5 ment or agency that has responsibility for implement-  
6 ing this Act may render technical assistance to individ-  
7 uals and institutions that have rights or responsibilities  
8 under this Act.

9 (2) IMPLEMENTATION OF TITLES.—

10 (A) TITLE I.—The Equal Employment Op-  
11 portunity Commission and the Attorney General  
12 shall implement the plan for assistance, as de-  
13 scribed in subsection (a), for title I.

14 (B) TITLE II.—

15 (i) IN GENERAL.—Except as provided  
16 for in clause (ii), the Attorney General shall  
17 implement such plan for assistance for title  
18 II.

19 (ii) EXCEPTION.—The Secretary of  
20 Transportation shall implement such plan for  
21 assistance for section 203.

22 (C) TITLE III.—The Attorney General, in  
23 coordination with the Secretary of Transportation  
24 and the Chairperson of the Architectural Trans-



1 portation Barriers Compliance Board, shall imple-  
2 ment such plan for assistance for title III.

3 (D) TITLE IV.—The Chairman of the Feder-  
4 al Communications Commission, in coordination  
5 with the Attorney General, shall implement such  
6 plan for assistance for title IV.

7 (d) GRANTS AND CONTRACTS.—

8 (1) IN GENERAL.—Each department and agency  
9 having responsibility for implementing this Act may  
10 make grants or enter into contracts with individuals,  
11 profit institutions, and nonprofit institutions, including  
12 educational institutions and groups or associations rep-  
13 resenting individuals who have rights or duties under  
14 this Act, to effectuate the purposes of this Act.

15 (2) DISSEMINATION OF INFORMATION.—Such  
16 grants and contracts, among other uses, may be de-  
17 signed to ensure wide dissemination of information  
18 about the rights and duties established by this Act and  
19 to provide information and technical assistance about  
20 techniques for effective compliance with this Act.

21 (e) FAILURE TO RECEIVE ASSISTANCE.—An employ-  
22 er, public accommodation, or other entity covered under this  
23 Act shall not be excused from meeting the requirements of  
24 this Act because of any failure to receive technical assistance  
25 under this section.

1 SEC. 507. FEDERAL WILDERNESS AREAS.

2 (a) STUDY.—The National Council on Disability shall  
3 conduct a study and report on the effect that wilderness des-  
4 ignations and wilderness land management practices have on  
5 the ability of individuals with disabilities to use and enjoy the  
6 National Wilderness Preservation System as established  
7 under the Wilderness Act (16 U.S.C. 1131 et seq.).

8 (b) SUBMISSION OF REPORT.—Not later than 1 year  
9 after the enactment of this Act, the National Council on Dis-  
10 ability shall submit the report required under subsection (a) to  
11 Congress.

12 SEC. 508. TRANSVESTITES.

13 For the purposes of this Act, the term “disabled” or  
14 “disability” shall not apply to an individual solely because  
15 that individual is a transvestite.

16 SEC. 509. CONGRESSIONAL INCLUSION.

17 Notwithstanding any other provision of this Act or of  
18 law, the provisions of this Act shall apply in their entirety to  
19 the Senate, the House of Representatives, and all the instru-  
20 mentalities of the Congress, or either House thereof.

21 SEC. 510. ILLEGAL DRUG USE.

22 (a) For purposes of this Act, an individual with a “dis-  
23 ability” shall not include any individual who uses illegal  
24 drugs, but may include an individual who has successfully  
25 completed a supervised drug rehabilitation program, or has



1 otherwise been rehabilitated successfully, and no longer uses  
2 illegal drugs.

3 (b) However, for purposes of covered entities providing  
4 medical services, an individual who uses illegal drugs shall  
5 not be denied the benefits of such services on the basis of his  
6 or her use of illegal drugs, if he or she is otherwise entitled to  
7 such services.

8 **SEC. 511. DEFINITIONS.**

9 Under this Act the term "disability" does not include  
10 "homosexuality", "bisexuality", "transvestism", "pedophi-  
11 lia", "transsexualism", "exhibitionism", "voyeurism", "com-  
12 pulsive gambling", "kleptomania", or "pyromania", "gender  
13 identity disorders", "current psychoactive substance use dis-  
14 orders", "current psychoactive substance-induced organic  
15 mental disorders", as defined by DSM-III-R which are not  
16 the result of medical treatment, or other sexual behavior dis-  
17 orders.

18 **SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.**

19 (a) **HANDICAPPED INDIVIDUAL.**—Section 7(7)(B) of the  
20 Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is  
21 amended—

22 (1) in the first sentence, by striking out "Subject  
23 to the second sentence of this subparagraph, the" and  
24 inserting in lieu thereof "The"; and

1 (2) by striking out the second sentence and insert-  
2 ing in lieu thereof the following:

3 "Notwithstanding any other provision of law, but subject to  
4 subsection (C) with respect to programs and activities provid-  
5 ing education and the last sentence of this paragraph, the  
6 term 'individual with a handicap' does not include any indi-  
7 vidual who currently uses illegal drugs, except that an indi-  
8 vidual who is otherwise handicapped shall not be excluded  
9 from the protections of this Act if such individual also uses or  
10 is also addicted to drugs. For purposes of programs and ac-  
11 tivities providing medical services, an individual who current-  
12 ly uses illegal drugs shall not be denied the benefits of such  
13 programs or activities on the basis of his or her current use of  
14 illegal drugs if he or she is otherwise entitled to such  
15 services.

16 "(C) For purposes of programs and activities providing  
17 educational services, local educational agencies may take dis-  
18 ciplinary action pertaining to the use or possession of illegal  
19 drugs or alcohol against any handicapped student who cur-  
20 rently uses drugs or alcohol to the same extent that such  
21 disciplinary action is taken against nonhandicapped students.  
22 Furthermore, the due process procedures at 34 CFR 104.36  
23 shall not apply to such disciplinary actions.

24 "(D) For purposes of sections 503 and 504 of this Act  
25 as such sections relate to employment, the term 'individual



1 with handicaps' does not include any individual who is an  
2 alcoholic whose current use of alcohol prevents such individ-  
3 ual from performing the duties of the job in question or whose  
4 employment, by reason of such current alcohol abuse, would  
5 constitute a direct threat to property or the safety of  
6 others."

7 (b) Section 7 of such Act (29 U.S.C. 706) is further  
8 amended by adding at the end thereof the following new  
9 paragraph:

10 "(22) The term 'illegal drugs' means controlled sub-  
11 stances, as defined in schedules I through V of section 202 of  
12 the Controlled Substances Act (21 U.S.C. 812), the posses-  
13 sion or distribution of which is unlawful under such Act. The  
14 term 'illegal drugs' does not mean the use of a controlled  
15 substance pursuant to a valid prescription or other uses au-  
16 thorized by the Controlled Substances Act or other provisions  
17 of Federal law."

18 **SEC. 513. SEVERABILITY.**

19 Should any provision in this Act be found to be uncon-  
20 stitutional by a court of law, such provision shall be severed  
21 from the remainder of the Act, and such action shall not

1 affect the enforceability of the remaining provisions of the  
2 Act.

Passed the Senate September 7 (legislative day, Sep-  
tember 6), 1989.

Attest:

*Secretary.*



## Calendar No. 216

101ST CONGRESS }  
1st Session }

SENATE

{ REPORT  
101-116

### THE AMERICANS WITH DISABILITIES ACT OF 1989

AUGUST 30, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day,  
January 3), 1989

Mr. KENNEDY, from the Committee on Labor and Human  
Resources, submitted the following

### REPORT

together with

### ADDITIONAL VIEWS

[To accompany S. 933]

The Committee on Labor and Human Resources, to which was referred the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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### I. INTRODUCTION

On August 2, 1989, the Committee on Labor and Human Resources, by a vote of 16-0, ordered favorably reported S. 933, the

21-174



Americans with Disabilities Act of 1989 (the ADA), with an amendment in the nature of a substitute.

The bill is sponsored by Senator Tom Harkin, chairman of the Subcommittee on the Handicapped, and cosponsored by Senators Kennedy, Durenberger, Simon, Jeffords, Cranston, McCain, Mitchell, Chafee, Leahy, Stevens, Inouye, Cohen, Gore, Packwood, Riegle, Boschwitz, Graham, Pell, Dodd, Adams, Mikulski, Metzenbaum, Matsunaga, Wirth, Bingaman, Conrad, Burdick, Levin, Lieberman, Moynihan, Kerry, Sarbanes, Heinz, Glenn, Shelby, Pressler, Hollings, Sanford, Wilson, Sasser, Dixon, Kerrey, Robb, Fowler, Rockefeller, Biden, Bentsen, Specter, DeConcini, Kohl, Lautenberg, D'Amato, Dole, Hatch, Warner, Pryor, and Bradley.

## II. SUMMARY OF THE LEGISLATION

The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities, and to ensure that the Federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

\* The ADA defines "disability" to mean, with respect to an individual: a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment.

Employment

Title I of the ADA specifies that an employer, employment agency, labor organization, or joint labor-management committee may not discriminate against any qualified individual with a disability in regard to any term, condition or privilege of employment. The ADA incorporates many of the standards of discrimination set out in regulations implementing section 504 of the Rehabilitation Act of 1973, including the obligation to provide reasonable accommodations unless it would result in an undue hardship on the operation of the business.

The ADA incorporates by reference the enforcement provisions under title VII of the Civil Rights Act of 1964 (including injunctive relief and back pay). Title I goes into effect two years after the date of enactment. For the first two years after the effective date, employers with 25 or more employees are covered. Thereafter, employers with 15 or more employees are covered.

Title II of the ADA specifies that no qualified individual with a disability may be discriminated against by a department, agency, special purpose district, or other instrumentality of a State or a local government. In addition to a general prohibition against discrimination, title II includes specific requirements applicable to public transportation provided by public transit authorities. Finally, title II incorporates by reference the enforcement provisions in section 505 of the Rehabilitation Act of 1973.

\* With respect to public transportation, all new fixed route buses must be made accessible unless a transit authority can demonstrate that no lifts are available from qualified manufacturers. A

State → Local Gov. / Transportation

public transit authority must also provide paratransit for those individuals who cannot use mainline accessible transportation up to the point where the provision of such supplementary services would pose an undue financial burden on a transit authority.

Title II takes effect 18 months after the date of enactment, with the exception of the obligation to ensure that new public buses are accessible, which takes effect for solicitations made 30 days after the date of enactment → Public Accommodations?

Title III of the ADA specifies that no individual shall be discriminated against in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation operated by a private entity on the basis of a disability. Public accommodations include: restaurants, hotels, doctor's offices, pharmacies, grocery stores, shopping centers, and other similar establishments.

Existing facilities must be made accessible if the changes are "readily achievable" i.e., easily accomplishable without much difficulty or expense. Auxiliary aids and services must be provided unless such provision would fundamentally alter the nature of the program or cause an undue burden. New construction and major renovations must be designed and constructed to be readily accessible to and usable by people with disabilities. Elevators need not be installed if the building has less than three stories or has less than 3,000 square feet per floor except if the building is a shopping center, shopping mall, or offices for health care providers or if the Attorney General decides that other categories of buildings require the installation of elevators.

Title III also includes specific prohibitions on discrimination in public transportation services provided by private entities, including the failure to make new over-the-road buses accessible five years from the date of enactment for large providers and six years for small providers.

The provisions of title III becomes effective 18 months after the date of enactment. Title III incorporates enforcement provisions in private actions comparable to the applicable enforcement provisions in title II of the Civil Rights Act of 1964 (injunctive relief) and provides for pattern and practice cases by the Attorney General, including authority to seek monetary damages and civil penalties.

Telephone Service

Title IV of the ADA specifies that telephone services offered to the general public must include interstate and intrastate telecommunication relay services so that such services provide individuals who use nonvoice terminal devices because of disabilities (such as deaf persons) with opportunities for communications that are equivalent to those provided to individuals able to use voice telephone services.

Title V of the ADA includes miscellaneous provisions, including a construction clause explaining the relationship between the provisions in the ADA and the provisions in other Federal and State laws; a construction clause explaining that the ADA does not disrupt the current nature of insurance underwriting; a prohibition against retaliation; a clear statement that States are not immune from actions in Federal court for a violation of the ADA; a direc-



tive to the Architectural and Transportation Barriers Compliance Board to issue guidelines; and authority to award attorney's fees.

### III. HEARINGS

Hearings were held before the Labor and Human Resources Committee and the Labor and Human Resources' Subcommittee on the Handicapped on legislation to establish a clear and comprehensive prohibition of discrimination on the basis of disability on September 27, 1988, May 9, May 10, May 16 and June 22, 1989.

On September 27, 1988, a joint hearing was held before the Subcommittee on the Handicapped and the House of Representatives' Subcommittee on Select Education on S. 2345, the Americans with Disabilities Act of 1988. Among the witnesses testifying were: Sandra Parrino, Chairperson, National Council on the Handicapped; Admiral James Watkins, Chairperson, President's Commission on the Human Immunodeficiency Virus Epidemic; Mary Linden of Morton Grove, Illinois who lived in an institution; Dan Piper, an 18-year old with Down Syndrome and Sylvia Piper of Ankeny, Iowa; Jade Calegory, a 12-year old movie actor with Spina Bifida from Corona Del Mar, California; and Lakisha Griffin from Talladega, Alabama, who attends the Alabama School for the Blind.

Also testifying were: Judith Heumann, World Institute on Disability, Berkeley, California; Gregory Hlibok, student-body president of Gallaudet University, Washington, DC; Belinda Mason from Tobinsport, Indiana who has AIDS; and W. Mitchell from Denver, Colorado, who uses a wheelchair and who was severely burned.

David Saks, on behalf of the Organization for Use of the Telephone, Baltimore, Maryland, also provided testimony.

On May 9, 1989, the Committee on Labor and Human Resources held a hearing on S. 933, the Americans with Disabilities Act of 1989. Among the witnesses were: Tony Coelho, the Majority Whip of the House of Representatives; I. King Jordan, President of Gallaudet University, Washington, DC; Justin Dart, chairperson, the Task Force on the Rights and Empowerment of Americans with Disabilities, Washington, DC.

Also testifying were: Ms. Mary DeSapio, a cancer survivor; Joseph Danowsky, an attorney who is blind; Amy Dimsdale, a college graduate who is quadriplegic and who after 5 years of looking for work remains unemployed; Harold Russell, chairman, President's Committee on Employment of People with Disabilities, Washington, DC; Zachery Fasman, U.S. Chamber of Commerce, Washington, DC; Lawrence Lorber, American Society of Personnel Administrators, Washington, DC; and Arlene Mayerson, Disability Rights Education and Defense Fund, Berkeley, California.

Others providing testimony were: Barbara Hoffman, Vice President of the National Coalition for Cancer Survivorship; Robert McGlotten, Director, Department of Legislation, AFL-CIO; the Associated General Contractors of America; and the National Organizations Responding to AIDS.

On May 10, the Subcommittee on the Handicapped heard testimony from Senator Bob Dole, Senator from Kansas and Senate Mi-

nority Leader; Perry Tillman, Paralyzed Veterans of America, New Orleans, Louisiana; Ken Tice, Advocating Change Together, Minneapolis, Minnesota; Lisa Carl who has cerebral palsy and her mother, Vickie Franke, Tacoma, Washington.

Also testifying were: the Honorable Neil Hartigan, Attorney General of the State of Illinois; Ron Mace, Barrier Free Environments, Raleigh, North Carolina; William Ball, Association of Christian Schools International, Harrisburg, Pennsylvania; Sally Douglas, National Federation of Independent Business, Washington, D.C.; Malcolm Green, National Association of Theater Owners, Boston Massachusetts; and Robert Burgdorf Jr., National Easter Seal Society, Washington, D.C.; Betty and Emory Corey, Baltimore, Maryland; and Ilene Foster, Baltimore, Maryland.

In addition, the Subcommittee heard testimony from Paul Taylor, National Technical Institute for the Deaf, Rochester, New York; Robert Yaeger, Minnesota Relay Service, Minneapolis, Minnesota; and Gerald Hines, AT&T, Basking Ridge, New Jersey.

Others providing testimony included: Chai Feldblum, Tony Califa, Nan Hunter, and Morton Halperin of the American Civil Liberties Union; Peter Bradford, chairman of the State of New York Public Service Commission; and Paul Rodgers and Caroline Chambers on behalf of the National Association of Regulatory Utility Commissioners.

On May 16, the Subcommittee on the Handicapped heard testimony from: Michael McIntyre, Queens Independent Living Center, Jamaica, New York; Mark Johnson, ADAPT, Alpharetta, Georgia; Laura Oftedahl, Columbia Lighthouse for the Blind, Washington, D.C.; and Dr. Mary Lynn Fletcher, Director, Disability Services, Loudon County, Tennessee.

Also testifying were: J. Roderick Burfield, Virginia Association of Public Transit Officials; Harold Jenkins, Cambria County Transit Authority, Johnstown, Pennsylvania; Dennis Louwerse, American Public Transit Association, Reading, Pennsylvania; Charles Webb, American Bus Association, Washington, D.C.; James Weisman, Eastern Paralyzed Veterans of America, New York, New York, and Tim Cook, National Disability Action Center, Washington, D.C.

Others providing testimony were: the Virginia Council for Independent Living; Wayne Smith, Executive Director of the United Bus Owners of America; and Theodore Knappen, Senior Vice President of Greyhound Lines, Inc.

On June 22, the Labor and Human Resources Committee heard testimony from Richard L. Thornburgh, Attorney General of the United States, and Senator Lowell P. Weicker, Jr., chief sponsor of the Americans with Disabilities Act of 1988.

### IV. NEED FOR THE LEGISLATION

The Committee, after extensive review and analysis over a number of Congresses, concludes that there exists a compelling need to establish a clear and comprehensive Federal prohibition of discrimination on the basis of disability in the areas of employment in the private sector, public accommodations, public services, transportation, and telecommunications.



## NATURE AND EXTENT OF DISCRIMINATION ON THE BASIS OF DISABILITY

### *In general*

Testimony presented to the Committee and the Subcommittee, two recent reports by the National Council on Disability ("Toward Independence" (1986) and "On the Threshold of Independence" (1988)), a report by the Civil Rights Commission ("Accommodating the Spectrum of Individual Abilities" (1983)), polls taken by Louis Harris and Associates ("The ICD Survey of Disabled Americans: Bringing Disabled Americans into the Mainstream" (March, 1986)) and "The ICD Survey II: Employing Disabled Americans" (1987)), a report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic (1988), and the report by the Task Force on the Rights and Empowerment of Americans with Disabilities all reach the same fundamental conclusions:

(1) Historically, individuals with disabilities have been isolated and subjected to discrimination and such isolation and discrimination is still pervasive in our society;

(2) Discrimination still persists in such critical areas as employment in the private sector, public accommodations, public services, transportation, and telecommunications;

(3) Current Federal and State laws are inadequate to address the discrimination faced by people with disabilities in these critical areas;

(4) People with disabilities as a group occupy an inferior status socially, economically, vocationally, and educationally; and

(5) Discrimination denies people with disabilities the opportunity to compete on an equal basis and costs the United States, State and local governments, and the private sector billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

One of the most debilitating forms of discrimination is segregation imposed by others. Timothy Cook of the National Disability Action Center testified:

As Rosa Parks taught us, and as the Supreme Court ruled thirty-five years ago in *Brown v. Board of Education*, segregation "affects one's heart and mind in ways that may never be undone. Separate but equal is inherently unequal."

Discrimination also includes exclusion, or denial of benefits, services, or other opportunities that are as effective and meaningful as those provided to others.

Discrimination results from actions or inactions that discriminate by effect as well as by intent or design. Discrimination also includes harms resulting from the construction of transportation, architectural, and communication barriers and the adoption or application of standards and criteria and practices and procedures based on thoughtlessness or indifference—of benign neglect.

The testimony presented by Judith Heumann, World Institute on Disability, illustrates several of these forms of discrimination:

When I was 5 my mother proudly pushed my wheelchair to our local public school, where I was promptly refused admission because the principal ruled that I was a fire hazard. I was forced to go into home instruction, receiving one hour of education three times a week for 3½ years. My entrance into mainstream society was blocked by discrimination and segregation. Segregation was not only on an institutional level but also acted as an obstruction to social integration. As a teenager, I could not travel with my friends on the bus because it was not accessible. At my graduation from high school, the principal attempted to prevent me from accepting an award in a ceremony on stage simply because I was in a wheelchair.

When I was 19, the house mother of my college dormitory refused me admission into the form because I was in a wheelchair and needed assistance. When I was 21 years old, I was denied an elementary school teaching credential because of "paralysis of both lower extremities sequelae of poliomyelitis." At the time, I did not know what sequelae meant. I went to the dictionary and looked it up and found out that it was "because of." So it was obviously because of my disability that I was discriminated against.

At the age of 25, I was told to leave a plane on my return trip to my job here in the U.S. Senate because I was flying without an attendant. In 1981, an attempt was made to forceably remove me and another disabled friend from an auction house because we were "disgusting to look at." In 1983, a manager at a movie theater attempted to keep my disabled friend and myself out of his theater because we could not transfer out of our wheelchairs.

Discrimination also includes harms affecting individuals with a history of disability, and those regarded by others as having a disability as well as persons associated with such individuals that are based on false presumptions, generalizations, misperceptions, patronizing attitudes, ignorance, irrational fears, and pernicious mythologies.

Discrimination also includes the effects a person's disability may have on others. For example, in March, 1988 the Washington Post reported the story of a New Jersey zoo keeper who refused to admit children with Downs Syndrome because he feared they would upset the chimpanzees. The Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985) cited as an example of improper discrimination on the basis of handicap a case in which "a court ruled that a cerebral palsied child, who was not a physical threat and was academically competitive, should be excluded from public school, because his teacher claimed his physical appearance 'produced a nauseating effect' on his classmates." 117 Cong Rec. 45974 (1971).

The Supreme Court in *School Board of Nassau County v. Arline*, 107 S. Ct. 1123 (1987) cited remarks of Senator Mondale describing a case in which a woman "crippled by arthritis" was denied a job not because she could not do the work but because "college trustees [thought] 'normal students shouldn't see her.'" 118 Cong Rec. 36761 (1972).



The Committee heard testimony about a woman from Kentucky who was fired from the job she had held for a number of years because the employer found out that her son, who had become ill with AIDS, had moved into her house so she could care for him. The Committee also heard testimony about former cancer victims, persons with epilepsy, a person with cerebral palsy, and others who had been subjected to similar types of discrimination.

With respect to the pervasiveness of discrimination in our Nation, the National Council explained:

A major obstacle to achieving the societal goals of equal opportunity and full participation of individuals with disabilities is the problem of discrimination \* \* \* The severity and pervasiveness of discrimination against people with disabilities is well documented.

The U.S. Commission on Civil Rights recently concluded that:

Despite some improvements \* \* \* [discrimination] persists in such critical areas as education, employment, institutionalization, medical treatment, involuntary sterilization, architectural barriers, and transportation.

The Commission further observed that "discriminatory treatment of handicapped persons can occur in almost every aspect of their lives."

The Lou Harris polls found that:

By almost any definition, Americans with disabilities are uniquely underprivileged and disadvantaged. They are much poorer, much less well educated and have much less social life, have fewer amenities and have a lower level of self-satisfaction than other Americans.

Admiral James Watkins, former chairperson of the President's Commission on the Human Immunodeficiency Virus Epidemic, testified that after 45 days of public hearings and site visits, the Commission concluded that discrimination against individuals with HIV infection is widespread and has serious repercussions for both the individual who experiences it and for this Nation's efforts to control the epidemic. The Report concludes:

as long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination \* \* \* will undermine our efforts to contain the HIV epidemic and will leave HIV-infected individuals isolated and alone.

Justin Dart, the chairperson of the Task Force on the Rights and Empowerment of Americans with Disabilities, testified that after 63 public forums held in every state, there is overwhelming evidence that:

Although America has recorded great progress in the area of disability during the past few decades, our society is still infected by the ancient, now almost subconscious assumption that people with disabilities are less than fully

human and therefore are not fully eligible for the opportunities, services, and support systems which are available to other people as a matter of right. The result is massive, society-wide discrimination.

The U.S. Attorney General, Dick Thornburgh, on behalf of President Bush, testified that:

Despite the best efforts of all levels of government and the private sector and the tireless efforts of concerned citizens and advocates everywhere, many persons with disabilities in this Nation still lead their lives in an intolerable state of isolation and dependence.

### *Employment*

Individuals with disabilities experience staggering levels of unemployment and poverty. According to a recent Lou Harris poll not working is perhaps the truest definition of what it means to be disabled in America. Two-thirds of all disabled Americans between the age of 16 and 64 are not working at all; yet, a large majority of those not working say that they want to work. Sixty-six percent of working-age disabled persons, who are not working, say that they would like to have a job. Translated into absolute terms, this means that about 8.2 million people with disabilities want to work but cannot find a job.

Forty percent of all adults with disabilities did not finish high school—three times more than non-disabled individuals. In 1984, fifty percent of all adults with disabilities had household incomes of \$15,000 or less. Among non-disabled persons, only twenty-five percent had household incomes in this wage bracket.

President Bush has stated: "The statistics consistently demonstrate that disabled people are the poorest, least educated and largest minority in America."

According to the Lou Harris poll, the majority of those individuals with disabilities not working and out of the labor force, must depend on insurance payments or government benefits for support. Eighty-two percent of people with disabilities said they would give up their government benefits in favor of a full-time job.

Lou Harris' poll also found that large majorities of top managers (72 percent), equal opportunity officers (76 percent), and department heads/line managers (80 percent) believe that individuals with disabilities often encounter job discrimination from employers and that discrimination by employers remains an inexcusable barrier to increased employment of disabled people.

According to testimony presented to the Committee by Arlene Mayerson of the Disabilities Rights Education and Defense Fund, the major categories of job discrimination faced by people with disabilities include: use of standards and criteria that have the effect of denying opportunities; failure to provide or make available reasonable accommodations; refusal to hire based on presumptions, stereotypes and myths about job performance, safety, insurance costs, absenteeism, and acceptance by co-workers; placement into dead-end jobs; under-employment and lack of promotion opportunities; and use of application forms and other pre-employment inquir-



ies that inquire about the existence of a disability rather than about the ability to perform the essential functions of a job.

Several witnesses also explained that title I of the ADA (employment discrimination) is modeled after regulations implementing the Rehabilitation Act of 1973, which prohibits discrimination by recipients of Federal assistance and requires affirmative action by Federal contractors and that compliance with these laws has been "no big deal."

Harold Russell, the chairperson of the President's Committee on Employment of People With Disabilities, testified that for a majority of employees, for example, no reasonable accommodation is required; for many others the costs can be less than \$50. According to the President's Committee which operates the Job Accommodation Network, typical accommodations provided for under \$50 include:

A timer costing \$26.95 with an indicator light allowed a medical technician who was deaf to perform the laboratory tests required for her job;

A receptionist who was visually impaired was provided with a light probe, costing \$45, which allowed her to determine which lines on a telephone were ringing, on hold, or in use of her company;

Obtaining a headset for a phone costing \$49.95 allowed an insurance salesperson with cerebral palsy to write while talking.

Witnesses also explained that there will also be a need for more expensive accommodations, including readers for blind persons and interpreters for deaf persons. But even costs for these accommodations are frequently exaggerated. Dr. I. King Jordan, President of Gallaudet University, explained to the Committee:

Often, interpreters can be hired to do other things as well as interpret—administrative secretaries or professional staff, even, who interpret on an only-as-needed basis. Most of the time, people who are hired who are deaf function without an interpreter except when they are in a meeting or except when they are attending a workshop or except when there is a very essential need for one-to-one communication. But, I think it needs to be made clear to people that the accommodations are not nearly as large as some people would lead us to believe.

In sum, testimony indicates that the provision of all types of reasonable accommodations is essential to accomplishing the critical goal of this legislation—to allow individuals with disabilities to be part of the economic mainstream of our society.

#### *Public accommodations*

Based on testimony presented at the hearings and recent national surveys and reports, it is clear that an overwhelming majority of individuals with disabilities lead isolated lives and do not frequent places of public accommodation.

The National Council on Disability summarized the findings of a recent Lou Harris poll:

The survey results dealing with social life and leisure experiences paint a sobering picture of an isolated and secluded population of individuals with disabilities. The large majority of people with disabilities do not go to movies, do not go to the theater, do not go to see musical performances, and do not go to sports events. A substantial minority of persons with disabilities never go to a restaurant, never go to a grocery store, and never go to a church or synagogue \* \* \* The extent of non-participation of individuals with disabilities in social and recreational activities is alarming.

Several witnesses addressed the obvious question "Why don't people with disabilities frequent places of public accommodations and stores as often as other Americans?" Three major reasons were given by witnesses. The first reason is that people with disabilities do not feel that they are welcome and can participate safely in such places. The second reason is fear and self-consciousness about their disability stemming from degrading experiences they or their friends with disabilities have experienced. The third reason is architectural, communication, and transportation barriers.

Former Senator Weicker testified that people with disabilities spend a lifetime "overcoming not what God wrought but what man imposed by custom and law."

Witnesses also testified about the need to define places of public accommodations to include all places open to the public, not simply restaurants, hotels, and places of entertainment (which are the types of establishments covered by title II of the Civil Rights Act of 1964) because discrimination against people with disabilities is not limited to specific categories of public accommodations. The Attorney General stated that we must bring Americans with disabilities into the mainstream of society "in other words, full participation in and access to all aspects of society."

Robert Burgdorf, Jr., currently a Professor of Law at the District of Columbia School of Law, testifying on behalf of the National Easter Seal Society, stated:

\* \* \* it makes no sense to bar discrimination against people with disabilities in theaters, restaurants, or places of entertainment but not in regard to such important things as doctors' offices. It makes no sense for a law to say that people with disabilities cannot be discriminated against if they want to buy a pastrami sandwich at the local deli but that they can be discriminated against next door at the pharmacy where they need to fill a prescription. There is no sense to that distinction.

Witnesses identified the major areas of discrimination that need to be addressed. The first is lack of physical access to facilities. Witnesses recognized that it is probably not feasible to require that existing facilities be completely retrofitted to be made accessible. However, it is appropriate to require modest changes. Ron Mace, an architect, described numerous inexpensive changes that could be made to make a facility accessible, including installing a permanent or portable ramp over an entrance step; installing offset



hinges to widen a doorway; relocating a vending machine to clear an accessible path; and installing signage to indicate accessible routes and features within facilities.

Several witnesses also recognized that when renovations are made that affect or could affect usability, the renovations should enhance accessibility and that newly constructed buildings should be fully accessible because the additional costs for making new facilities accessible are often "negligible." According to Ron Mace, there is absolutely no reason why new buildings constructed in America cannot be barrier-free since additional cost is not the factor. He testified that the problem is that "there is right now no training provided for designers in our country on how to design for children, older people and disabled people."

Additional areas of discrimination that witnesses identified include: the imposition or application of standards or criteria that limit or exclude people with disabilities; the failure to make reasonable modifications in policies to allow participation, and a failure to provide auxiliary aids and services.

For example, Greg Hlibok and Frank Bowe testified about the need for places of public accommodations to take steps to enhance safety for persons with hearing impairments. Laura Oftedahl testified about the lack of access and unnecessary dangers visually impaired people face because of lack of simple, inexpensive auxiliary aids.

#### *Public services*

Currently, Federal law prohibits recipients of Federal assistance from discriminating against individuals with disabilities. Many agencies of State and local government receive Federal aid and thus are currently prohibited from engaging in discrimination on the basis of disability. Witnesses testified about the inequity of limiting protection based on the receipt of Federal funding. For example, Neil Hartigan, the Attorney General from Illinois, testified that:

Under the current Federal law, the Rehabilitation Act's nondiscrimination requirements are tied to the receipt of Federal financial assistance. Unfortunately, what this translates to is total confusion for the disabled community and the inability to expect consistent treatment. Where there is no state law prohibiting discriminatory practices, two programs that are exactly alike, except for funding sources, can treat people with disabilities completely differently than others who don't have disabilities.

Mr. Hartigan also focused on the need to ensure access to polling places: "You cannot exercise one of your most basic rights as an American if the polling places are not accessible." The Committee heard about people with disabilities who were forced to vote by absentee ballot before key debates by the candidates were held.

Dr. Mary Lynn Fletcher testified that access to all public services is particularly critical in rural areas, because State and local government activities are frequently the major activities in such small towns. Since Federal aid frequently does not reach small rural

towns, current law thus does not protect people with disabilities in such areas from discrimination.

#### *Transportation*

Transportation is the linchpin which enables people with disabilities to be integrated and mainstreamed into society. Timothy Cook testified that "access to transportation is the key to opening up education, employment, recreation; and other provisions of the [ADA] are meaningless unless we put together an accessible public transportation system in this country." The National Council on Disability has declared that "accessible transportation is a critical component of a national policy that promotes the self-reliance and self-sufficiency of people with disabilities."

Harold Russell, testifying for the President's Committee on Employment of People with Disabilities made the same point when he stated:

To have less than adequate accessible public transportation services for an individual who is protected from discrimination in employment, or who has received other numerous federally funded services, is analogous to throwing an 11-foot rope to a drowning man 20 feet offshore and then proclaiming you are going more than halfway.

Witnesses also testified about the need to pursue a multi-modal approach to ensuring access for people with disabilities which provides that all new buses used for fixed routes are accessible and paratransit is made available for those who cannot use the fixed route accessible buses.

For some people with disabilities who lead or would like to lead spontaneous, independent lives integrated into the community, paratransit is often inadequate or inappropriate for the following reasons, among others: the need to make reservations in advance often conflicts with one's work schedule or interests in going out to restaurants and the like; the cost of rides when used frequently is often exorbitant; limitations on time of day and the number of days that the paratransit operates; waiting time; restrictions on use by guests and nondisabled companions who are excluded from accompanying the person with a disability; the expense to the public agency; and restrictions on eligibility placed on use by social service agencies.

However, witnesses also stressed that there are some people with disabilities who are so severely disabled that they cannot use accessible mainline transit and thus there is a need to have a paratransit system for these people.

Witnesses also addressed common myths about making mainline buses accessible. Harold Jenkins, the General Manager of the Cambria County Transit Authority in Johnstown, Pennsylvania, testified that his system is 100% accessible and operates without problem, notwithstanding hilly terrain and inclement weather, including snow, flooding, and significant extremes in temperature.

He also explained that when the decision was initially made to make the fleet 100% accessible there was fear and reluctance on the part of the disability community, the drivers, and the general public. That fear and reluctance has now disappeared. Jenkins con-



cluded that mainline access works in his community because of the commitment by everyone to make it work. Thus, there is a need to train and educate top management, drivers, and the general public as well as the disability community.

The Committee also heard and received written testimony that the new generation of lifts are not having the maintenance problems experienced in the past and they can operate in inclement weather. The Architectural Transportation Barriers Compliance Board has reported that currently most problems with lift operation are the direct result of driver error and that lift maintenance is but one facet of a good maintenance program. Thus, transit authorities reporting problems with lifts are generally those that also report problems with general maintenance.

With respect to intercity transportation, the Committee learned about reasonably priced lifts that can be installed on buses which will enable people using wheelchairs to have access to these buses. This is particularly critical in rural areas where these buses are often the only mode of transportation that is available.

#### *Telecommunications*

Dr. I. King Jordan, President of Gallaudet University, noted to the Committee that more than 100 years ago Alexander Graham Bell invented the telephone in the hope that he could close the communication gap between deaf and hearing people. According to Dr. Jordan: "Not only did the telephone not help close the gap, but in many ways it widened it and has become one more barrier in the lives of deaf people."

Several witnesses testified about the critical need to establish relay systems which will enable hearing impaired and communication impaired persons who use telecommunication devices for the deaf (TDDs) to make calls to and receive calls from individuals using voice telephones. Dr. Jordan explained:

The simplest task often becomes a major burden when we do not have access to the telephone: the person who wants to call a doctor for an appointment or the person who has to call his boss and tell him he cannot show up for work that day, someone at home who needs to call a plumber to fix a leak, or maybe a theatergoer who wants to make reservations or go to dinner.

Robert Yeager, who operates the Minnesota Relay Service, explained the importance of the relay this way:

As a former relay operator myself, I have seen the difference these services can make in people's lives \* \* \* A woman calls an ambulance when her husband has a heart attack; someone sets up a job interview and gets a job; a teenager gets their first date \* \* \*

Dr. Jordan summed up the need for a national relay system by stating:

The phone is a necessity, and it is a necessity for all of us, not just people who can hear \* \* \* By requiring nationwide telephone relay service for everyone, it will help deaf people achieve a level of independence in employment

and public accommodations that is sought by other parts of the ADA.

#### *Enforcement*

Several witnesses emphasized that the rights guaranteed by the ADA are meaningless without effective enforcement provisions. Illinois Attorney General Neil Hartigan explained that:

The whole trick is to make it more expensive to break the law than it is to keep the law. The vast majority of businesspeople want to keep the law. They just have got a bottom line they have got to meet. They can't have somebody else having an unfair competitive advantage by getting away with a discriminatory practice. That is why we need teeth in the law. That is why we put the penalties in the law and the damages in the law.

Mr. Hartigan explained that the inclusion of penalties and damages in the driving force that facilitates voluntary compliance:

When you don't have the penalties, there is no enforcement possibilities. Right now \* \* \* we can have traditional as well as punitive damages. We can have injunctive activity. We have got a range of weapons we can use if we have to use them. But, the fact that you've got it, the fact they know you are serious about it, keeps you from having to use it. We have 3,000 cases where we haven't had to go to court.

#### *Summary*

In sum, the unfortunate truth is that individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the ability of such individuals to participate in and contribute to society.

#### THE EFFECTS OF DISCRIMINATION ON INDIVIDUALS WITH DISABILITIES

Discrimination has many different effects on individuals with disabilities. Arlene Mayerson of the Disabilities Rights Education and Defense Fund testified about the nature of discrimination against people with disabilities:

The discriminatory nature of policies and practices that exclude and segregate disabled people has been obscured by the unchallenged equation of disability with incapacity and by the gloss of "good intentions." The innate biological and physical "inferiority" of disabled people is considered self-evident. This "self-evident" proposition has served to justify the exclusion and segregation of disabled people from all aspects of life. The social consequences that have attached to being disabled often bear no relationship to the physical or mental limitations imposed by the disability. For example, being paralyzed has meant far more than



being unable to walk—it has meant being excluded from public schools, being denied employment opportunities and being deemed an “unfit parent.” These injustices co-exist with an atmosphere of charity and concern for disabled people.

Dr. I. King Jordan, the President of Gallaudet University, explained that:

Discrimination occurs in every facet of our lives. There is not a disabled American alive today who has not experienced some form of discrimination. Of course, this has very serious consequences. It destroys healthy self-concepts and slowly erodes the human spirit. Discrimination does not belong in the lives of disabled people.

Judith Heumann explained that:

In the past, disability has been a cause of shame. This forced acceptance of second-class citizenship has stripped us as disabled people of pride and dignity \* \* \* This stigma scars for life.

Discrimination produces fear and reluctance to participate. Robert Burgdorf and Harold Jenkins testified that fear of mistreatment and discrimination and the existence of architectural, transportation, and communication barriers are critical reasons why individuals with disabilities don't participate to the same extent as nondisabled people in public accommodations and transportation.

Dr. Mary Lynn Fletcher testified about the factors that isolate people with disabilities and then explained that when one adds the rural factor on top of everything else it “obliterates the person.”

Discrimination results in social isolation and in some cases suicide.

Justin Dart testified before the Committee about how several of his brothers had committed suicide because of their disabilities and about a California woman, a mother, a TV director before becoming disabled who said to him:

We can go just so long constantly reaching dead ends. I am broke, degraded, and angry, have attempted suicide three times. I know hundreds. Most of us try, but which way and where can we go? What and who can we be? If I were understood, I would have something to live for.

#### THE EFFECTS OF DISCRIMINATION ON SOCIETY

The Committee also heard testimony and reviewed reports concluding that discrimination results in dependency on social welfare programs that cost the taxpayers unnecessary billions of dollars each year. Sandy Parrino, the chairperson of the National Council on Disability, testified that discrimination places people with disabilities in chains that:

\* \* \* bind many of the 36 million people into a bondage of unjust, unwanted dependency on families, charity, and social welfare. Dependency that is a major and totally unnecessary contributor to public deficits and private expenditures.

She added that:

\* \* \* it is contrary to sound principles of fiscal responsibility to spend billions of Federal tax dollars to relegate people with disabilities to positions of dependency upon public support.

President Bush has stated:

On the cost side, the National Council on the Handicapped states that current spending on disability benefits and programs exceeds \$60 billion annually. Excluding the millions of disabled who want to work from the employment ranks costs society literally billions of dollars annually in support payments and lost income tax revenues.

Attorney General Thornburgh added that:

We must recognize that passing comprehensive civil rights legislation protecting persons with disabilities will have direct and tangible benefits for our country \* \* \* Certainly, the elimination of employment discrimination and the mainstreaming of persons with disabilities will result in more persons with disabilities working, in increased earnings, in less dependence on the Social Security system for financial support, in increased spending on consumer goods, and increased tax revenues.

Justin Dart testified that it is discrimination and segregation that are preventing persons with disabilities from becoming self-reliant:

\* \* \* and that are driving us inevitably towards an economic and moral disaster of giant, paternalistic welfare bureaucracy. We are already paying unaffordable and rapidly escalating billions in public and private funds to maintain ever-increasing millions of potentially productive Americans in unjust, unwanted dependency.

Thus, discrimination makes people with disabilities dependent on social welfare programs rather than allowing them to be taxpayers and consumers.

Discrimination also deprives our Nation of a valuable source of labor in a period of labor shortages in certain jobs.

President Bush has stated:

The United States is now beginning to face labor shortages as the baby boomers move through the work force. The disabled offer a pool of talented workers whom we simply cannot afford to ignore, especially in connection with the high tech growth industries of the future.

Jay Rochlin, the executive director of the President's Committee on Employment of People with Disabilities, has stated:

The demographics have given us an unprecedented 20 year window of opportunity. Employers will be desperate to find qualified employees. Of necessity, they will have to look beyond their traditional sources of personnel and work to attract minorities, women, and others for a new



workforce. Our challenge is to insure that the largest minority, people with disabilities, is included.

Discrimination also negates the billions of dollars we invest each year to educate our children and youth with disabilities and train and rehabilitate adults with disabilities. Dr. I. King Jordan testified that:

We must stop sending disabled youth conflicting signals. America makes substantial investments in the education and development of these young people, then we deny them the opportunity to succeed and to graduate into a world that treats them with dignity and respect.

Sylvia Piper, a parent of a child with developmental disabilities testified that:

We have invested in Dan's future. And the Ankeny Public School District has made an investment in Dan's future. \* \* \* Are we going to allow this investment of time, energy, and dollars, not to mention Dan's ability and quality of life, to cease when he reaches 21?

Attorney General Thornburgh made the same point in his testimony:

The continued maintenance of these barriers imposes staggering economic and social costs and inhibits our sincere and substantial Federal commitment to the education, rehabilitation, and employment of persons with disabilities. The elimination of these barriers will enable society to benefit from the skills and talents of persons with disabilities and will enable persons with disabilities to lead more productive lives.

**CURRENT FEDERAL AND STATE LAWS ARE INADEQUATE; NEED FOR COMPREHENSIVE FEDERAL LEGISLATION**

State laws are inadequate to address the pervasive problems of discrimination that people with disabilities are facing. As Neil Hargigan, testified,

This is a crucial area where the Federal Government can act to establish uniform minimum requirements for accessibility.

Admiral Watkins, testified that:

My predecessor [Sandy Parrino] here this morning said enough time has, in my opinion, been given to the States to legislate what is right. Too many States, for whatever reason, still perpetuate confusion. It is time for Federal action.

According to Harold Russell:

The fifty State Governors' Committees, with whom the President's Committee works, report that existing State laws do not adequately counter such acts of discrimination.

Current Federal law is also inadequate. Currently, Federal anti-discrimination laws only address discrimination by Federal agen-

cies and recipients of Federal financial assistance. Last year, Congress amended the Fair Housing Act to prohibit discrimination against people with disabilities. However, there are still no protections against discrimination by employers in the private sector, by places of public accommodation, by State and local government agencies that do not receive Federal aid, and with respect to the provision of telecommunication services. With respect to the provision of accessible transportation services, there are still misinterpretations by executive agencies and some courts regarding transportation by public entities and lack of protection against private transportation companies.

The need to enact omnibus civil rights legislation for individuals with disabilities was one of the major recommendations of the National Council on Disability in its two most recent reports to Congress. In fact S. 2345, the Americans With Disabilities Act of 1988, introduced during the 100th Congress, was developed by the Council.

The need for omnibus civil rights legislation was also one of the major recommendations of the Presidential Commission on the HIV Epidemic:

Comprehensive Federal anti-discrimination legislation, which prohibits discrimination against persons with disabilities in the public and private sectors, including employment, housing, public accommodations and participation in government programs should be enacted. All persons with symptomatic or asymptomatic HIV infection should be clearly included as persons with disabilities who are covered by the anti-discrimination protections of this legislation.

Attorney General Thornburgh, on behalf of President Bush, also testified about the importance of enacting comprehensive civil rights legislation for people with disabilities:

The Committee is to be commended for its efforts in drafting S. 933. One of its most impressive strengths is its comprehensive character. Over the last 20 years, civil rights laws protecting disabled persons have been enacted in piecemeal fashion. Thus, existing Federal laws are like a patchwork quilt in need of repair. There are holes in the fabric, serious gaps in coverage that leave persons with disabilities without adequate civil rights protections.

**VISION FOR THE FUTURE**

Many of the witnesses described the vision of the Americans With Disabilities Act.

Sandy Parrino testified that:

Martin Luther King had a dream. We have a vision. Dr. King dreamed of an America "where a person is judged not by the color of his skin, but by the content of his character." ADA's vision is of an America where persons are judged by their abilities and not on the basis of their disabilities.



Tony Coelho shared the following observation with the Committee:

While the charity model once represented a step forward in the treatment of persons with handicaps, in today's society it is irrelevant, inappropriate and a great disservice. Our model must change. Disabled people are sometimes impatient, and sometimes angry, but for good reason—they are fed up with discrimination and exclusion, tired of denial, and are eager to seize the challenges and opportunities as quickly as the rest of us.

Dr. Jordan testified that the ADA is necessary to demonstrate that disabled people:

Can have the same aspirations and dreams as other American citizens. Disabled people know that their dreams can be fulfilled.

Dr. Jordan also testified that passage of ADA:

Will tell disabled Americans that they are indeed equal to other Americans and that discrimination toward disabled persons will no longer be tolerated in our country. It will also make a powerful statement to the world that America is true to its ideals. That is the full measure of the American dream.

Perry Tillman, a Vietnam veteran, testified that:

I did my job when I was called on by my country. Now it is your job and the job of everyone in Congress to make sure that when I lost the use of my legs I didn't lose my ability to achieve my dreams. Myself and other veterans before me fought for freedom for all Americans. But when I came home and found out that what I fought for applied to everyone but me and other handicapped people, I couldn't stop fighting. I have fought since my injury in Vietnam to regain my rightful place in society. I ask that you now join me in ending this fight and give quick and favorable consideration to the ADA in order to allow all Americans, disabled or not, to take part equally in American life.

#### CONCLUSION

In conclusion, there is a compelling need to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and for the integration of persons with disabilities into the economic and social mainstream of American life. Further, there is a need to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities. Finally, there is a need to ensure that the Federal Government plays a central role in enforcing these standards on behalf of individuals with disabilities.

The difficult task before the Committee and, indeed, the Congress, is to establish standards that fulfill this mandate in a clear, balanced, and reasonable manner. The Committee believes that

this legislation has done that. This report explains in detail how that balance has been struck.

#### V. SUMMARY OF COMMITTEE ACTION

S. 933 was brought for markup at the Committee on Labor and Human Resources executive session on August 2, 1989. At that time, the Committee discussed three amendments, of which two were adopted. Senator Harkin offered an amendment in the nature of a substitute, which included amendment No. 541, proposed by Senator McCain concerning amending the substitute by adding a provision concerning technical assistance, which was adopted by voice vote. Senator Hatch offered and then withdrew an amendment that would have extended the scope of coverage to include the Congress.

The Committee voted to adopt and report S. 933, as amended, as an amendment in the nature of a complete substitute, by a roll call vote of 16-0.

#### VI. EXPLANATION OF THE LEGISLATION

##### DEFINITION OF THE TERM "DISABILITY"

Section 3(2) of the legislation defines the term "disability" for purposes of this legislation. The definition of the term "disability" included in the bill is comparable to the definition of the term "individual with handicaps" in section 7(8)(B) of the Rehabilitation Act of 1973 and section 802(h) of the Fair Housing Act.

It is the Committee's intent that the analysis of the term "individual with handicaps" by the Department of Health, Education, and Welfare of the regulations implementing section 504 (42 Fed. Reg. 22685 et. seq. (May 4, 1977)) and the analysis by the Department of Housing and Urban Development of the regulations implementing the Fair Housing Amendments Act of 1988 apply to the definition of the term "disability" included in this legislation.

The use of the term "disability" instead of "handicap" and the term "individual with a disability" instead of "individual with handicaps" represents an effort by the Committee to make use of up-to-date, currently accepted terminology. In regard to this legislation, as well as in other contexts, the Congress has been apprised of the fact that to many individuals with disabilities the terminology applied to them is a very significant and sensitive issue.

As with racial and ethnic epithets, the choice of terms to apply to a person with a disability is overlaid with stereotypes, patronizing attitudes, and other emotional connotations. Many individuals with disabilities and organizations representing them object to the use of such terms as "handicapped person" or "the handicapped." In recent legislation, Congress has begun to recognize this shift of terminology, e.g., by changing the name of the National Council on the Handicapped to the National Council on Disability.

The Committee concluded that it was important for the current legislation to use terminology most in line with the sensibilities of most Americans with disabilities. No change in definition or substance is intended nor should be attributed to this change in phraseology.



The term "disability" means, with respect to an individual—

- (1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (2) A record of such impairment; or
- (3) Being regarded as having such an impairment.

The first prong of the definition includes any individual who has a "physical or mental impairment." A physical or mental impairment means—(1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

It is not possible to include in the legislation a list of all the specific conditions, diseases, or infections that would constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list, particularly in light of the fact that new disorders may develop in the future. The term includes, however, such conditions, diseases and infections as: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, infection with the Human Immunodeficiency Virus, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, drug addiction, and alcoholism.

The term "physical or mental impairment" does not include simple physical characteristics, such as blue eyes or black hair. Further, because only physical or mental impairments are included, environmental, cultural, and economic disadvantages are not in themselves covered. For example, having a prison record does not constitute having a disability. Age is not a disability, nor is homosexuality. Of course, if a person who has any of these characteristics also has a physical or mental impairment, such as epilepsy, the person may be considered as having a disability or purposes of this legislation.

A physical or mental impairment does not constitute a disability under the first prong of the definition for purposes of the ADA unless its severity is such that it results in a "substantial limitation of one or more major life activities." A "major life activity" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

For example, a person who is paraplegic will have a substantial difficulty in the major life activity of walking; a deaf person will have a substantial difficulty in hearing aural communications; and a person with lung disease will have a substantial limitation in the major life activity of breathing. As noted by the U.S. Department of Justice, "Application of Section 504 of the Rehabilitation Act to HIV-Infected Individuals," September 27, 1988, at 9-11, a person infected with the Human Immunodeficiency Virus is covered under the first prong of the definition of the term "disability."

Persons with minor, trivial impairments, such as a simple infected finger are not impaired in a major life activity. A person is considered an individual with a disability for purposes of the first prong of the definition when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person who can walk for 10 miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing some discomfort. Moreover, whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids.

The second prong of the definition of the term "disability" includes an individual who has a record of such an impairment, i.e., an individual who has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

This provision is included in the definition in part to protect individuals who have recovered from a physical or mental impairment which previously substantially limited them, in a major life activity. Discrimination on the basis of such a past impairment would be prohibited under this legislation. Frequently occurring examples of the first group (i.e., those who have a history of an impairment) are persons with histories of mental or emotional illness, heart disease, or cancer; examples of the second group (i.e., those who have been misclassified as having an impairment) are persons who have been misclassified as mentally retarded.

The third prong of the definition includes an individual who is regarded as having a covered impairment. This third prong includes an individual who has a physical or mental impairment that does not substantially limit major life activities, but that is treated by a covered entity as constituting such a limitation. The third prong also includes an individual who has a physical or mental impairment that substantially limits major activities only as a result of the attitudes of others toward such impairment or has no physical or mental impairment but is treated by a covered entity as having such an impairment.

The rationale for this third prong was clearly articulated by the U.S. Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987). The Court noted that Congress included this third prong because it was as concerned about the effect of an impairment on others as it was about its effect on the individual. As the Court noted, the third prong of the definition is designed to protect individuals who have impairments that do not in fact substantially limit their functioning. The Court explained:

Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment. 480 U.S. at 283.

The Court went on to conclude that:



By amending the definition of "handicapped individual" to include not only those who are actually physically impaired but also those who are regarded as impaired and who, as a result, are substantially limited in a major life activity, Congress acknowledged that society's accumulated myths and fears about disability and diseases are as handicapping as are the physical limitations that flow from actual impairment.

This third prong is particularly important for individuals with stigmatic conditions that are viewed as physical impairments but do not in fact result in a substantial limitation of a major life activity. For example, severe burn victims often face discrimination.

Another important goal of the third prong of the definition is to ensure that persons with medical conditions that are under control, and that therefore do not currently limit major life activities, are not discriminated against on the basis of their medical conditions. For example, individuals with controlled diabetes or epilepsy are often denied jobs for which they are qualified. Such denials are the result of negative attitudes and misinformation.

Other examples of individuals who fall within the "regarded as" prong of the definition include people who are rejected for a particular job for which they apply because of findings of a back abnormality on an x-ray, notwithstanding the absence of any symptoms, or people who are rejected for a particular job solely because they wear hearing aids, even though such people may compensate substantially for their hearing impairments by using their aids, speechreading, and a variety of other strategies.

A person who is excluded from any activity covered under this Act or is otherwise discriminated against because of a covered entity's negative attitudes towards disability is being treated as having a disability which affects a major life activity. For example, if a public accommodation, such as a restaurant, refused entry to a person with cerebral palsy because of that person's physical appearance, that person would be covered under the third prong of the definition. Similarly, if an employer refuses to hire someone because of a fear of the "negative reactions" of others to the individual, or because of the employer's perception that the applicant had a disability which prevented that person from working, that person would be covered under the third prong. See, e.g., *Arline*, 480 U.S. at 284; *Doe v. Centinela Hospital*, 57 U.S.L.W. 2034, No. CV-87-2514-PAR (C.D.Cal., June 30, 1988), *Thornhill v. Marsh*, 49 FEP Cases 6 (Feb. 2, 1989) (9th Cir. 1989).

#### TITLE I—EMPLOYMENT

Title I of the legislation sets forth prohibitions against discrimination on the basis of disability by employers, employment agencies, labor organizations, or joint labor-management committees (hereinafter referred to as "covered entities") with respect to hiring and all terms, conditions, and privileges of employment.

##### *Scope of coverage*

The bill covers employers (including governments, governmental agencies, and political subdivisions) who are engaged in an indus-

try affecting commerce and who have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of such a person; except, for the two years following the effective date of title I, only entities with 25 or more employees are covered. Additional entities covered by title I of the legislation are employment agencies, labor organizations, or joint labor-management committees.

Consistent with title VII of the Civil Rights Act of 1964, the term "employer" under this legislation does not include (i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or (ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

##### *Definitions*

Several of the definitions set out in title VII of the Civil Rights Act of 1964 are adopted or incorporated by reference in this legislation (Commission, employer, person, labor organization, employment agency, commerce, and industry affecting commerce). The term "employee" means an individual employed by an employer. The exception set out in title VII of the Civil Rights Act of 1964 for elected officials and their employees and appointees has been deleted.

##### *Actions covered by this legislation*

Section 102(a) of the legislation specifies that no covered entity shall discriminate against any qualified individual with a disability because of such individual's disability in regard to job application procedures, the hiring or discharge of employees, employee compensation, advancement, job training, and other terms, conditions, and privileges of employment.

The phrasing of this section is consistent with regulations implementing section 504 of the Rehabilitation Act of 1973. Consistent with these regulations, the phrase "other terms, conditions, and privileges of employment" includes: (1) recruitment, advertising, and the processing of applications for employment; (2) hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring; (3) rates of pay or any other form of compensation and changes in compensation; (4) job assignment, job classification, organizational structures, position descriptions, lines of progression, and seniority lists; (5) leaves of absence, sick leave, or any other leave; (6) fringe benefits available by virtue of employment, whether or not administered by the covered entity; (7) selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training; and (8) employer-sponsored activities, including social or recreational programs.

##### *Qualified individual with a disability*

The term "qualified individual with a disability" is defined in section 101(7) of the bill to mean an individual with a disability who, with or without reasonable accommodation, can perform the



essential functions of the employment position that such individual holds or desires.

This definition is comparable to the definition used in regulations implementing section 501 and section 504 of the Rehabilitation Act of 1973. The phrase "essential functions" means job tasks that are fundamental and not marginal. The point of including this phrase within the definition of a "qualified individual with a disability" is to ensure that employers can continue to require that all applicants and employees, including those with disabilities, are able to perform the essential, i.e., non-marginal functions of the job in question.

As the 1977 regulations issued by the Department of Health, Education, and Welfare pointed out "inclusion of this phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job." 42 Fed. Reg. 22686 (1977). In determining what constitutes the essential functions of the job, consideration should be given to the employer's judgment regarding what functions are essential as a matter of business necessity.

The basic concept is that an employer may require that every employee be qualified to perform the essential functions of a job. The term "qualified" refers to whether the individual is qualified at the time of the job action in question; the mere possibility of future incapacity does not by itself render the person not qualified.

By including the phrase "qualified individual with a disability," the Committee intends to reaffirm that this legislation does not undermine an employer's ability to choose and maintain qualified workers. This legislation simply provides that employment decisions must not have the purpose or effect of subjecting a qualified individual with a disability to discrimination on the basis of his or her disability.

Thus, under this legislation an employer is still free to select the most qualified applicant available and to make decisions based on reasons unrelated to the existence or consequence of a disability. For example, suppose an employer has an opening for a typist and two persons apply for the job, one being an individual with a disability who types 50 words per minute and the other being an individual without a disability who types 75 words per minute, the employer is permitted to choose the applicant with the higher typing speed.

On the other hand, if the two applicants are an individual with a hearing impairment who requires a telephone headset with an amplifier and an individual without a disability, both of whom have the same typing speed, the employer is not permitted to choose the individual without a disability because of the need to provide the needed reasonable accommodation.

In the above example, the employer would be permitted to reject the applicant with a disability and choose the other applicant for reasons not related to the disability or the accommodation or otherwise prohibited by this legislation. In other words, the employer's obligation is to consider applicants and make decisions without regard to an individual's disability, or the individual's need for reasonable accommodation. But, the employer has no obligation under

this legislation to prefer applicants with disabilities over other applicants on the basis of disability.

Under this legislation an employer may still devise physical and other job criteria and tests for a job so long as the criteria or tests are job-related and consistent with business necessity. Thus, for example, an employer can adopt a physical criterion that an applicant be able to lift fifty pounds, if that ability is necessary to an individual's ability to perform the essential functions of the job in question.

Moreover, even if the criterion is legitimate, the employer must determine whether a reasonable accommodation would enable the person with the disability to perform the essential functions of the job without imposing an undue hardship on the business.

Finally, this legislation prohibits use of a blanket rule excluding people with certain disabilities except in the very limited situation where in all cases physical condition by its very nature would prevent the person with a disability from performing the essential functions of the job, even with reasonable accommodations.

It is also acceptable to deny employment to an applicant or to fire an employee with a disability on the basis that the individual poses a direct threat to the health or safety of others or poses a direct threat to property. The determination that an individual with a disability will pose a safety threat to others must be made on a case-by-case basis and not be based on generalizations, misperceptions, ignorance, irrational fears, patronizing attitudes, or pernicious mythologies.

The employer must identify the specific risk that the individual with a disability would pose. The standard to be used in determining whether there is a direct threat is whether the person poses a significant risk to the safety of others or to property, not a speculative or remote risk, and that no reasonable accommodation is available that can remove the risk. (See section 102(b) of the legislation). See also *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987). For people with mental disabilities, the employer must identify the specific behavior on the part of the individual that would pose the anticipated direct threat.

Making such a determination requires a fact-specific individualized inquiry resulting in a "well-informed judgment grounded in a careful and open-minded weighing of the risks and alternatives." *Hall v. U.S. Postal Service*, 857 F.2d 1073, 1079 (6th Cir. 1988), quoting *Arline*. See also *Mantolite v. Bolger*, 757 F.2d 1416 (9th Cir. 1985) and *Strathie v. Dept. of Transportation*, 716 F.2d 227 (3d Cir. 1983).

With respect to covered entities subject to rules promulgated by the Department of Transportation regarding physical qualifications for drivers of certain classifications of motor vehicles, it is the Committee's intent that a person with a disability applying for or currently holding a job subject to these standards must be able to satisfy these physical qualification standards in order to be considered a qualified individual with a disability under title I of this legislation.

In light of this legislation, the Committee expects that within two years from the date of enactment (the effective date of title I of this legislation), the Secretary of Transportation will undertake a



thorough review of these regulations to ascertain whether the standards conform with current knowledge about the capabilities of persons with disabilities and currently available technological aids and devices and in light of section 504 of the Rehabilitation Act of 1973 and make any necessary changes within the two year period.

#### *Specific forms of discrimination prohibited*

As explained above, section 1029a) of the bill includes a general prohibition against discrimination on the basis of disability against a qualified individual with a disability. Section 102(b) of the bill specifies specific forms of discrimination that are prohibited by section 102(a).

Section 102(b)(1) of the legislation specifies that the term "discrimination" includes limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee.

Thus, covered entities are required to make employment decisions based on facts applicable to individual applicants or employees, and not on the basis of presumptions as to what a class of individuals with disabilities can or cannot do.

For example, it would be a violation of this legislation if an employer were to limit the duties of an individual with a disability based on a presumption of what was best for such individual or based on a presumption about the ability of that individual to perform certain tasks. Similarly, it would be a violation for an employer to adopt separate lines of progression for employees with disabilities based on a presumption that no individual with a disability would be interested in moving into a particular job.

It would also be a violation to deny employment to an applicant based on generalized fears about the safety of the applicant or higher rates of absenteeism. By definition, such fears are based on averages and group-based predictions. This legislation requires individualized assessments which are incompatible with such an approach. Moreover, even group-based fears may be erroneous. In 1973, a study examined the job performance, safety record and attendance of 1,452 physically impaired employees of the E.I. du Pont de Nemours and Company (Wolfe, "Disability is No Hardship for du Pont").

The study was intended, in part, to determine the validity of several concerns expressed by employers with regard to hiring veterans with disabilities: (1) insurance rates will skyrocket; (2) considerable expense will be involved in making the necessary adjustments at the place of work; (3) safety records will be jeopardized; (4) special privileges will have to be granted; and (5) other employees may not accept workers with disabilities.

A du Pont executive said:

Every one of these reasons for not considering the handicapped veteran is not only a myth—but has been proven through experience to hold no semblance of fact whatsoever.

Regarding insurance, the executive added

Du Pont has had no increase in compensation costs as a result of hiring the handicapped and no lost-time injuries of the handicapped have been experienced.

With regard to the other concerns, the study showed that the disabled worker performed as well as or better than their non-disabled co-workers. The fears of safety and absenteeism were unfounded.

Some specific findings of the study were as follows:

Ninety-one percent of Du Pont's disabled workers rated average or better in performance.

Only four percent of the workers with disabilities were below average in safety records; more than half were above average.

Ninety-three percent of the workers with disabilities rated average or better with regard to job stability (turnover rate).

Seventy-nine percent of the workers with disabilities rated average or better in attendance.

Fellow employees did not resent necessary accommodations made for employees with disabilities.

In addition, employers may not deny health insurance coverage completely to an individual based on the person's diagnosis or disability. For example, while it is permissible for an employer to offer insurance policies that limit coverage for certain procedures or treatments, e.g., only a specified amount per year for mental health coverage, a person who has a mental health condition may not be denied coverage for other conditions such as for a broken leg or for heart surgery because of the existence of the mental health condition. A limitation may be placed on reimbursements for a procedure or the types of drugs or procedures covered e.g., a limit on the number of x-rays or non-coverage of experimental drugs or procedures; but, that limitation must apply to persons with or without disabilities. All people with disabilities must have equal access to the health insurance coverage that is provided by the employer to all employees.

The ADA does not, however, affect pre-existing condition clauses included in insurance policies offered by employers. Thus, employers may continue to offer policies that contain pre-existing condition exclusions, even though such exclusions adversely affect people with disabilities, so long as such clauses are not used as a subterfuge to evade the purposes of this legislation.

For additional explanations of the treatment of insurance under this legislation, see the discussion in the report on insurance under title V of the legislation.

Section 102(b)(2) of the legislation specifies that "discrimination" includes participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to the discrimination prohibited by this title. Such relationships include a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs.

Section 102(b)(3) of the legislation specified that "discrimination" includes utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability or



that perpetuate the discrimination of others who are subject to common administrative control.

Paragraphs (2) and (3) of the legislation are derived from provisions set out in the title I of the ADA, as originally introduced (which has been deleted by the Substitute) and general forms of discrimination set out in regulations implementing section 504 of the Rehabilitation Act of 1973 (see e.g., 45 CFR Part 84). Thus, the Substitute should not be construed as departing in any way from the concepts included in the original "general prohibitions" title of the ADA and these concepts are subsumed within the provision of the subsequent titles of the legislation. Further, this legislation in no way is intended to diminish the continued viability of sheltered workshops and programs implementing the Javits-Wagner O'Day Act.

Subparagraphs (B) and (C) incorporate a disparate impact standard to ensure that the legislative mandate to end discrimination does not ring hollow. This standard is consistent with the interpretation of section 504 by the U.S. Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985). The Court explained that members of Congress made numerous statements during passage of section 504 regarding eliminating architectural barriers, providing access to transportation, and eliminating discriminatory effects of job qualification procedures. The Court then noted:

These statements would ring hollow if the resulting legislation could not rectify the harms resulting from action that discriminated by effect as well as by design.

The Court also noted, however, that section 504 was not intended to require that a "Handicapped Impact Statement" be prepared by a covered entity before any action was taken that might conceivably affect people with disabilities. Thus, the Court rejected "the boundless notion that all disparate-impact showings constitute prima facie cases under section 504."

Section 101(b)(4) of the legislation specifies that "discrimination" includes excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

Thus, assume for example that an applicant applies for a job and discloses to the employer that his or her spouse has a disability. The employer believes the applicant is the most qualified person for the job. The employer, however, assuming without foundation that the applicant will have to miss work or frequently leave work early or both, in order to care for his or her spouse, declines to hire the individual for such reasons. Such a refusal is prohibited by this subparagraph.

In contrast, assume that the employer hires the applicant. If he or she violates a neutral employer policy concerning the attendance or tardiness, he or she may be dismissed even if the reason for the absence or tardiness is to care for the spouse. The employer need not provide any accommodation to the nondisabled employee.

Section 102(b)(5) of the legislation specifies that discrimination includes the failure by a covered entity to make reasonable accommodations to the known physical or mental limitations of a quali-

fied individual with a disability who is an applicant or employee, unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

The duty to make reasonable accommodations applies to all employment decisions, not simply to hiring and promotion decisions. This duty has been included as a form of non-discrimination on the basis of disability for almost fifteen years under section 501 and section 504 of the Rehabilitation Act of 1973 and under the nondiscrimination section of the regulations implementing section 503 of that Act.

The term "reasonable accommodation" is defined in section 101(8) of the legislation. The definition includes illustrations of accommodations that may be required in appropriate circumstances. The list is not meant to be exhaustive; rather, it is intended to provide general guidance about the nature of the obligation. Furthermore, the list is not meant to suggest that employers must follow all of the actions listed in each particular case. Rather, the decision as to what reasonable accommodation is appropriate is one which must be determined based on the particular facts of the individual case. This fact-specific case-by-case approach to providing reasonable accommodations is generally consistent with interpretations of this phrase under sections 501, 503, and 504 of the Rehabilitation Act of 1973.

The first illustration of a reasonable accommodation included in the legislation is making existing facilities used by employees in general, readily accessible to and usable by individuals with disabilities.

The legislation also specifies, as examples of reasonable accommodation, job restructuring, part-time or modified work schedules and reassignment to a vacant position.

Job restructuring means modifying a job so that a person with a disability can perform the essential functions of the position. Barriers to performance may be eliminated by eliminating nonessential elements; redelegating assignments; exchanging assignments with another employee; and redesigning procedures for task accomplishment.

Part-time or modified work schedules can be a no-cost way of accommodation. Some people with disabilities are denied employment opportunities because they cannot work a standard schedule. For example, persons who need medical treatment may benefit from flexible or adjusted work schedules. A person with epilepsy may require constant shifts rather than rotation from day to night shifts. Other persons who may require modified work schedules are persons with mobility impairments who depend on a public transportation system that is not currently fully accessible. Allowing constant shifts or modified work schedules are examples of means to accommodate the individual with a disability to allow him or her to do the same job as a nondisabled person. This legislation does not entitle the individual with a disability to more paid leave time than non-disabled employees.

Reasonable accommodation may also include reassignment to a vacant position. If an employee, because of disability, can no longer perform the essential functions of the job that she or he has held, a transfer to another vacant job for which the person is qualified



may prevent the employee from being out of work and the employer from losing a valuable worker.

Reassignment as a reasonable accommodation is not available to applicants for employment. The Committee believes that efforts should be made to accommodate an employee in the position that he or she was hired to fill before reassignment should be considered. The Committee also wishes to make clear that reassignment need only be to a vacant position—"bumping" another employee out of a position to create a vacancy is not required.

The section 504 regulations provide that "a recipient's obligation to comply with this subpart [employment] is not affected by any inconsistent term of any collective bargaining agreement to which it is a party." 45 CFR 84.11(c). This policy also applies to the ADA. An employer cannot use a collective bargaining agreement to accomplish what it otherwise would be prohibited from doing under this legislation. For example, a collective bargaining agreement that contained physical criteria which caused a disparate impact on individuals with disabilities and were not job-related and consistent with business necessity could be challenged under this legislation.

The collective bargaining agreement could be relevant, however, in determining whether a given accommodation is reasonable. For example, if a collective bargaining agreement reserves certain jobs for employees with a given amount of seniority, it may be considered as a factor in determining whether it is a reasonable accommodation to assign an employee with a disability without seniority to that job.

In other situations, the relevant question would be whether the collective bargaining agreement articulates legitimate business criteria. For example, if the collective bargaining agreement includes job duties, it may be taken into account as a factor in determining whether a given task is an essential function of the job.

Conflicts between provisions of a collective bargaining agreement and an employer's duty to provide reasonable accommodations may be avoided by ensuring that agreements negotiated after the effective date of this title contain a provision permitting the employer to take all actions necessary to comply with this legislation.

Additional forms of reasonable accommodation included in the legislation are acquisition or modification of equipment or devices. The Job Accommodation Network operated by the President's Committee on Employment of People with Disabilities reports that it is possible to accommodate many employees with relatively simple and inexpensive assistive technology.

For blind and visually-impaired persons, this may include adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and brailled material.

For persons with hearing impairments, this may include telephone handset amplifiers, telephones compatible with hearing aids, and telecommunication devices for deaf persons. For persons with limited physical dexterity, this may include goose neck telephone headsets, mechanical page turners, and raised or lowered furniture.

The Committee wishes to make it clear that non job-related personal use items such as hearing aids and eyeglasses are not included in this provision.

The legislation also lists appropriate adjustment or modifications of examinations, training materials or policies. For example, many employers have a policy that in order to qualify for a job an employee must have a driver's license—even though the jobs do not involve driving. The employer may believe that someone who drives will be on time for work or may be able to do an occasional errand. This requirement, however, would be marginal and should not be used to exclude persons with disabilities who can do the essential functions of the job that admittedly do not include driving.

The Committee wishes to emphasize again that this legislation does not require an employer to make any modification, adjustment, or change in a job description or policy that an employer can demonstrate would fundamentally alter the essential functions of the job in question.

The legislation also explicitly includes provision of qualified readers of interpreters as examples of reasonable accommodations. As with readers and interpreters, the provision of an attendant to assist a person with a disability during parts of the workday may be a reasonable accommodation depending on the circumstances of the individual case. Attendants may, for example, be required for traveling and other job-related functions. This issue must be dealt with on a case-by-case basis to determine whether an undue hardship is created by providing attendants.

The Committee wishes to clarify the employer's obligation to notify the applicant and the employee of its obligation to provide a reasonable accommodation, who is entitled to an accommodation, when the duty to provide a reasonable accommodation is triggered, and the process of determining the appropriate accommodation.

First, pursuant to section 104 of the legislation, the employer must notify applicants and employees of its obligation under this legislation to make reasonable accommodations.

Second, section 102(b)(5) of the legislation requires that reasonable accommodation be made for "a qualified individual who is an applicant or employee \* \* \*" The term "qualified" as used in this section does not refer to the definition of "qualified individual with a disability" set forth in section 101(7) because such an interpretation would be circular and meaningless. Rather, as in section 504 regulations, the term "qualified" in section 102(b)(5) means "otherwise qualified" (See 45 CFR 84.12(a)), i.e., a person with a disability who meets all of an employer's job-related selection criteria except such criteria he or she cannot meet because of a disability.

For example, if a law firm requires that all incoming lawyers have graduated from an accredited law school and have passed the bar examination, the law firm need not provide an accommodation to an individual with a disability who has not met these selection criteria. That individual is not yet eligible for a reasonable accommodation because he or she is not otherwise qualified for the position.

On the other hand, if the individual graduated from an accredited law school and passed a bar examination (assuming that these are the only selection criteria) the person is "otherwise qualified"



and the law firm would be required to provide a reasonable accommodation to the employee's visual impairment, such as a reader, that would enable the employee to perform the essential functions of the job as an attorney unless the necessary accommodation would impose an undue hardship.

If, to continue the example, a part-time reader can be provided as a reasonable accommodation that permits the individual to perform the essential functions of the attorney position without imposing an undue hardship, the person is a "qualified individual with a disability" as defined in section 101(7) of the legislation and it would be unlawful not to hire the individual because of his or her visual impairment.

Third, the legislation clearly states that employers are obligated to make reasonable accommodations only to the "known" physical or mental limitations of a qualified individual with a disability. Thus, the duty to accommodate is generally triggered by a request from an employee or applicant for employment. Of course, if a person with a known disability is having difficulty performing his or her job, it would be permissible for the employer to discuss the possibility of a reasonable accommodation with an employee.

In the absence of a request, it would be inappropriate to provide an accommodation, especially where it could impact adversely on the individual. For example, it would be unlawful to transfer unilaterally a person with HIV infection from a job as a teacher to a job where such person has no contact with people. See, e.g., *Chalk v. United States District Court*, 840 F.2d 701 (9th Cir. 1988).

The Committee believes that the reasonable accommodation requirement is best understood as a process in which barriers to a particular individual's equal employment opportunity are removed. The accommodation process focuses on the needs of a particular individual in relation to problems in performance of a particular job because of a physical or mental impairment. A problem-solving approach should be used to identify the particular tasks or aspects of the work environment that limit performance and to identify possible accommodations that will result in a meaningful equal opportunity for the individual with a disability.

The Committee suggests that, after a request for an accommodation has been made, employers first will consult with and involve the individual with a disability in deciding on the appropriate accommodation. The Committee recognizes that people with disabilities may have a lifetime of experience identifying ways to accomplish tasks differently in many different circumstances. Frequently, therefore, the person with a disability will know exactly what accommodation he or she will need to perform successfully in a particular job. And, just as frequently, the employee or applicant's suggested accommodation is simpler and less expensive than the accommodation the employer might have devised, resulting in the employer and the employee mutually benefiting from the consultation.

The Committee also recognizes that there are times when the appropriate accommodation is not obvious to the employer or applicant because such individual is not familiar in detail with the manner in which the job in question is performed and the employer is not familiar enough with the individual's disability to identify

the appropriate accommodation. In such circumstances, the Committee believes the employer should consider four informal steps to identify and provide an appropriate accommodation.

The first informal step is to identify barriers to equal opportunity. This includes identifying and distinguishing between essential and nonessential job tasks and aspects of the work environment of the relevant position(s). With the cooperation of the person with a disability, the employer must also identify the abilities and limitations of the individual with a disability for whom the accommodation is being provided. The employer then should identify job tasks or work environment that limit the individual's effectiveness or prevent performance.

Having identified the barriers to job performance caused by the disability, the second informal step is to identify possible accommodations. As noted above, the search for possible accommodations must begin with consulting the individual with a disability. Other resources to consult include the appropriate State Vocational Rehabilitation Services agency, the Job Accommodation Network operated by the President's Committee on Employment of People With Disabilities, or other employers.

Having identified one or more possible accommodations, the third informal step is to assess the reasonableness of each in terms of effectiveness and equal opportunity. A reasonable accommodation should be effective for the employee. Factors to be considered include the reliability of the accommodation and whether it can be provided in a timely manner.

The Committee believes strongly that a reasonable accommodation should provide a meaningful equal employment opportunity. Meaningful equal employment opportunity means an opportunity to attain the same level of performance as is available to non-disabled employees having similar skills and abilities.

The final informal step is to implement the accommodation that is most appropriate for the employee and the employer and that does not impose an undue hardship on the employer's operation or to permit the employee to provide his or her own accommodation if it does impose an undue hardship. In situations where there are two effective accommodations, the employer may choose the accommodation that is less expensive or easier for the employer to implement as long as the selected accommodation provides meaningful equal employment opportunity.

The expressed choice of the applicant or employee shall be given primary consideration unless another effective accommodation exists that would provide a meaningful equal employment opportunity or that the accommodation requested would pose an undue hardship.

The Committee wishes to note that many individuals with disabilities do not require any reasonable accommodation whatsoever. The only change that needs to be made for such individuals is a change in attitude regarding employment of people with disabilities.

The term "undue hardship" is defined in section 101(9) to mean an action requiring significant difficulty or expense i.e., an action that is unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the program. In determining



whether a particular accommodation would impose an undue hardship on the operation of the covered entity's business i.e., require significant difficulty or expense, factors to be considered include: (1) the overall size of the business of the covered entity with respect to number of employees, number and type of facilities and size of the budget; (2) the type of operation maintained by the covered entity, including the composition and structure of the entity's workforce; and (3) the nature and cost of the accommodation needed.

This provision is derived from and should be applied consistently with interpretations by Federal agencies applying the term set forth in regulations implementing sections 501 and 504 of the Rehabilitation Act of 1973.

The weight given to each factor in making the determination as to whether a reasonable accommodation nonetheless constitutes an "undue hardship" will vary depending on the facts of a particular situation and turns on both the nature and cost of the accommodation in relation to the employer's resources and operations. In explaining the "undue hardship" provision, the Department of Health, Education, and Welfare explained in the appendix accompanying the section 504 regulations (42 Fed. Reg. 22676 et. seq. May 4, 1977):

Thus, a small day-care center might not be required to expend more than a nominal sum, such as that necessary to equip a telephone for use by a secretary with impaired hearing, but a large school district might be required to make available a teacher's aide to a blind applicant for a teaching job. Further, it might be considered reasonable to require a State welfare agency to accommodate a deaf employee by providing an interpreter, while it would constitute an undue hardship to impose that requirement on a provider of foster home care services.

The mere fact that an employer is a large entity for the purposes of factor (1), should not be construed to negate the importance of factors (2) and (3) in determining the existence of undue hardship.

The Committee wishes to make it clear that the principles enunciated by the Supreme Court in *TWA v. Hardison*, 432 U.S. 63 (1977) are not applicable to this legislation. In *Hardison*, the Supreme Court concluded that under title VII of the Civil Rights Act of 1964 an employer need not accommodate persons with religious beliefs if the accommodation would require more than a de minimus cost for the employer.

Finally, the Committee wishes to make it clear that even if there is a determination that a particular reasonable accommodation will result in undue hardship, the employer must pay for the portion of the accommodation that would not cause an undue hardship if, for example, the State Vocational Rehabilitation Agency, other similar agency, or the employee or applicant pays for the remainder of the cost of the accommodation.

Section 102(b)(6) of the legislation specifies that discrimination includes the denial of employment opportunities by a covered entity to an applicant or employee who is a qualified individual

with a disability if the basis for such denial is because of the need of the individual for reasonable accommodation.

Thus, for example, where an applicant with a disability is otherwise equally qualified as an applicant without a disability, an employer cannot reject the applicant with a disability who requires a reasonable accommodation in favor of one who does not if the reason for the rejection is the reasonable accommodation requirement. Even where an employer is not required under this law to pay for a reasonable accommodation, because it would impose an undue hardship on the employer, the employer cannot refuse to hire an applicant where the applicant is willing to make his or her own arrangements for the provision of such an accommodation, if the reason for the rejection is the reasonable accommodation requirement.

Section 102(b)(7) of the legislation specifies that discrimination includes using employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.

As in Section 504, the ADA adopts a framework for employment selection procedures which is designed to assure that persons with disabilities are not excluded from job opportunities unless they are actually unable to do the job. The requirement that job criteria actually measure ability required by the job is a critical protection against discrimination based on disability. As was made strikingly clear at the hearings on the ADA, stereotypes and misconceptions about the abilities, or more correctly the inabilities, of persons with disabilities are still pervasive today. Every government and private study on the issue has shown that employers disfavor hiring persons with disabilities because of stereotypes, discomfort, misconceptions, and unfounded fears about increased costs and decreased productivity.

The three pivotal provisions to assure a fit between job criteria and an applicant's actual ability to do the job are:

- (1) The requirement that persons with disabilities not be disqualified because of the inability to perform non-essential or marginal functions of the job;
- (2) The requirement that any selection criteria that screen out or tend to screen out be job-related and consistent with business necessity; and
- (3) The requirement to provide reasonable accommodation to assist persons with disabilities to meet legitimate criteria.

These three legal requirements, which are incorporated in sections 102(b)(5) and (7) of the legislation, work together to provide a high degree of protection to eliminate the current pervasive bias against employing persons with disabilities in the selection process.

The interrelationship of these requirements in the selection procedure is as follows. If a person with a disability applies for a job and meets all selection criteria except one that he or she cannot meet because of a disability, the criteria must concern an essential, non-marginal aspect of the job, and be carefully tailored to measure the person's actual ability to do an essential function of the



job. If the criteria meets this test, it is nondiscriminatory on its face and it is otherwise lawful under the legislation. However, the criteria may not be used to exclude an applicant with a disability if the criteria can be satisfied by the applicant with a reasonable accommodation. A reasonable accommodation may entail adopting an alternative, less discriminatory criterion.

For example, in *Stutts v. Freeman*, 694 F2d 666 (11th Cir. 1983), Mr. Stutts, who was dyslexic, was denied the job of heavy equipment operator because he could not pass a written test used by the employer for entering the training program, which was a prerequisite for the job. The written test had a disparate impact on persons with dyslexia. The questions, therefore, were whether both the written test for admission to the training program and the reading requirements of the training program itself, were necessary criteria for the heavy equipment operator job. If the answers to both those questions were yes, the question then became whether a reasonable accommodation could enable the person with a disability to meet the employment criteria at issue.

In *Stutts*, the record reflected that Mr. Stutts could perform the job of heavy equipment operator. As stated by the court,

Indeed, everyone involved in this case seems to concede that Mr. Stutts would have no problems doing the job but rather may experience difficulty with the outside reading requirements of the training program. If selected, this obstacle may be overcome by Mr. Stutts obtaining the assistance of someone to act as a "reader" \* \* \* [T]o eliminate Mr. Stutts without implementing an alternative test (oral) administered by outside professionals of TVA's staff or by failing to adjust the entry requirements to accommodate his dyslexia, TVA has failed to comply with the statute.

Hence, the requirement that job selection procedures be "job-related and consistent with business necessity" underscores the need to examine all selection criteria to assure that they not only provide an accurate measure of an applicant's actual ability to perform the job, but that even if they do provide such a measure, a disabled applicant is offered a "reasonable accommodation" to meet the criteria that relate to the essential functions of the job at issue. It is critical that paternalistic concerns for the disabled person's own safety not be used to disqualify an otherwise qualified applicant. As noted, these requirements are incorporated in the legislation in sections 102(b)(1)(5) and (7).

The Committee intends that the burden of proof under each of the aforementioned sections be construed in the same manner in which parallel agency provisions are construed under Section 504 of the Rehabilitation Act as of June 4, 1989. See, e.g., 45 C.F.R. 84.13 (Department of Health and Human Services); 29 C.F.R. 1613.705 (Equal Employment Opportunity Commission); 28 C.F.R. 42.512 (Department of Justice); 29 C.F.R. 32.14 (Department of Labor).

Section 102(b)(8) of the legislation specifies that discrimination includes failing to select and administer tests so as best to ensure that, when the test is administered to an applicant or employee with a disability that impairs sensory, manual, or speaking skills,

the tests results accurately reflect the individual's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

Section 102(c) of the legislation specifies that the prohibition against discrimination in section 101(a) applies to medical examinations and inquiries. Historically, employment application forms and employment interviews requested information concerning an applicant's physical or mental condition. This information was often used to exclude applicants with disabilities—particularly those with so-called hidden disabilities such as epilepsy, diabetes, emotional illness, heart disease and cancer—before their ability to perform the job was even evaluated.

In order to assure that misconceptions do not bias the employment selection process, the legislation sets forth a process which begins with the prohibition to pre-offer medical examinations or inquiries. The process established by the legislation parallels the regulations issued under section 504 of the Rehabilitation Act of 1973.

The legislation prohibits any identification of a disability by inquiry or examination at the pre-offer stage. Employers may ask questions which relate to the ability to perform job-related functions, but may not ask questions in terms of disability. For example, an employer may ask whether the applicant has a driver's license, if driving is an essential job function, but may not ask whether the applicant has a visual disability. This prohibition against inquiries regarding disability is critical to assure that bias does not enter the selection process.

The only exception to making medical inquiries that are not strictly job-related is narrow. The legislation allows covered entities to require post-offer medical examinations so long as they are given to all entering employees in a particular category, the results of the examinations are kept confidential, and the results are not used to discriminate against individuals with disabilities unless such results makes the individual not qualified for the job. For example, an entity can test all police officers rather than all city employees or all construction workers rather than all construction company employees. This exception to the general rule meets the employer's need to discover possible disabilities that do limit the person's ability to do the job, i.e., those that are job-related.

Once an employee is on the job, the actual performance on the job is, of course, the best measure of ability to do the job. When a need arises to question the continued ability of a person to do the job, the employer may make disability inquiries, including medical exams, which are job-related and consistent with business necessity. The concept of "job-related and consistent with business necessity" has been outlined elsewhere in the report under the discussion of section 102(b)(7) of the legislation.

An inquiry or medical examination that is not job-related serves no legitimate employer purpose, but simply serves to stigmatize the person with a disability. For example, if an employee starts to lose a significant amount of hair, the employer should not be able to require the person to be tested for cancer unless such testing is job-related. Testimony before the Committee indicated there still exists



widespread irrational prejudice against persons with cancer. While the employer might argue that it does not intend to penalize the individual, the individual with cancer may object merely to being identified, independent of the consequences. As was abundantly clear before the Committee, being identified as disabled often carries both blatant and subtle stigma. An employer's legitimate needs will be met by allowing the medical inquiries and examinations which are job-related.

Consistent with the section in the legislation pertaining to pre-employment inquiries, it is the Committee's intent that a covered entity may invite applicants for employment to indicate whether and to what extent they have a disability under the following circumstances only: (1) when a covered entity is taking remedial action to correct the effects of past discrimination, (2) when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited employment opportunities, or (3) when a recipient is taking affirmative action pursuant to section 503 of the Rehabilitation Act of 1973, provided that:

(a) The covered entity states clearly on any written questionnaire used for this purpose or makes clear orally (if no written questionnaire is used) that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts, and

(b) The covered entity states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this title of the Act.

#### Defenses

Section 103(a) of the legislation specifies that in general, it may be a defense to a charge of discrimination that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation.

With respect to contagious diseases or infections, section 103(b) of the legislation specifies that the term "qualification standards" may include a requirement that an individual with a currently contagious disease or infection shall not pose a direct threat to the health or safety of other individuals in the workplace. Under this qualification standard, for a person with a currently contagious disease or infection to constitute a direct threat to the health or safety of others, the person must pose a significant risk of transmitting the infection to others in the workplace which cannot be eliminated by reasonable accommodation. See *School Board of Nassau County v. Arline*, 480 U.S. 273, 287, note 16.

With respect to drug addicts and alcoholics, section 103(c)(1) of the legislation specifies that, notwithstanding any other provision of this legislation, a covered entity:

(1) May prohibit the use of alcohol or illegal drugs at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or illegal drugs at the workplace;

(3) May require that employees conform their behavior to requirements established pursuant to the Drug-Free Workplace Act of 1988, and that transportation employees meet requirements established by the Department of Transportation with respect to drugs and alcohol; and

(4) May hold a drug user or alcoholic to the same qualification standards for employment or job performance and behavior to which it holds other individuals, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such individual.

Further, section 103(c)(2) of the legislation specifies that nothing in this title shall be construed to encourage, prohibit, or authorize conducting drug testing of job applicants or employees or making employment decisions based on such test results.

With respect to the defense that transportation employers may require that transportation employees meet requirements established by the Secretary of Transportation pursuant to and consistent with Federal law, the Committee wishes to make the following clarifications.

First, licensing of motor carrier drivers and railroad engineers, and certification of airplane pilots involves consideration of drunk and drug-related driving convictions, as recorded by individual States and made available to employers through the National Drivers Register at the Department of Transportation. In addition, records of other drug or alcohol related violations of State or Federal law may be considered as indicators of "fitness for duty" for safety-sensitive transportation positions.

Second, this defense applies to violations of Department of Transportation regulations concerning drug and alcohol use outside the workplace e.g., an air crew member who, in violation of Federal Aviation Administration rules, drinks alcohol within 8 hours of going on duty.

Third, this defense applies to actions based on an individual's failure to pass DOT mandated drug and alcohol tests when administered in accordance with Federal and State laws e.g., a truck driver who tests positive for illegal drugs and the failure or refusal to take a drug test mandated by Department of Transportation regulations.

The Committee believes that test results should be accurate and encourages covered entities to follow the Mandatory Guidelines on Federal Workplace Testing as issued by the Department of Health and Human Services. In any event, testing must comply with applicable Federal, State, or local laws or regulations regarding quality control, confidentiality, and rehabilitation; provided that, with respect to transportation employees, if testing is undertaken, it must be done in compliance with applicable Federal laws and regulations.

The reasonable accommodation provision in section 102(b)(5) of this title does not affirmatively require that a covered entity must provide a rehabilitation program or an opportunity for rehabilitation for any job applicant who is a drug addict or alcoholic or for any current employee who is a drug addict or alcoholic against



whom employment-related actions are taken for the reasons enumerated in section 103(c) relating to defenses.

Although the provision of a rehabilitation program or an opportunity for rehabilitation of a drug addict or alcoholic is not required by this title, the Committee strongly encourages covered entities to follow the lead of the Federal government and many private employers, consistent with the policy embedded in the Drug Free Workplace Act, to offer such rehabilitation programs or provide an opportunity for rehabilitation.

Finally, the Committee wishes to emphasize that the provisions of section 103(c) of this legislation apply only to addicts that are currently using illegal drugs or alcohol.

With respect to religious entities, section 103(d) of the legislation specifies that title I does not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

Because title I of this legislation incorporates by reference the definition of the term "employer" and "employee" used in title VII of the Civil Rights Act of 1964 and because of the similarity between the "religious preference" provisions in title VII and the ADA, it is the Committee's intent that title I of the ADA be interpreted in a manner consistent with title VII of the Civil Rights Act of 1964 as it applies to the employment relationship between a religious organization and those who minister on its behalf.

In addition, section 103(d) of the legislation includes a provision not included in title VII of the Civil Rights Act of 1964 which specifies that under title I of the legislation, a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization. This exemption is modeled after the provision in title IX of the Education Amendments of 1972. Thus, it is the Committee's intent that the terms "religious organizations" and "religious tenets" be interpreted consistent with the Department of Education's regulations thereunder.

The inclusion of a "religious tenets" defense is not intended to affect in any way the scope given to section 702 of title VII of the Civil Rights Act of 1964.

#### *Posting notices*

Section 104 of the legislation specifies that every employer, employment agency, labor organization, or joint labor-management committee covered under this title must post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

#### *Regulations*

Section 105 of the legislation specifies that not later than one year after the date of enactment of this Act, the Equal Employment Opportunity Commission must issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

It is the Committee's intent that these regulations will be drafted so as to be a self-contained document. The regulations should not incorporate by reference other laws or regulations. The Commission's regulations will have the force and effect of law.

This format will increase the likelihood of voluntary compliance on the part of covered entities and should minimize the need to hire a battery of lawyers to ascertain the obligations created by this legislation.

#### *Enforcement*

Section 106 of the legislation specifies that the remedies and procedures set forth in sections 706, 707, 709, and 710 of the Civil Rights Act of 1964 shall be available with respect to the Commission or any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this legislation, or regulations promulgated under section 105 concerning employment. As has been the case under title VII of the Civil Rights Act of 1964, the Attorney General may continue to have pattern or practice authority with respect to State and local governments.

Section 205 of S. 933, as originally introduced, provided protection to individuals who believe that they are being or who are "about to be subjected to discrimination." This provision has been deleted because the Committee determined that the case law under title VII of the Civil Rights Act of 1964 already provides protection against discrimination in those circumstances with which the Committee had had concerns, and thus, a specific provision in the ADA is unnecessary.

The Supreme Court enumerated the "futile gesture" doctrine under title VII: "When a person's desire for a job is not translated into a formal application solely because of his unwillingness to engage in a futile gesture he is as much a victim of discrimination as is he who goes through the motions of submitting an application." *International Brotherhood of Teamsters v. United States*, 431 U.S.C. 324, 365-67.

The term "is being subjected to discrimination" also includes the situation where the employee discovers that the employer is redesigning office space in such a way that it will become inaccessible to a disabled employee. In this situation, the employee should be able to stop the illegal construction before it begins.

The Committee recognizes that this legislation's requirements are substantially different from the other statutes governing private sector employment that are enforced by the Commission. The fact that most of the Commission's current professional employees are unfamiliar with disability nondiscrimination requirements will necessitate that the Commission provide extensive training for staff.

The Committee expects the Commission will establish and implement employer training programs and otherwise provide technical assistance to employers seeking to comply with the legislation's requirements.



*Effective date*

Section 107 of the legislation specifies that title I shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

Title II of the legislation has two purposes. The first purpose is to make applicable the prohibition against discrimination on the basis of disability, currently set out in regulations implementing section 504 of the Rehabilitation Act of 1973, to all programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, regardless of whether or not such entities receive Federal financial assistance. Currently, section 504 prohibits discrimination only by recipients of Federal financial assistance.

The second purpose is to clarify the requirements of section 504 for public transportation entities that receive Federal aid, and to extend coverage to all public entities that provide public transportation, whether or not such entities receive Federal aid.

*Extending a Federal prohibition against discrimination on the basis of disability to all State and local governmental entities*

Section 202 of the legislation extends the nondiscrimination policy in section 504 of the Rehabilitation Act of 1973 to cover all State and local governmental entities. Specifically, section 202 provides that no qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or a local government.

The forms of discrimination prohibited by section 202 are comparable to those set out in the applicable provisions of titles I and III of this legislation. It is the Committee's intent that section 202 and other sections of the legislation be interpreted consistent with *Alexander v. Choate*, 469 U.S. 287 (1985).

The Committee recognizes that the phrasing of section 202 in this legislation differs from section 504 by virtue of the fact that the phrase "solely by reason of his or her handicap" has been deleted. The deletion of this phrase is supported by the experience of the executive agencies charged with implementing section 504. The regulations issued by most executive agencies use the exact language set out in section 202 in lieu of the language included in the section 504 statute.

A literal reliance on the phrase "solely by reason of his or her handicap" leads to absurd results. For example, assume that an employee is black and has a disability and that he needs a reasonable accommodation that, if provided, will enable him to perform the job for which he is applying. He is the most qualified applicant. Nevertheless, the employer rejects the applicant because he is black and because he has a disability.

In this case, the employer did not refuse to hire the individual solely on the basis of his handicap—the employer refused to hire him because of his disability and because he was black. Although he might have a claim of race discrimination under title VII of the

Civil Rights Act, it could be argued that he would not have a claim under section 504 because the failure to hire was not based solely on his disability and as a result he would not be entitled to a reasonable accommodation.

The Committee, by adopting the language used in regulations issued by the executive agencies, rejects the results described above. Court cases interpreting section 504 have also rejected such reasoning. As the Tenth Circuit explained in *Pushkin v. Regents of University of Colorado*, 658 F. 2d 1372, the fact that the covered entity lists a number of factors to rejection in addition to the disability is not dispositive. In this case, the University stated that Dr. Pushkin was rejected because of low interview scores. The court stated that "it is not possible to extricate ratings from the reactions to the handicap itself."

Moreover, the interview ratings "as a general practice are not necessarily controlling in the selection process." The question was whether "the reasons articulated for the rejection other than handicap encompass unjustified consideration of the handicap itself" (Id. at 1387). As stated by the court, the "issue is whether rejecting Dr. Pushkin after expressly weighing the implication of his handicap was justified."

If the plaintiff is qualified for the position in question, a rejection which considered the disability as a factor would not be justified. The existence of non-disability related factors in the rejection decisions does not immunize employers. The entire selection procedure must be reviewed to determine if the disability was improperly considered.

As used in this title, the term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a department, agency, special purpose district, or other instrumentality of a State or a local government.

The term "instrumentality of a state and local government" includes public transit authorities.

With regard to school bus operations by public entities, it is not the intent of this Committee to require anything different under this legislation than is currently required of school systems and other entities receiving Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (e.g., 34 CFR Part 104).

Agencies of a State, or a political subdivision of a State that provide school bus transportation are required to provide bus service to children with disabilities equivalent to that provided to children without disabilities (whether provided directly or by contract or other arrangement with a private entity).

The school bus transportation provided to children with disabilities must be provided in the most integrated setting possible. This means that when a child with a disability requires transportation, the school bus that serves his/her route should be accessible. This does not mean that all school buses need to be accessible; only that equal nonsegregated opportunities are provided to all children.



School bus operations, as defined in 49 CFRT 605.3(b) and the associated revisions established in Highway Safety Program Standard No. 17, means transportation by Type I and II school bus vehicles of school children, personnel, and equipment to and from school or school-related activities.

*Actions applicable to public transportation considered discriminatory*

*Definition*

As used in title II, the term "public transportation" means transportation by bus or rail, or by any other conveyance (other than air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis, including service contracted through a private sector entity.

As used in title II, the term "public entity" includes the National Railroad Passenger Corporation.

The Committee excluded transportation by air because the Congress recently passed the Air Carrier Access Act, which was designed to address the problem of discrimination by Air Carriers and it is the Committee's expectation that regulations will be issued that reflect congressional intent. However, this title applies to the public entities' fixed facilities used in air travel, such as airport terminals, and to related services, such as ground transportation, provided by public entities.

It is not the Committee's intent to make the vehicle accessibility provisions of this title applicable to vehicles donated to a public entity. The Committee understands that it is not usual to donate vehicles to a public entity. However, there could be instances where someone could conceivably donate a bus to a public transit operator in a will. In such a case, the transit operators should not be prevented from accepting the gift.

The Committee does not intend that this limited exemption for donated vehicles be used to circumvent the intent of the ADA. For example, a local transit authority could not arrange to be the recipient of donated inaccessible buses. This would be a violation of the ADA.

As a general rule, all requirements for nondiscrimination apply not only to the design of vehicles and facilities but to their operation as well. Thus, new fixed route buses must have lifts, and new and key stations must have elevators or other means to ensure accessibility as necessary components for a transit authority to be in compliance with the provisions of this title of the legislation. Merely installing the access equipment is never sufficient by itself, however; the lifts and elevators must also operate, be in good working order, and be available when needed for access in order for an entity to be in compliance with the law.

The Committee believes that a strong commitment from a transit authority's management team will ensure nondiscrimination in the provision of transportation to people with disabilities. This includes adequate training of maintenance personnel and bus operators, sensitivity training of all personnel which stresses the importance of providing transportation, and creative marketing strategies.

*New buses, rail vehicles, and other fixed route vehicles*

Section 203(b)(1) of the legislation specifies that it shall be considered discrimination, for purposes of this Act and for purposes of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to purchase or lease a new fixed route bus of any size, a new intercity rail vehicle, a new light rail vehicle to be used for public transportation, or any other new fixed route vehicle to be used for public transportation and for which a solicitation by such individual or entity is made later than 30 days after the date of enactment of this Act, if such bus, rail, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

This requirement is included to ensure that an accessible transportation system is phased-in as new vehicles are purchased. It makes no sense, at this point in time, to perpetuate continued inaccessibility and to exclude persons with disabilities from the opportunity to use a key public service—transportation. Inaccessible vehicles affect more than just individuals with disabilities' ability to travel independently. It affects their ability to gain employment. When such individuals are able to depend on an accessible transportation system, one major barrier is removed which would prevent them from joining the work force. This ability ultimately affects our society as a whole. Accessible transportation also allows individuals with disabilities to enjoy cultural, recreational, commercial and other benefits that society has to offer.

Transportation affects virtually every aspect of American life. Mainline services are geared to moving people to and from work, school, stores, and other activities on schedules that reflect most people's daily routines. It is false and discriminatory to suggest that people with disabilities—who have the same needs as other community residents—are not as interested in or worthy of using transit services as people without disabilities.

The term "fixed route" means a bus system that operates on a continuing and regular basis on a fixed pattern and schedule.

The term "new" means buses which are offered for first sale or lease after manufacture without any prior use. Buses for which a solicitation is made within 30 days after enactment of this legislation are not subject to the accessibility requirement and thus are not required to have wheelchair lift equipment. However, buses that are solicited for after 30 days from enactment of this legislation are covered by the accessibility provision and would have to comply with the requirement that all newly purchased vehicles be accessible to people with disabilities including wheelchair users.

The phrase "for which a solicitation by such individual or entity is made" means when a public entity asks for bids from manufacturers to build buses or begins to offer to purchase or bid for the purchase of new buses 30 days after enactment of this legislation.

The term "readily accessible to and usable by" is a term of art that means the ability of individuals with disabilities, including individuals using wheelchairs, to enter into and exit and safely and effectively use a vehicle used for public transportation.

Lifts or ramps and other equipment, and fold-up seats or other wheelchair spaces with appropriate securement devices are among



the features necessary to make transit vehicles readily accessible to and usable by individuals with disabilities. The requirement that a vehicle is to be readily accessible obviously entails that each vehicle is to have some spaces for individuals using wheelchairs or other mobility aids; how many spaces per vehicles are to be made available for wheelchairs is, however, a determination that depends upon various factors, including the number of vehicles in the fleet, the seat vacancy rates, and usage by people with disabilities.

The Committee intends, consistent with these factors, that the determination of how many spaces must be available for wheelchair use should be flexible and generally left up to the provider, provided that at least some seats on each vehicle are accessible. Technical specifications and guidance regarding lifts and ramps, wheelchair spaces, and securement devices are to be provided in the minimum guidelines and regulations to be promulgated under this legislation. These minimum guidelines should be consistent with the Committee's desire for flexibility and decisionmaking by the provider.

The Committee wishes to emphasize that the legislation uses the phrase "including individuals who use wheelchairs" because of misinterpretations of the nature and extent of obligations under section 504. The obligation to provide public transportation in a non-discriminatory fashion applies to all persons with disabilities, including people with sensory impairments and those with cognitive impairments such as mental retardation. It is the Committee's intent that the obligation to provide lift service applies, not only to people who use wheelchairs, but also to other individuals who have difficulty in walking. For example, people who use crutches, walkers or three-wheeled mobility aids should be allowed to use a lift.

A public transit authority should develop training sessions to familiarize bus operators with the services that individuals with disabilities may need. For example, assuring that people with vision impairments get off at the correct stop, training bus drivers how to use the lift in a bus, and developing a program which would assist people with mental retardation in how to use the transportation system. Transit authorities should also be required to have written materials available in a format accessible to people with vision impairments and to make TDD numbers available to persons with hearing and communication impairments.

Section 203(e) of the legislation provides temporary relief for public entities from the obligations under section 203(b) where lifts are unavailable. Specifically, with respect to the purchase of new buses, a public entity may apply for, and the Secretary of Transportation may temporarily relieve such entity from the obligation to purchase new buses of any size that are readily accessible to and usable by individuals with disabilities, if such public entity can demonstrate the existence of four factors:

(1) That the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) The unavailability from any qualified manufacturer of hydraulic, electro-mechanical, or other lifts for such new buses;

(3) That the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) That any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

Section 203(f) of the legislation makes it clear that any relief granted under subsection (e) must be limited in duration by a specified date. In addition, if, at any time, the Secretary of Transportation has reasonable cause to believe that such relief was fraudulently applied for, the Secretary of Transportation shall cancel such relief, if such relief is still in effect, and take other steps that he or she considers appropriate.

Further, the appropriate committees of the Congress must be notified of any such relief granted. The appropriate committees in the Senate include the Committee on Commerce, Science, and Transportation and the Committee on Labor and Human Resources.

#### *Used vehicles*

Section 203(b)(2) of the legislation specifies that if a public entity purchases or leases a used vehicle after the date of enactment of this Act, such public entity shall make demonstrated good faith efforts to purchase or lease a used vehicle that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The term "used vehicle" means a vehicle that was purchased before a date which is at least 30 days prior to the enactment of this legislation. Frequently small and rural communities do not purchase new buses. Many of these communities buy used buses that are less expensive than new buses in an effort to provide transportation to individuals in these areas without expending large sums of money. Purchasers of used vehicles are required by this legislation to make "demonstrated good faith efforts" to locate accessible used vehicles.

The phrase "demonstrated good faith efforts" is intended to require a nationwide search and not a search limited to a particular region. For instance, it would not be enough for a transit operator to contact only the manufacturer where the transit authority usually does business to see if there are accessible used buses. It might involve the transit authority advertising in a trade magazine, i.e., Passenger Transport, or contacting the transit trade association, American Public Transit Association (APTA), to determine whether accessible used vehicles are available.

It is the Committee's expectation that as the number of buses with lifts increases, the burden on the transit authority to demonstrate its inability to purchase accessible vehicles despite good faith efforts will become more and more difficult to satisfy.

#### *Remanufactured vehicles*

Section 203(b)(3) of the legislation specifies that if a public entity remanufacturers a vehicle, or purchases or leases a remanufactured vehicle, so as to extend its useful life for 5 years or more, the vehicle shall, to the maximum extent feasible, be readily accessible



to and usable by individuals with disabilities, including individuals who use wheelchairs.

The phrase "remanufactures a vehicle or purchases or leases a remanufactured vehicle so as to extend its usable life for 5 years or more" means that the vehicle is stripped to its frame and is then rebuilt. It does not simply mean an engine overhaul. The additional cost to make a remanufactured vehicle accessible would be comparable to the cost of making a new vehicle accessible. Therefore, remanufactured vehicles should be treated the same as new vehicles.

The phrase "to the maximum extent feasible" is included in order to provide clarification that the Committee does not intend to require accessibility for remanufactured vehicles if it would destroy the structural integrity of the vehicle.

*Paratransit as a supplement to fixed route public transportation system*

Section 203(c) of the legislation specifies that if a public entity operates a fixed route public transportation system to provide public transportation, it shall be considered discrimination, for purposes of this Act and for purpose of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public transit entity to fail to ensure the provision of paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using fixed route public transportation to individuals with disabilities, including individuals who use wheelchairs, who cannot otherwise use fixed route public transportation and to other individuals associated with such individuals with disabilities in accordance with service criteria established under regulations promulgated by the Secretary of transportation unless the public transit entity can demonstrate that the provision of paratransit or other special transportation services would impose an undue financial burden on the public transit entity.

If the provision of comparable paratransit or other special transportation services would impose an undue financial burden on the public transit entity, such entity must provide paratransit and other special transportation services to the extent that providing such services would not impose an undue financial burden on such entity.

Regulations promulgated by the Secretary of Transportation to determine what constitutes an undue financial burden may include a flexible numerical formula that incorporates appropriate local characteristics such as population. Although the legislation mentions only population as an example of local characteristics that might be reflected is such a formula, other characteristics appropriate to consider include population density, level of paratransit services currently being provided in the area, residential patterns, and the interim degree of accessibility of fixed route transit service.

Notwithstanding the above provisions, the Secretary may require, at the discretion of the Secretary, public transit authority to provide paratransit services beyond the amount determined by such formula.

It is the Committee's intent that any criteria developed by the Secretary regarding the "undue financial burden" proviso, includ-

ing the use of a formula, be consistent with that portion of the *ADAPT v. Skinner* decision handed down on July 24, 1989 by the Third Circuit Court of Appeals (Nos. 88-1139, 88-1177, and 88-1178) concerning the three percent "safe harbor" provision (pages 38-46 of the slip opinion).

The Committee recognizes that there will always be a need for paratransit services. Paratransit services must be available to individuals who are unable to use mainline public transportation. By "unable to use" the committee means to include those individuals who cannot gain access to the public transportation systems. The reasons for this inability to access the transit system could be because of the nature and severity of the individual's physical or mental disability or because of other factors determined by the local community, such as the lack of curb cuts which would prevent individuals with certain disabilities from traveling to a bus stop.

In developing the criteria that will be used to determine which individuals with disabilities are unable to use the transportation services, it is important to significantly involve organizations representing people with disabilities and individual consumers with disabilities. The Committee wishes to make it clear that criteria developed to determine eligibility for paratransit e.g., inability to use mainline transportation services shall not be used to prevent, limit, or otherwise exclude such individuals from using mainline services if they so choose.

The term "paratransit or other special transportation services" means a transportation system that is available to those individuals who are unable to use the transportation system available to other people. This has been characteristically provided by transit authorities or contracted out to private companies and uses small buses or vans. Usually, the services is demand responsive or door-to-door service.

The Committee does not intend to require a public transit authority to actually provide paratransit or other special transportation services if such services are provided by other entities serving the same geographical location as is served by the public transit authority providing the fixed route system. However, the Committee wishes to emphasize that the paratransit or other special transportation services provided must be consistent with the requirements set out in this legislation and a public transit entity must be ultimately accountable for ensuring that the services are being provided in compliance with this legislation.

The following minimum service criteria should apply to special paratransit service systems that are used to supplement a fixed route accessible system:

- a. Eligibility: All persons with disabilities unable to use the fixed route vehicles and their companions shall be eligible to use the special service.
- b. Response time: The service should be provided to a person with a disability with a comparable response time that a person without a disability would receive.
- c. Restrictions or priorities based on trip purpose: There shall not be priorities or restrictions based on trip purpose on users of the special service.



d. Fares: The fare for a trip charged to a user of the special service system shall be comparable to the fare for a trip of similar length, at a similar time of day, charged to a user of the fixed route service.

e. Hours and days of service: The special service shall be available throughout the same hours of days as the fixed route service.

f. Service area: The special service shall be available throughout the service area in which the fixed route service is provided. Service to points outside this service area served by extended express or commuter bus service shall be available to persons with disabilities in an accessible manner.

The term "comparable level of services" means that when all aspects of a transportation system are analyzed, equal opportunities to use the transportation system exist for all persons—individuals with and without disabilities. The essential test to meet is whether the system is providing a level of service that meets the needs of persons with and without disabilities to a comparable extent.

For instance, if a person with a disability calls for a ride on a demand response system for the general public—and an accessible bus arrives within fifteen minutes—that is equal treatment if a person without a disability has to wait for the bus for an equivalent amount of time. However, if the bus arrives and it does not have a lift and one is needed, or if a disabled person has to wait considerably more time than a non-disabled person, then equal opportunity to use the demand responsive public transportation system is not being provided.

The term "other individuals associated with such individuals with disabilities" means the companions of those individuals who cannot otherwise use fixed route bus service whether they are part of the person's family, or friends of the individual with a disability. For instance, if a father wanted to take his children to the zoo and paratransit services are the only means of transportation that father is qualified for, he should be allowed to take his children on the paratransit bus. He should not be relegated to the paratransit by himself while his children are required to take fixed route public transportation.

If a man and woman were dating and the woman could not otherwise use public fixed route transportation then they should be able to use the paratransit services to and from that date. Likewise, if an individual had out of town guests and one of the out of town guests cannot use the fixed route bus system and is qualified to use the paratransit services of the state where they are visiting, then everyone in the group should be allowed to use the paratransit service to go sightseeing.

The Committee intends that during the interim period in which substantial numbers of fixed route buses are not accessible, the public transit authorities form an advisory committee to ensure the participation of individuals with disabilities in the planning, development, and implementation stages of the transportation system. One way to do this is by instituting an advisory group. Careful consideration should be given to the composition of the advisory group and every effort should be made to have adequate representation from all elements of the disability community.

This advisory group is an essential component to the development of standards which must then appear in the authorities' transit plan. Cooperation between the disability community and the transit operators is imperative during the period of time in which the system will be in transition, from an inaccessible system to an accessible one.

The transition options chosen will depend, to a certain extent, on the system involved. Some systems will require the broadest use of the existing accessible buses. For instance, it may be advantageous for a small system to require that all the accessible buses be in service during both off-peak and peak hours and at regular intervals so as to provide some service to the most people. A larger system might choose to make key lines accessible or ensure that the feeder lines are accessible. In this way, the system will be providing meaningful transportation at least to a portion of the individuals that need the access of the system.

The mainline interim service agreed upon by the advisory Committee must be available throughout the regular service area and during the normal service hours. This service, to the extent feasible, must meet a number of criteria as to convenience and comparability to regular mainline service (e.g., no restriction as to trip purpose, wait, fares and travel time).

Regardless of the mainline accessible transportation that will be available, it is important that a paratransit service be in place to ensure adequate access in those areas where accessible mainline service cannot yet be achieved. It is equally as important to realize that paratransit will always be necessary for those individuals who for legitimate reasons are unable to use mainline accessible service.

The local transit authority must be sincere in its efforts to coordinate special services in the locality to meet the service standards. The paratransit services should meet the service criteria both during the transition phase and thereafter.

#### *Community operating demand responsive systems for the general public*

Section 203(d) of the legislation specifies that if a public entity operates a demand responsive system that is used to provide public transportation for the general public, it shall be considered discrimination, for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such public entity to purchase or lease a new vehicle, for which a solicitation is made later than 30 days after the date of enactment of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the general public.

The intent of the Committee is to provide flexibility for rural and small urban communities that only have a demand responsive system for everyone. These systems are available to people without disabilities as well as to those with disabilities. The Committee intends that the time delay between a telephone call to access the demand responsive system and the pick up of the individual is not



to be greater because the individual needs a lift or ramp or other accommodation to access the vehicle.

The term "demand responsive service" means service where the individual must request transportation service before it is rendered. This fact distinguishes this type of service from fixed route service.

With fixed route service, no action is needed by an individual to initiate public transportation. If an individual is at a bus stop at the time the bus is scheduled to appear then that individual will be able to access the transportation system. With demand-responsive service, an additional step must be taken by the individual before he or she can ride the bus, i.e., the individual must make a telephone call. In this type of service, the transit provider will know ahead of time whether or not an accessible vehicle is necessary. Therefore, all demand responsive vehicles need not be accessible as long as the level of service provided to individuals with disabilities is equal to that provided to those without disabilities.

The phrase "when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the general public" means that when all aspects of a transportation system are analyzed, equal opportunities for each individual with a disability to use the transportation system must exist.

The Committee wishes to make it clear that the authority of the Secretary to grant temporary relief where lifts are unavailable applies to communities operating demand responsive as well as fixed route bus systems.

#### *New facilities*

Section 203(g) of the legislation specifies that for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to build a new facility that will be used to provide public transportation services, including bus service, intercity rail service, rapid rail service, commuter rail service, light rail service, and other service used for public transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The meaning of the key phrases used in this subsection are described subsequently in the section of the report pertaining to title III of the Act.

#### *Alterations of existing facilities*

Section 203(h) of the legislation specifies that, with respect to a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such individual or entity to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

If such public entity is undertaking major structural alterations that affect or could affect the usability of the facility (as defined under criteria established by the Secretary of Transportation) such public entity shall also make any additional alterations that are necessary to ensure that, to the maximum extent feasible, a path of travel from a primary entrance, and a reasonable number of bathrooms, telephones, and drinking fountains serve such path of travel are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The key phrases used in this subsection are described subsequently under the section of the report concerning title III of the legislation.

#### *Existing facilities*

Section 203(i)(1) of the legislation specifies that with respect to existing facilities used for public transportation, it shall be considered discrimination, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate such public transportation program or activity conducted in such facilities so that, when viewed in the entirety, it is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

This is the same standard that currently applies under section 504 regulations issued by the Department of Transportation.

The standards set out above do not apply to stations in intercity rail systems, and rapid rail, commuter rail and light rail systems. Such stations are governed by section 203(i)(3) of the legislation, which specifies that for purposes of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to make stations in intercity rail systems and key stations in rapid rail, commuter rail and light rail systems readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Intercity rail systems, including the National Railroad Passenger Corporation, must be made accessible as soon as practicable, but in no event later than 20 years after the date of enactment. Key stations in rapid rail, commuter rail, and light rail systems must be made accessible as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years for extraordinarily expensive structural changes to, or replacement of, existing facilities necessary to achieve accessibility.

The Committee intends that the term "key stations" shall include stations that have high ridership, and stations that serve as transfer and feeder stations. The public transit authority shall develop a plan for complying with the requirement that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of this requirement.

The phrase "key stations" includes high ridership stations since individuals with disabilities have the same travel objectives as individuals without disabilities. Stations may have high ridership because they are located in business and employment districts, cul-



tural, educational, recreational and entertainment centers, or are transfer points from other modes of transportation.

In addition to high ridership stations, "feeder stations" should be designated as "key" because they generally are located in suburban areas. Making these stations accessible will provide individuals with disabilities who live in these areas the ability to commute.

Exactly what stations will be determined "key" is a decision best left to the local community. The Committee does not intend to mandate a process to identify "key stations" except that—in developing the criteria that will be used to determine which stations will be "key"—it is important to significantly involve organizations representing people with disabilities and individual consumers with disabilities.

It is the Committee's understanding the settlement agreements recently reached in New York City specifying approximately 38 particular stations out of over 465 stations in the system and in Philadelphia where 11 out of approximately 53 stations on the high speed line and 31 out of approximately 172 commuter rail stations are to be considered "key stations" are in full compliance with the criteria and procedures set out above.

The phrase "as soon as practicable" is included in order to create an obligation to attain accessibility before the specified period of time has elapsed. It is the intent of this Committee that this requirement would prohibit a transit authority from delaying the installation of an elevator, if capital funds were available and the installation could otherwise be accomplished, could be just because the absolute time limit is not up.

The phrase "extraordinarily expensive structural change to or replacement of existing facilities" is intended to create a narrow exemption for the facilities where the only means of creating accessibility would be to raise the entire platform of a station or to install an elevator. The costs to accomplish these structural changes can be extremely costly.

In issuing regulations for the enforcement of this section, the Secretary of Transportation may prescribe a procedure for the resolution of disputes when a local rail transit operator and representatives of the disability community are unable to reach mutual agreement.

#### *Intercity, rapid, light, and commuter rail systems*

Section 203(i)(2) of the legislation specifies that with respect to vehicles operated by intercity, light, rapid and commuter rail systems, for purposes of this title and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least one car per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in any event in no less than 5 years.

It is the Committee's expectation that the regulations issued by the Secretary of Transportation will ensure that the car that is accessible stops at an appropriate place in the station that is level with the car and that signage is included to indicate where such car will stop.

#### *Regulations*

Section 204 of the legislation specifies that not later than one year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this title (other than section 303), and such regulations shall be consistent with this title and with the coordination regulations under part 41 of title 28 Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) except, with respect to "program accessibility, existing facilities" and "communications" such regulations shall be consistent with applicable portions of regulations and analysis relating to Federally conducted activities under section 504 of the Rehabilitation Act of 1973 (part 39 of title 28 of the Code of Federal Regulations).

Section 204(b) of the legislation specifies that not later than one year after the date of enactment of this Act, the Secretary of Transportation shall promulgate regulations in an accessible format that include standards applicable to facilities and vehicles covered under section 203.

Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

#### *Enforcement*

Section 205 of the legislation specifies that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of any provisions of this Act, or regulations promulgated under section 204, concerning public services.

It is the Committee's intent that enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973. The Attorney General should use section 504 enforcement procedures and the Department's coordination role under Executive Order 12250 as models for regulation in this area.

The Committee envisions that the Department of Justice will identify appropriate Federal agencies to oversee compliance activities for State and local government. As with section 504, these Federal agencies, including the Department of Justice, will receive, investigate, and where possible, resolve complaints of discrimination. If a Federal agency is unable to resolve a complaint by voluntary means, the Federal government would use the enforcement sanctions of section 505 of the Rehabilitation Act of 1973. Because the fund termination procedures of section 505 are inapplicable to State and local government entities that do not receive Federal funds, the major enforcement sanction for the Federal government will be referral of cases by these Federal agencies to the Department of Justice.



The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities. Again, consistent with section 504, it is not our intent that persons with disabilities need to exhaust Federal administrative remedies before exercising the private right of action.

#### *Effective date*

In accordance with section 206 of the legislation, title II of the bill shall become effective 18 months after the date of enactment except that the provisions of the bill applicable to the purchase of new fixed route vehicles shall become effective on the date of enactment of this Act.

#### TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Section 504 of the Rehabilitation Act of 1973 prohibits Federal agencies and recipients of Federal financial assistance from discriminating against persons with disabilities. The purpose of title III of the legislation is to extend these general prohibitions against discrimination to privately operated public accommodations and to bring individuals with disabilities into the economic and social mainstream of American life. Title III fulfills these purposes in a clear, balanced, and reasonable manner.

Title III is not intended to govern any terms or conditions of employment by providers of public accommodations or potential places of employment; employment practices are governed by title I of this legislation.

Title III also prohibits discrimination in public transportation services provided by private entities.

#### *Scope of coverage of public accommodations*

Section 301(3) of the legislation sets forth the definition of the term "public accommodation." The following privately operated entities are considered public accommodations for purposes of title III, if the operations of such entities affect commerce:

- (1) An inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;
- (2) A restaurant, bar, or other establishment serving food or drink;
- (3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- (4) An auditorium, convention center, or lecture hall;
- (5) A bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;
- (6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

- (7) A terminal used for public transportation;
- (8) A museum, library, gallery, and other similar place of public display or collection;
- (9) A park or zoo;
- (10) A nursery, elementary, secondary, undergraduate, or postgraduate private school;
- (11) A day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and
- (12) A gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

The twelve categories of entities included in the definition of the term "public accommodation" are exhaustive. However, within each of these categories, the legislation only lists a few examples and then, in most cases, adds the phrase "other similar" entities. The Committee intends that the "other similar" terminology should be construed liberally consistent with the intent of the legislation that people with disabilities should have equal access to the array of establishments that are available to others who do not currently have disabilities.

For example, the legislation lists "golf course" as an example under the category of "place of exercise or recreation." This does not mean that only driving ranges constitute "other similar establishments." Tennis courts, basketball courts, dance halls, playgrounds, and aerobics facilities, to name a few other entities are also included in this category. Other entities covered under this category include video arcades, swimming pools, beaches, camping areas, fishing and boating facilities, and amusement parks.

Similarly, although not expressly mentioned, bookstores, video stores, stationary stores, pet stores, computer stores, and other stores that offer merchandise for sale or rent are included as retail sales establishments.

The phrase "privately operated" is included to make it clear that establishments operated by Federal, State, and local governments are not covered by this title. Of course an establishment operated by a private entity which is otherwise covered by this title that also receives Federal, State, or local funds is still covered by this title.

Only nonresidential entities or portions of entities are covered by this title. For example, in a large hotel that has a residential apartment wing, the apartment wing would be covered by the Fair Housing Act, but not this title. The nonresidential accommodations in the rest of the hotel would be covered by this title. Although included in the definition of public accommodations, homeless shelters are subject to the provisions of this title only to the extent that they are not covered by the Fair Housing Act, as amended in 1988.

Private schools, including elementary and secondary schools, are covered by this title. The Committee does not intend, however, that compliance with this legislation requires a private school to provide a free appropriate education or develop an individualized education program in accordance with regulations implementing section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104) and regulations implementing part B of the Education of the Handicapped Act (34



CFR Part 300). Of course, if a private school is under contract with a public entity to provide a free appropriate public education, it must provide such education in accordance with section 504 and part B.

The term "commerce" is defined in section 301(1) of the legislation to mean travel, trade, traffic, commerce, transportation, or communication among the several States, or between any foreign country or any territory or possession and any State or between points in the same state but through another state or foreign country.

*Prohibition of discrimination by public accommodations*

Section 302(a) of the legislation specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

"Full and equal enjoyment" does not encompass the notion that persons with disabilities must achieve the identical result or level of achievement of nondisabled persons, but does mean that persons with disabilities must be afforded equal opportunity to obtain the same result.

Section 302(b)(1) of the legislation specifies general forms of discrimination prohibited by this title. These provisions are consistent with the general prohibitions which were included in title I of S. 933, as originally introduced. As explained previously in the report, the general prohibitions title has been deleted by the Substitute.

Sections 302(b)(1)(A) (i), (ii), and (iii) of the legislation specify that it shall be discriminatory:

To subject an individual or class of individuals on the basis of disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity;

To afford such an opportunity that is not equal to that afforded other individuals; or

To provide such an opportunity that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with an opportunity that is as effective as that provided to others.

Section 302(b)(1)(B) of the legislation specifies that goods, services, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

Section 302(b)(1)(C) of the legislation specifies that notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes above individuals with disabilities. Consistent with these standards,

covered entities are required to make decisions based on facts applicable to individuals and not on the basis of presumptions as to what a class individuals with disabilities can or cannot do.

The Committee wishes to emphasize that these provisions should not be construed to jeopardize in any way the continued viability of separate private schools providing special education for particular categories of children with disabilities, sheltered workshops, special recreational programs, and other similar programs.

At the same time, the Committee wishes to reaffirm that individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and over-arching principle of the Committee's bill. Separate, special, or different programs are designed to make participation by persons with disabilities possible. Such programs are not intended to restrict the participation of disabled persons in ways that are appropriate to them.

For example, a blind person may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his own pace with the museum's recorded tour. It is not the intent of this title to require the blind person to avail him or herself of the special tour. The Committee intends that modified participation for persons with disabilities be a choice but not a requirement.

In addition, it would not be a violation of this title for an establishment to offer recreational programs specially designed for children with mobility impairments. However, it would be a violation of this title if the entity then excluded such children from other recreational services made available to nondisabled children, or required children with disabilities to attend only designated programs.

Section 302(b)(1)(D) of the legislation specifies that an individual or entity shall not, directly, or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control. This provision is identical to section 102(b)(3) of the bill, which was discussed previously in the report.

Section 302(b)(1)(E) of the legislation specifies that it shall be discriminatory to exclude or otherwise deny equal goods, services, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. This provision is comparable to section 102(b)(4) of the legislation, which was discussed previously in the report.

Section 302(b)(2) of the legislation includes specific applications of the general prohibition against discrimination in section 302(a) and the general prohibitions set out in section 302(b)(1) of the legislation. The Committee wishes to emphasize that the specific provisions contained in title III, including the exceptions and terms of limitation, control over the more general provisions in section 302(a) and section 302(b)(1) to the extent there is any apparent conflict.



Section 302(b)(2)(A)(i) of the legislation specifies that the term "discrimination" includes the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

As explained above, it is a violation of this title to exclude persons with disabilities. For example, it would be a violation for a grocery store to impose a rule that no blind persons would be allowed in the store, or for a drugstore to refuse to serve deaf people. It also would be a violation for such an establishment to invade such people's privacy by trying to identify unnecessarily the existence of a disability, as, for example, if the credit application of a department store were to inquire whether an individual has epilepsy, has ever had been hospitalized for mental illness, or has other disability.

Similarly, it can constitute a violation to impose criteria that limit the participation of people with disabilities, as for example, by requiring that individuals with Down syndrome can only be seated at the counter, but not the table-seating section of a diner.

And it would be a violation to adopt policies which impose additional requirements or burdens upon people with disabilities not applied to other persons. Thus, it would be a violation for a theater or restaurant to adopt a policy specifying that individuals who use wheelchairs must be chaperoned by an attendant.

In addition, this subsection prohibits the imposition of criteria that "tend to" screen out an individual with a disability. This concept, drawn from current regulations under Section 504 (See, e.g. 45 C.F.R. 84.13), makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, diminish such individuals' chances of participation.

Such diminution of opportunity to participate can take a number of different forms. If, for example, a drugstore refuses to accept checks to pay for prescription drugs unless an individual presents a driver's license, and no other form of identification is acceptable the store is not imposing a criterion that identifies or mentions disability. But for many individuals with visual impairments, and various other disabilities, this policy will operate to deny them access to the service available to other customers; people with disabilities will be disproportionately screened out.

Section 302(b)(2)(A)(ii) of the legislation specifies that discrimination includes a failure to make reasonable modifications in policies, practices, and procedures when such modifications may be necessary to afford such goods, services, facilities, privileges, advantages, and accommodations unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, and accommodations.

For example, a physician who specializes in treating burn victims could not refuse to treat the burns of a deaf person because of his or her deafness. However, such a physician need not treat the deaf individual if he or she does not have burns nor need the physician

provide other types of medical treatment to individuals with disabilities unless he or she provides other types of medical treatment to nondisabled individuals.

Thus, nothing in this legislation is intended to prohibit a physician from providing the most appropriate medical treatment in the physician's judgment or from referring an individual with a disability to another physician when the physician would make such a referral of an individual who does not have a disability.

Similarly, a drug rehabilitation clinic could refuse to treat a person who was not a drug addict but could not refuse to treat a person who was a drug addict simply because the patient tests positive for HIV.

A public accommodation which does not allow dogs must modify that rule for a blind person with a seeing-eye dog, a deaf person with a hearing ear dog, or a person with some other disability who uses a service dog.

Section 302(b)(2)(A)(iii) of the legislation specifies that discrimination includes a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, advantages, and accommodations being offered or would result in an undue burden.

The phrase "undue burden" is the limit applied under the ADA upon the duty of places of public accommodation to provide auxiliary aids and services. It is analogous to the phrase "undue hardship" used in the employment title of ADA (see previous discussion in the report) and is derived from section 504 and regulations thereunder. The determination of whether the provision of an auxiliary aid or service imposes an undue burden on a business will be made on a case-by-case basis, taking into account the same factors used for purposes of determining "undue hardship."

The fact that the provision of any particular auxiliary aid would result in a undue burden does not relieve the business from the duty to furnish an alternative auxiliary aid, if available, that would not result in such a burden.

The term "auxiliary aids and services" is defined in section 3(1) of the legislation. The definition includes illustrations of aids and services that may be provided. The list is not meant to be exhaustive; rather, it is intended to provide general guidance about the nature of the obligation.

The Committee expects that the covered entity will consult with the individual with a disability before providing a particular auxiliary aid or service. Frequently, an individual with a disability requires a simple adjustment or aid rather than an expensive or elaborate modification often envisioned by a covered entity.

For example, auxiliary aids and services for blind persons include both readers and the provision of brailled documents (see below). A restaurant would not be required to provide menus in braille if it provided a waiter or other person who was willing to read the menu. Similarly, a bookstore need not braille its price tags, stock brailled books, or lower all its shelves so that a person



who uses a wheelchair can reach all the books. Rather, a salesperson can tell the blind person how much an item costs, make a special order of brailled books, and reach the books that are out of the reach of the person who uses a wheelchair.

The legislation specifies that auxiliary aids and services includes qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments. Other effective methods may include: telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for the deaf, closed captions, and decoders.

For example, it would be appropriate for regulations issued by the Attorney General to require hotels of a certain size to have decoders for closed captions available or, where televisions are centrally controlled by the hotel, to have a master decoder.

It is also the Committee's expectation that regulations issued by the Attorney General will include guidelines as to when public accommodations are required to make available portable telecommunication devices for the deaf. In this regard, it is the Committee's intent that hotels and other similar establishments that offer nondisabled individuals the opportunity to make outgoing calls, on more than an incidental convenience basis, to provide a similar opportunity for hearing impaired customers and customers with communication disorders to make such outgoing calls by making available a portable telecommunication device for the deaf.

It is not the Committee's intent that individual retail stores, doctors' offices, restaurants or similar establishments must have telecommunications devices for the deaf since people with hearing impairments will be able to make inquiries, appointments, or reservations with such establishments through the relay system established pursuant to title IV of the legislation, and the presence of a public telephone in these types of establishments for outgoing calls is incidental.

Open-captioning, for example, of feature films playing in movie theaters, is not required by this legislation. Filmmakers are, however, encouraged to produce and distribute open-captioned versions of films and theaters are encouraged to have at least some preannounced screenings of a captioned version of feature films.

Places of public accommodations that provide film and slide shows to impart information are required to make such information accessible to people with disabilities.

The legislation also specifies that auxiliary aids and services includes qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments. Additional examples of effective methods of making visually delivered materials available include: audio recordings and the provision of brailled and large print materials.

The legislation specifies that auxiliary aids and services includes the acquisition or modification of equipment or devices. For example, a museum that provides audio cassettes and cassette players for an audio-guided tour of the museum may need to add brailled adhesive labels to the buttons on a select number of the tape-players so that they can be operated by a blind person.

The Committee wishes to make it clear that technological advances can be expected to further enhance options for making



meaningful and effective opportunities available to individuals with disabilities. Such advances may enable covered entities to provide auxiliary aids and services which today might be considered to impose undue burdens on such entities.

Section 302(b)(2)(A)(iv) of the legislation specifies that discrimination includes a failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable.

The Committee was faced with a choice in how to address the question of what actions, if any, a public accommodation should be required to take in order to remove structural barriers in existing facilities and vehicles. On the one hand, the Committee could have required retrofitting of all existing facilities and vehicles to make them fully accessible. On the other hand, the Committee could have required that no actions be taken to remove barriers in existing facilities and vehicles.

The Committee rejected both of these alternatives and instead decided to adopt a modest requirement that covered entities make structural changes or adopt alternative methods that are "readily achievable."

The phrase "readily achievable" is defined in section 301(5) to mean easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

- (1) The overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of the budget;

- (2) The type of operation of the covered entity, including the composition and structure of the entity; and

- (3) The nature and cost of the action needed.

It is important to note that readily achievable is a significantly lesser or lower standard than the "undue burden" standard used in this title and the "undue hardship" standard used in title I of this legislation. Any changes that are not easily accomplishable and are not able to be carried out without much difficulty or expense when the preceding factors are weighed are not required under the readily achievable standard, even if they do not impose an undue burden.

The concept of readily achievable should not be confused with the phraseology of "readily accessible" used in regard to accessibility requirements for alterations (section 302(b)(2)(A)(vi)) and new construction (section 303). While the word "readily" appears in both phrases and has roughly the same meaning in each context—easily, without much difficulty—the concepts of "readily achievable" and "readily accessible" are sharply distinguishable and represent almost polar opposites in focus.

The phrase "readily accessible to and usable by individuals with disabilities" focuses on the person with a disability and addresses the degree of ease with which an individual with a disability can



enter and use a facility; it is access and usability which must be "ready."

"Readily achievable," on the other hand, focuses on the business operator and addresses the degree of ease or difficulty of the business operator in removing a barrier; if barrier removal cannot be accomplished readily, then it is not required.

What the "readily achievable" standard will mean in any particular public accommodation will depend on the circumstances, considering the factors listed previously, but the kind of barrier-removal which is envisioned includes the addition of grab bars, the simple ramping of a few steps, the lowering of telephones, the addition of raised letter and braille markings on elevator control buttons, the addition of flashing alarm lights, and similar modest adjustments.

This section may require the removal of physical barriers, including those created by the arrangement or location of such temporary or movable structures as furniture, equipment, and display racks. For example, a restaurant may need to rearrange tables and chairs, or a department store may need to adjust its layout of display racks and shelves, in order to permit access to individuals who use wheelchairs, where these actions can be carried out without much difficulty or expense.

A public accommodation would not be required to provide physical access if there is a flight of steps which would require extensive ramping or an elevator. The readily achievable standard only requires physical access that can be achieved without extensive restructuring or burdensome expense.

In small facilities like single-entrance stores or restaurants, "readily achievable" changes could involve small ramps, the installation of grab bars in restrooms in various sections and other such minor adjustments and additions.

The readily achievable standard allows for minimal investment with a potential return of profit from use by disabled patrons, often more than justifying the small expense.

Section 302(b)(2)(A)(v) of the legislation specifies that where an entity can demonstrate that removal of a barrier is not readily achievable, discrimination includes a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable.

With respect to the adoption of alternative methods, examples of "readily achievable" include: coming to the door to receive or return drycleaning; allowing a disabled patron to be served beverages at a table even though nondisabled persons having only drinks are required to drink at the inaccessible bar; providing assistance to retrieve items in an inaccessible location; and rotating movies between the first floor accessible theater and a comparable second floor inaccessible theater.

Section 302(b)(2)(A)(vi) of the legislation specifies that discrimination includes, with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the fa-

cility is readily accessible to and usable by individuals with disabilities.

Where the entity is undertaking major structural alterations that affect or could affect the usability of the existing facility, the entity must also make the alterations in such manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities.

The phrase "major structural alterations" will be defined by the Attorney General. The Committee intends that the term "structural" means elements that are a permanent or fixed part of the building, such as walls, suspended ceilings, floors, or doorways.

The term "major structural alterations" refers to structural alterations or additions that affect the primary functional areas of a building, e.g., the entrance, a passageway to an area in the building housing a primary function, or the areas of primary functions themselves. For example, structural alteration to a utility room in an office building would not be considered "major." On the other hand, structural alteration to the customer service lobby of a bank would be considered major because it houses a major or primary function of the bank building.

The legislation includes an exception regarding the installation of elevators, which specifies that the obligation to make a facility readily accessible to and usable by individuals with disabilities shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

The Committee wishes to make it clear that the exception regarding elevators does not obviate or limit in any way the obligation to comply with the other accessibility requirements established by this legislation, including requirements applicable to floors which, pursuant to the exception, are not served by an elevator. And, in the event a facility which meets the criteria for the exception nonetheless has an elevator installed, then such elevator shall be required to meet accessibility standards.

The Committee intends that the term "facility" means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property or interest in such property, including the site where the building, property, structure or equipment is located. This definition is consistent with the definitions used under current Federal regulations and standards and thus includes both indoor areas and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment.

The phrase "readily accessible to and usable by individuals with disabilities" is a term of art which is explained in the section of the report concerning new construction.



The phrase "to the maximum extent feasible" has been included to allow for the occasional case in which the nature of an existing facility is such as to make it virtually impossible to renovate the building in a manner that results in its being entirely accessible to and usable by individuals with disabilities. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

Thus, for example the term "to the maximum extent feasible" should be construed as not requiring entities to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member unless the load-bearing structural member is otherwise being removed or altered as part of the alteration.

Section 302(b)(2)(B) of the legislation includes policies applicable to fixed route vehicles used by entities that are not in the principal business of transporting people. First, it is considered discrimination for an entity to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act that are not readily accessible to and usable by individuals with disabilities except that over-the-road buses shall be subject to section 304(b)(4) (which delays the effective date for 6 years for small operators and 5 years for other operators) and section 305 (which provides for a study of how to make the impact of making such buses accessible).

If an entity not in the principal business of transporting people purchases or leases a vehicle carrying 16 or fewer passengers after the effective date of title III that is not readily accessible to or usable by individuals with disabilities, it is discriminatory for such an entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

Section 302(b)(2)(C) includes provisions applicable to vehicles used in demand-responsive systems by entities that are not in the principal business of transporting people. The provisions applicable to such vehicles are the same as those applicable to fixed route vehicles except that the entity need not ensure that all new vehicles carrying more than 16 passengers are accessible if it can demonstrate that the system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public.

For example, where a hotel at an airport provides free shuttle service, the hotel need not purchase new vehicles that are accessible so long as it makes alternative equivalent arrangements for transporting people with disabilities who cannot ride the inaccessible vehicles. This might be accomplished through the use of a portable lift or by making arrangements with another entity that has an accessible vehicle that can be made available to provide equivalent shuttle service.

#### *New construction*

Section 303 of the legislation sets forth obligations with respect to the construction of new facilities. This section is applicable to public accommodations and potential places of employment.

The term "potential places of employment" is defined in section 301(2) to mean facilities that are intended for nonresidential use and whose operations affect commerce. The Committee expects that implementing regulations concerning "potential places of employment" will cover the same areas in a facility as existing design standards. Thus, unusual spaces that are not duty stations, such as catwalks and fan rooms, would continue to lie outside the scope of design standards.

The term does not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968.

Specifically, section 303(a) of the legislation specifies that it is unlawful discrimination for a public accommodation or potential place of employment to fail to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally infeasible to do so, in accordance with standards set forth or incorporated by reference in regulations issued under title III.

Section 303(b) of the legislation exempts entities from installing elevators under the same circumstances applicable to alterations (see section 302(b)(2)(A)(vi) and the accompanying clarifications in the report).

The phrase "readily accessible to or usable by" is a term of art which, in slightly varied formulations, has been applied in the Architectural Barriers Act of 1968 ("ready access to, and use of"), the Fair Housing Act of 1968, as amended ("readily accessible to and usable by"), and the regulations implementing section 504 of the Rehabilitation Act of 1973 ("readily accessible to and usable by") and is included in standards used by Federal agencies and private industry e.g., the Uniform Federal Accessibility Standards (UFAS) ("ready access to and use of") and the American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People (ANSI A117.1) (readily accessible to, and usable by).

The term is intended to enable people with disabilities (including mobility, sensory, and cognitive impairments) to get to, enter, and use a facility. While the term does not necessarily require the accessibility of every part of every area of a facility, the term contemplates a high degree of convenient accessibility, entailing accessibility of parking areas, accessible routes to and from the facility, accessible entrances, usable bathrooms and water fountains, accessibility of public and common use areas, and access to the goods, services, programs, facilities, and accommodations offered at the facility.

The term is not intended to require that all parking spaces, bathrooms, stalls within bathrooms, etc. are accessible; only a reasonable number must be accessible, depending on such factors as their location and number.

Accessibility elements for each particular type of facility should assure both ready access to the facility and usability of its features and equipment and of the goods, services, and programs available therein.



For example, for a hotel "readily accessible to and usable by" includes, but is not limited to, providing full access to the public use and common use portions of the hotel; requiring all doors and doorways designed to allow passage into and within all hotel rooms and bathrooms to be sufficiently wide to allow passage by individuals who use wheelchairs; making a percentage of each class of hotel rooms fully accessible (e.g., including grab bars in bath and at the toilet, accessible counters in bathrooms); audio loops in meeting areas; signage, emergency flashing lights or alarms; braille or raised letter words and numbers on elevators; and handrails on stairs and ramps.

Of course, if a person with a disability needing a fully accessible room makes an advance registration without informing the hotel of the need for such a room arrives on the date of the reservation and no fully accessible room is available, the hotel has not violated the Act. Moreover, a hotel is not required to forego renting fully accessible rooms to nondisabled persons if to do so would cause the hotel to lose a rental.

In a physician's office, "readily accessible to and usable by" would include ready access to the waiting areas, a bathroom, and a percentage of the examining rooms.

Historically, particularized guidance and specifications regarding the meaning of the phrase "readily accessible to and usable by" for various type of facilities have been provided by MGRAD, UFAS, and the ANSI standards. Under this legislation, such specificity will be provided by the expanded MGRAD standards to be issued by the Architectural and Transportation Barriers Compliance Board and by the regulations issued by the Attorney General, both of which are discussed subsequently in this report.

It is the expectation of the Committee that the regulations issued by the executive branch could utilize appropriate portions of MGRAD.

It is also the Committee's intent that the regulations will include language providing that departures from particular technical and scoping requirements, as revised, will be permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the facility. Allowing these departures will provide covered entities with necessary flexibility to design for special circumstances and will facilitate the application of new technologies.

The phrase "structurally impracticable" is a narrow exception that will apply only in rare and unusual circumstances where unique characteristics of terrain make accessibility unusually difficult. Such limitations for topographical problems are analogous to an acknowledged limitation in the application of the accessibility requirements of the Fair Housing Amendments Act of 1988. In the House Committee Report accompanying the Act, the House Committee on the Judiciary noted:

certain natural terrain may pose unique building problems. For example, in areas which flood frequently, such as waterfronts or marshlands, housing traditionally may be built on stilts. The Committee does not intend to require that the accessibility requirements of this Act over-

ride the need to protect the physical integrity of multifamily housing that may be built on such sites.

By incorporating the phrase "structurally impracticable," the ADA explicitly recognizes an exception analogous to the "physical integrity" exception for peculiarities of terrain recognized implicitly in statutory language and expressly in the House Committee Report accompanying the Fair Housing Amendments Act. As under the Fair Housing Amendments Act, this is intended to be a narrow exception to the requirement of accessibility. It means that only where unique characteristics of terrain prevent the incorporation of accessibility features and would destroy the physical integrity of a facility is it acceptable to deviate from accessibility requirements. Buildings that must be built on stilts because of their location in marshlands or over water are one of the few situations in which the structurally impracticable exception would apply.

Neither under the ADA nor the Fair Housing Amendments Act should an exception to accessibility requirements be applied to situations in which a facility is located in "hilly" terrain or on a plot of land upon which there are steep grades; in such circumstances, accessibility can be achieved without destroying the physical integrity of a structure, and ought to be required in the construction of new facilities.

In those are circumstances in which it is structurally impracticable to achieve full compliance with accessibility requirements under the ADA, public accommodations should still be designed and constructed to incorporate accessibility features to the extent that they are structurally practicable. The accessibility requirements should not be viewed as an all-or-nothing proposition in such circumstances.

If it is structurally impracticable for a facility in its entirety to be readily accessible to and usable by people with disabilities, then those portions which can be made accessible should be. If a building cannot comply with the full range of accessibility requirements because of structural impracticability, then it should still be required to incorporate those features which are structurally practicable. And if it is structurally impracticable to make a particular facility accessible to persons who have particular types of disabilities, it is still appropriate to require it to be made accessible to persons with other types of disabilities.

If, for example, a facility which is of necessity built on stilts cannot be made accessible to persons who use wheelchairs because it is structurally impracticable to do so, this is no reason not to still require it to be accessible for individuals with vision or hearing impairments or other kinds of disabilities.

The new construction provision includes establishments that "are potential places of employment" as well as public accommodations. The Committee decided to include this provision to ensure that unnecessary barriers to employment are not built into facilities that are constructed in the future. Since it is easy and inexpensive to incorporate accessibility features in new construction, the Committee concluded that there is no rational justification for employers to continue to construct inaccessible facilities that will bar



the entrance of and limit opportunities for people with disabilities for years to come.

In addition, this provision will ensure that all new facilities which potentially may be occupied by places of public accommodation but whose first occupant may not be such an entity are constructed in such a way that they are readily accessible to and usable by individuals with disabilities for the original use for which the building is intended.

The Committee decided not to limit this provision to potential places of employment of 15 or more employees because of the desire to establish a uniform requirement of accessibility in new construction, because of the ease with which such a requirement can be accomplished in the design and construction stages, and because future expansion of a business or sale or lease of the property to a larger employer or to a business that is open to the public is always a possibility.

The phrase "are potential places of employment" is not intended to make an establishment that is not a public accommodation subject to the other provisions of this title e.g., the obligation to provide auxiliary aids or services.

*Prohibition of discrimination in public transportation services provided by private entities*

Section 304(a) of the legislation specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of public transportation services provided by a privately operated entity that is primarily engaged in the business of transporting people, but is not in the principal business of providing air transportation, and whose operations affect commerce.

The term "public transportation" is defined in section 301(4) of the legislation to mean transportation by bus or rail, or by any other conveyance (other than by air travel) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

The Committee wishes to make it clear that the provisions of title III do not apply to public entities such as public transit authorities and school districts. Public entities providing transportation services are generally subject to the provisions of title II of this legislation and school bus operations are generally covered by regulations implementing section 504 of the Rehabilitation Act of 1973 issued by agencies providing Federal financial assistance to school districts.

The Committee also wishes to make it clear that title III does not apply to volunteer-driven commuter ridership arrangements.

The Committee excluded transportation by air because the Congress recently passed the Air Carriers Access Act, which was designed to address the problem of discrimination by air carriers and it is the Committee's expectation that regulations will be issued that reflect congressional intent.

Section 304(b) of the legislation includes specific applications of the general prohibition set out in section 303(a). As used in subsection (a), the term "discrimination against" includes:

- (1) The imposition or application by an entity of eligibility criteria that screen out or tend to screen out an individual

with a disability or any class of individuals with disabilities from fully enjoying the public transportation services provided by the entity;

- (2) The failure of an entity to—

- (A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

- (B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

- (C) remove barriers consistent with the requirements of section 302(b)(2)(A) (iv), (v), and (vi); and

- (3) The purchase or lease of a new vehicle (other than an automobile or over-the-road bus) that is to be used to provide public transportation services, and for which a solicitation is made later than 30 days after the effective date of this Act, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The bill includes a special exception for vehicles used in a demand-responsive system. In the case of a vehicle used in a demand-response system, the new vehicle need not be readily accessible to and usable by individuals with disabilities if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

With respect to the purchase of new over-the-road buses, it is considered discrimination to purchase or lease a new over-the-road bus that is used to provide public transportation services and for which a solicitation is made later than 6 years after the date of enactment of this Act for small providers (as defined by the Secretary of Transportation) and 5 years for other providers, that is not readily accessible to and usable by individuals with disabilities.

The term "readily accessible to and usable by" means, with respect to vehicles used for public transportation, able to be entered into and exited from and safely and effectively used by individuals with disabilities, including individuals who use wheelchairs.

Currently, technology may not exist that will enable an individual who uses a wheelchair to access restrooms in over-the-road buses without resulting in the significant loss of current seating capacity. Since this legislation is future driven, the Committee intends that the Department of Transportation develop regulations which require that accessible restrooms be installed on intercity coaches when technologically feasible.

Lifts or ramps, and fold-up seats or other wheelchair spaces with appropriate securement devices are among the current features necessary to make transit vehicles readily accessible to and usable by individuals with disabilities. The requirement that a vehicle is to be readily accessible obviously entails that each vehicle is to have some spaces for individuals who use wheelchairs or three-wheeled mobility aids; how many spaces per vehicle are to be made available for wheelchairs is, however, a determination that depends on various factors, including the number of vehicles in the fleet, seat vacancy rates, and usage by people with disabilities.

The Committee intends that, consistent with these general factors, the determination of how many spaces must be available should be flexible and generally left up to the provider; provided



that at least some spaces on each vehicle are accessible. Technical specifications and guidance regarding lifts and ramps, wheelchair spaces, and securement devices are to be provided in the minimum guidelines and regulations to be issued under this legislation.

The Committee intends that during the interim periods prior to the date when over-the-road buses must be readily accessible to and usable by individuals with disabilities that regulations specify that providers modify their policies so that individuals who use wheelchairs may get on and off such buses without having to bring their own attendant to help them get on and off the bus. Further, policies should be modified to require the on-board storage of batteries for battery operated wheelchairs.

Section 305 of the legislation directs the Architectural and Transportation Barriers Compliance Board to undertake a study to determine the access needs of individuals with disabilities to over-the-road buses and the most cost effective methods for making over-the-road buses readily accessible to and usable by individuals with disabilities.

In determining the most cost-effective methods for making over-the-road buses readily accessible to and usable by persons with disabilities, particularly individuals who use wheelchairs, the legislation specifies that the study should analyze the cost of providing accessibility, recent technological and cost saving developments in equipment and devices, and possible design changes.

Thus, the Committee is interested in having the study include a review of current technology such as lifts that enable persons with mobility impairments, particularly those individuals who use wheelchairs, to get on and off buses without being carried; alternative designs to the current lifts; as well as alternative technologies and modifications to the design of buses that may be developed that will also enable such individuals to get on and off over-the-road buses without being carried.

It is also expected that the study will review alternative design modifications that will enable an individual using the over-the-road bus to have access to the restroom and at the same time permitting the provider to retain approximately the same seating capacity.

The study must also assess the impact of accessibility requirements on the continuation of inter-city bus service by over-the-road buses, with particular consideration of impact on rural service in light of the economic pressures on the bus industry that have led to a reduction of service, particularly in rural America. According to an analysis by the Interstate Commerce Commission staff, 3,400 communities lost all intercity bus service between 1982 and 1986. Of these nine-tenths were areas with populations of under 10,000.

Thus, this study should analyze how the private bus operators can comply with the requirement in section 304 of the legislation that over-the-road buses be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, without contributing to the deterioration of rural bus service.

It is the Committee expectation that the study will also review current policies that impede the shared use by private companies providing tours and charter services of public buses that are currently accessible. Another component of the study may be to seek

ways to link local providers of accessible transportation services with intercity bus service in hub areas. This may necessitate expansion of service by local providers to match intercity and intermodal schedules in order to help ensure effective development of such a feeder service relationship.

The Committee recognizes that after deregulation of the airline and rail industries, safety net programs were implemented to assist States in preserving efficient air and rail transportation, primarily between smaller cities and communities threatened by the loss of service. No similar Federal program was established to assist the private bus industry. The Committee expects that the study will consider whether and, if deemed appropriate, identify policy alternatives that might assist private bus companies meet the mandates in this legislation.

The legislation also calls for the establishment of an advisory board of which 50 percent of the members must be selected from among private operators using over-the-road buses, bus manufacturers, and lift manufacturers; and 50 percent of the members must be individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses.

Anyone in the business of providing taxi service shall not discriminate on the basis of disability in the delivery of that service. For example, it would be illegal under the Act to refuse to pick up a person on the basis of that person's disability. A taxi cab driver could not refuse to pick up someone in a wheelchair because he or she believes that the person could not get out of their chair or because he or she did not want to lift the wheelchair into the trunk of the taxi or put it in the back seat.

#### *Regulations*

Section 306(a) of the legislation specifies that not later than one year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format that shall include standards applicable to facilities and vehicles covered under section 302(b)(2) (B) and (C) and section 304.

With respect to section 304(b)(4) of the legislation, the Committee recognizes the apparent anomaly in requiring the promulgation of regulations while a needs and impact assessment is in progress and two years prior to the submission of the study and its recommendations to the President and the Congress. This timing, however, should not be construed as calling into question the importance or necessity of empirical data and technological information to this rulemaking process. Rather, the Committee believed it wise that, with respect to over-the-road buses, regulations be in place well in advance of the compliance dates of the Act.

The Committee fully expects that, following submission, the study and its recommendations will be expeditiously and carefully reviewed to determine if, or to what extent, the regulations promulgated pursuant to this section of the legislation need to be revised or amended.

Section 306(b) of the legislation, specifies that not later than one year after the date of enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the remaining provisions of this title not referred to in subsection (a) that



include standards applicable to facilities and vehicles covered under section 302.

Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

#### *Exemptions for private clubs and religious organizations*

Section 307 of the legislation specifies that the provisions of title III do not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 or to religious organizations or to entities controlled by religious organizations. Places of worship and schools controlled by religious organizations are among those organizations and entities which fall within this exemption.

The reference to "entities controlled by a religious organization" is modeled after the provisions in title IX of the Education Amendments of 1972. Thus, it is the Committee's intent that the term "controlled by a religious organization" be interpreted consistently with the Attachment which accompanied the Assurance of Compliance with title IX required by the U.S. Department of Education. Of course, the Committee recognizes that unlike the title IX exemption, this provision applies to entities that are not educational institutions. The term "religious organization" has the same meaning as the term "religious organization" in the phrase "entitles controlled by a religious organization."

Activities conducted by a religious organization or an entity controlled by a religious organization on its own property which are open to nonmembers of that organization or entity are included in this exemption.

#### *Enforcement*

Section 308 of the legislation sets forth the scheme for enforcing the rights provided for in title III. Section 308(a)(1) provides a private right of action for any individual who is being or is about to be subjected to discrimination on the basis of disability in violation of title III. This subsection makes available to such an individual the remedies and procedures set forth in section 204a-3(a) of the Civil Rights Act of 1964 (preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order).

Section 308(a)(2) of the legislation makes it clear that in the case of violations of section 302(b)(2)(A)(iv) pertaining to removing barriers in existing facilities, section 302(b)(2)(A)(vi) pertaining to alterations of existing facilities, and section 303(a) pertaining to new construction, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities as required by title III.

Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

Section 308(b) of the legislation specifies the enforcement scheme for the Attorney General. First, the Attorney General shall investi-



gate alleged violations of title III, which shall include undertaking periodic reviews of compliance of covered entities.

If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by title III or that any person or group of persons has been denied any of the rights granted by title III and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

In a civil action brought by the Attorney General, the court may grant any equitable relief it considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by title III.

In addition, a court may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved, when requested by the Attorney General. Thus, it is the Committee's intent that the Attorney General shall have discretion regarding the damages he or she seeks on behalf of persons aggrieved. It is not the Committee's intent that this authority include the authority to award punitive damages.

Furthermore, the court may vindicate the public interest by assessing a civil penalty against the covered entity in an amount not exceeding \$50,000 for a first violation and not exceeding \$100,000 for any subsequent violation.

#### *Effective date*

In accordance with section 309 of the legislation, title III of the legislation shall become effective 18 months after the date of enactment of this legislation.

#### TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Title IV of the legislation, as reported, will help to further the statutory goals of universal service as mandated in the Communications Act of 1934. It will provide to hearing- and speech-impaired individuals telephone services that are functionally equivalent to those provided to hearing individuals.

#### *Background*

There are over 24 million hearing-impaired and 2.8 million speech-impaired individuals in the United States, yet inadequate attention has been paid to their special needs with respect to accessing the Nation's telephone system. Given the pervasiveness of the telephone for both commercial and personal matters, the inability to utilize the telephone system fully has enormous impact on an individual's ability to integrate effectively in today's society.

The Communications Act of 1934 mandates that communications services be "[made] available, so far as possible, to *all* the people of the United States. \* \* \*". (Section 1, emphasis added). This goal of universal service has governed the development of the Nation's telephone system for over fifty years. The inability of over 26 million Americans to access fully the Nation's telephone system poses



a serious threat to the full attainment of the goal of universal service.

In order to realize this goal more fully, Title IV of this legislation amends Title II of the Communications Act of 1934, as amended, by adding a new section 225. This new section imposes on all common carriers providing interstate or intrastate telephone service, an obligation to provide to hearing and speech impaired individuals telecommunications services that enable them to communicate with hearing individuals. These services must be functionally equivalent to telephone service provided to hearing individuals. Carriers are granted the flexibility to determine whether such services are provided by the carrier alone, in concert with other carriers, or through a designee. Hereinafter, this part of the Report will be referring to this new section 225 and not to sections in S. 933, The Americans with Disabilities Act.

Currently, individuals with hearing and speech impairments can communicate with each other over the telephone network with the aid of Telecommunications Devices for the Deaf (TDDs). TDDs use a typewriter-style device equipped with a message display (screen and/or printer) to send a coded signal through the telephone network. However, users of TDDs can communicate only with other users of TDDs. This creates serious hardships for Americans with hearing and/or speech impairments, since access to the community at large is significantly limited.

The Committee intends that section 225 better serve to incorporate the hearing- and speech-impaired communities into the telecommunications mainstream by requiring that telephone services be provided to hearing and/or speech impaired individuals in a manner that is functionally equivalent to telephone services offered to those who do not have these impairments. This requirement will serve to bridge the gap between the communications impaired telephone and the community at large. To participate actively in society, one must have the ability to call firends, family, businesses, and employers.

Current technology allows for communications between a TDD user and a voice telephone user by employing a type of relay system. Such systems include a third party operator who completes the connection between the two parties and who transmits messages back and forth in real time between the TDD user and the hearing individual. The originator of the call communicates to the operator either by voice or TDD. The operator then uses a video display system to translate the typed or voice message simultaneously from one medium to the other.

Although the Committee notes that relay systems represent the current state-of-the-art, this legislation is not intended to discourage innovation regarding telecommunications services to individuals with hearing and speech impairments. The hearing- and speech-impaired communities should be allowed to benefit from advancing technology. As such, the provisions of this section do not seek to entrench current technology but rather to allow for new, more advanced, and more efficient technology.

The Committee intends that the FCC have sufficient enforcement authority to ensure that telecommunications relay services are provided nationwide and that certain minimum federal standards are

met by all providers of such services. The FCC's authority over the provision of intrastate telecommunications relay services, however, is expressly limited by certification procedures required to be established under this section whereby a state retains jurisdiction over the intrastate provision of telecommunications relay services.

The Committee finds it necessary to grant the FCC such residual authority in this instance to ensure universal service to the hearing- and speech-impaired community. Although a number of states have mandated statewide relay systems, the majority of states have not done so. Moreover, the systems that do exist vary greatly in quality and accessibility. The Committee finds that to ensure universal service to this population of users, service must be made uniformly available on a local, intrastate, and interstate basis. It is the Committee's hope and expectation, however, that all states will seek certification in a timely manner and that the FCC will not find it necessary to exercise its enforcement authority. It is essential to this population's well-being, self-sufficiency and full integration into society to be able to access the telecommunications network and place calls nationwide without regard to geographic location.

Attaining meaningful universal service for this population also requires that some level of minimum federal standards for service, service quality, and functional equivalency to voice telephone services be established and maintained. The FCC is therefore required to establish certain minimum federal standards that all telecommunications relay service providers must meet.

By requiring telecommunications relay services to be provided throughout the United States, this section takes a major step towards enabling individuals with hearing and speech impairments to achieve the level of independence in employment, public accommodations and public services sought by other sections of the Americans with Disabilities Act. The Committee concludes that expanding the FCC's authority in this instance will both promote interstate commerce and be of benefit to all Americans.

The grant of jurisdiction to the FCC is limited, however, by the state certification procedures required to be established under this section. It is the Committee's intention that these procedures operate to preserve initiatives by a state or group of states to implement a telecommunications relay services program within that state or within a region either through the state itself, through designees, or through regulation of intrastate common carriers. As such, the section provides that any state may regulate intrastate telecommunications relay services provided by intrastate carriers once the state is granted certification by the FCC. The FCC is to establish clearly defined procedures for requesting certification and a review process to ensure that a state program, however it is provided, satisfies the minimum standards promulgated under this section. The certification procedures and review process should afford the least possible intrusion into state jurisdiction consistent with the goals of this section to have nationwide universal service for hearing- and speech-impaired individuals.

The Committee intends that telecommunications relay services be governed by minimum federal standards that will ensure that telephone service for hearing and speech impaired individuals is



functionally equivalent to telephone services offered to hearing individuals. Such standards, however, should not have the effect of freezing technology or thwarting the introduction of a superior or more efficient technology.

Cost recovery for telecommunications relay services will be determined by the FCC in the case of interstate telecommunications relay services and by certified states in the case of intrastate telecommunications relay services. While states are granted the maximum latitude to determine the method of cost recovery for intrastate relay services provided under their jurisdiction, the FCC is specifically prohibited from allowing the imposition of a flat monthly charge on residential end users to recover the costs of providing interstate telecommunications relay service. It is the Committee's expectation that the costs of providing telecommunications relay services will be considered a legitimate cost of doing business and therefore a recoverable expense through the regulatory rate-making process.

#### *Definitions*

Section 225(a) defines: (1) "Common Carrier or Carrier" to include interstate carriers and intrastate carriers for purposes of this section only; (2) "TDD" to mean a machine that may be used by a variety of disabled individuals such as deaf, hard of hearing, deaf-blind, or speech impaired individuals and that employs graphic communications through the transmission of coded signals over telephone wires; and (3) "Telecommunications relay services" to mean telephone transmission services that allow a hearing- and/or speech-impaired individual to communicate in a manner that is functionally equivalent to voice communications services offered to hearing individuals. The term includes, but is not limited to, TDD relay services.

#### *Availability of telecommunications relay services*

Section 225(b)(1) states that in furtherance of the goals of universal service, the FCC must ensure that interstate and intrastate telecommunications relay services are provided to the greatest extent possible and in the most efficient manner.

Section 225(b)(2) extends the remedies, procedures, rights and obligations applicable to interstate carriers under the Communications Act of 1934, as amended, to intrastate carriers for the limited purpose of implementing and enforcing the requirements of this section.

#### *Provision of services*

Section (c) requires that carriers providing telephone voice transmission services provide telecommunications relay services within two years after the date of enactment of this section. Carriers are to offer to hearing- and speech-impaired individuals services which are functionally equivalent to telephone services provided to hearing individuals including providing services with the same geographic radius that they offer to hearing individuals. Carriers are granted the flexibility to provide such services either individually, in concert with other carriers, or through designees. In exercising

this flexibility to appoint designees, however, carriers must ensure that all requirements of this section are complied with.

#### *Regulations*

Section (d) requires the FCC to prescribe the necessary rules and regulations to carry out the requirements of this section within one year of its enactment.

Also, given the unique and specialized needs of the population that will be utilizing telecommunications relay services, the FCC should pay particular attention to input from representatives of the hearing and speech impaired community. It is recommended that this input be obtained in a formal manner such as through an advisory committee that would represent not only telecommunications relay service consumers but also carriers and other interested parties. The Committee notes that the FCC has already issued several notices on the creation of an interstate relay system and the most efficient way such a system could be provided. While the FCC is afforded a significant amount of flexibility in implementing the goals of this section, subsection (d) requires that the FCC establish certain minimum standards, practices and criteria applicable to all telecommunications relay services and service providers as follows:

Section (d)(1)(A) requires the FCC to establish functional requirements, guidelines, and operational procedures for the provision of telecommunications relay services. One of these requirements shall be that all carriers subject to this section shall provide telecommunications relay services on a non-discriminatory basis to all users within their serving area. The FCC should pursue means in which the goals of this section may be met in the most efficient manner. In addition, the Commission should include specific language requiring that operators be sufficiently trained so as to effectively meet the specialized communications needs of individuals with hearing and speech impairments, including sufficient skills in typing, grammar and spelling.

Section (d)(1)(B) requires the FCC to establish minimum federal standards to be met by all providers of intrastate and interstate telecommunications relay services including technical standards, quality of service standards, and the standards that will define functional equivalence between telecommunications relay services and voice telephone transmission services. Telecommunications relay services are to be governed by standards that ensure that telephone service for hearing- and speech-impaired individuals is functionally equivalent to voice services offered to hearing individuals. In determining factors necessary to establish functional equivalency, the FCC should include, for example, the requirement that telecommunications relay services transmit messages between the TDD and voice caller in real time, as well as the requirement that blockage rates for telecommunications relay services be no greater than standard industry blockage rates for voice telephone services. Other factors that should be included are the opportunity for telecommunications relay service users to choose an interstate carrier whenever possible. The FCC should enumerate other such measurable standards to ensure that hearing and non-hearing individuals have equivalent access to the Nation's telephone networks.



Section (d)(1)(C) requires that such telecommunications relay services operate 24 hours a day, seven days a week.

Section (d)(1)(D) requires that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination. Although the Committee commends states that have chosen to implement a discount, this section is not intended to mandate a rate discount with respect to call duration.

Section (d)(1)(E) prohibits relay operators from refusing calls or limiting the length of calls that use such relay services.

Section (d)(1)(F) prohibits relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of that call. The Committee recognizes that printed records of such calls may be necessary to complete the call; however, this requirement is to ensure that records are not kept after termination of the conversation. In addition, the Committee recognizes that it may be technically impossible today to relay recorded messages in their entirety because TDDs can only transmit messages at a given speed. In these situations, a hearing or speech impaired individual should be given the option to have the message summarized.

Section (d)(1)(G) prohibits relay operators from intentionally altering any relayed conversation.

Section (d)(2) requires that the FCC ensure that regulations prescribed to implement this section encourage the use of state-of-the-art technology. Such regulations should not have the effect of freezing technology or thwarting the introduction of a superior or more efficient technology.

Section (d)(3) states that the Commission should issue regulations to govern the separation of costs for the services provided pursuant to this section. No change to the procedures for allocating joint costs between the interstate and intrastate jurisdictions as set forth elsewhere in the Communications Act of 1934 is intended.

Section (d)(4) prohibits the Commission from allowing the imposition of a fixed monthly charge on residential customers to recover the costs of providing interstate telecommunications relay services. However, the manner in which the costs of providing intrastate telecommunications relay services are recovered is left to the discretion of certified states. It is the Committee's expectation that the costs of providing such services will be considered a legitimate cost of doing business and therefore a recoverable expense through the regulatory ratemaking process.

Section (d)(5) grants the FCC flexibility to extend the date of full compliance with the requirements of this Section by one year for any carrier or group of carriers that it finds will be unduly burdened. Interested parties should be given an opportunity to comment on any such request for an extension and such requests should not be granted without compelling justification.

#### *Enforcement*

Section (e)(1) requires that the Commission enforce the requirements of this section subject to subsections (f) and (g). The Commit-

tee intends that the FCC have sufficient enforcement authority to ensure that telecommunications relay services are provided nationwide and that certain minimum federal standards are met by all providers of the service. The FCC's authority over the provision of intrastate telecommunications relay services, however, is expressly limited by certification procedures required to be established under subsection (f) whereby a state retains jurisdiction over the intrastate provision of telecommunications relay services.

Section (e)(2) requires that the Commission resolve any complaint by final order within 180 days after that complaint has been filed.

#### *Certification*

Sections (f) (1) and (2) describe the state certification procedure whereby states may apply to reassert jurisdiction over the provision of intrastate telecommunications relay services. The FCC may grant certification upon a showing that such services are being made available in the state and that they comply with the federal guidelines and standards promulgated pursuant to section (d). A state plan may make service available through the state itself, through designees or through regulation of intrastate carriers.

Section (f)(3) states that, except for reasons affecting rules promulgated pursuant to section (d), the FCC may not deny certification to a state based solely on its chosen method of funding the provision of intrastate telecommunications relay services. Section (d), however, would require that a state program not include cost recovery mechanisms that would have the effect of requiring users of telecommunications relay services to pay effectively higher rates than those paid for functionally equivalent voice communications services. Additionally, the Committee urges that because this service is of benefit to all society that any funding mechanism not be labeled so as to unduly prejudice the hearing- and speech-impaired community.

Section (f)(4) allows for the Commission to revoke such certification, if after notice and opportunity for hearing, the Commission determines that certification is no longer warranted.

#### *Complaint*

Section (g)(1) states that when a complaint is filed with the Commission that alleges a violation of this section with respect to the provision of intrastate telecommunication relay services, the Commission shall refer such complaint to the appropriate State commission if that State has been duly certified by the FCC pursuant to section (f). If the appropriate State has not been duly certified, then the Commission will handle the complaint pursuant to sections (e) (1) and (2).

Once a complaint has been properly referred to a State Commission, subsection (g)(2) permits the FCC to exercise its jurisdiction over such a complaint only if final action has not been taken within 180 days after the complaint is filed with the State, or within a shorter period as prescribed by the regulations of such State, or if the Commission determines that a State program no longer qualifies for certification under section (f).



TITLE V—MISCELLANEOUS PROVISIONS

*Construction*

Section 501 of the legislation specifies the relationship between this legislation and the Rehabilitation Act of 1973 and other Federal, State or local laws. Section 501 also specifies the relationship between this legislation and the regulation of insurance.

With respect to the Rehabilitation Act of 1973, section 501(a) of the legislation specifies that nothing in this legislation should be construed to reduce the scope of coverage or apply a lesser standard than the coverage required or the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by the Federal agencies pursuant to such title.

With respect to other laws, section 501(b) of the legislation specifies that nothing in this legislation should be construed to invalidate or limit any other Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater protection for the rights of individuals with disabilities that are afforded by this legislation. This legislation could be construed to be in conflict with other laws governing spaces or worksites, for example OSHA requirements. The Committee expects the Attorney General to exercise coordinating authority to avoid and eliminate conflicts.

With respect to insurance, section 501(c) of the legislation specifies that titles I, II, and III of this legislation shall not be construed to prohibit or restrict—

(1) An insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) Any person or organization covered by this Act from establishing, sponsoring or observing the terms of a bona fide benefit plan which terms are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law;

provided that points (1) and (2) are not used as a subterfuge to evade the purposes of titles I, II and III of this legislation.

As indicated earlier in this report, the main purposes of this legislation include prohibiting discrimination in employment, public services, and places of public accommodation. The Committee does not intend that any provisions of this legislation should affect the way the insurance industry does business in accordance with the State laws and regulations under which it is regulated.

Virtually all States prohibit unfair discrimination among persons of the same class and equal expectation of life. The ADA adopts this prohibition of discrimination. Under the ADA, a person with a disability cannot be denied insurance or be subject to different terms or conditions of insurance based on disability alone, if the disability does not pose increased risks.

Since there is some uncertainty over the possible interpretations of the language contained in titles I, II and III as it applies to insurance, the Committee added section 501(c) to make it clear that this legislation will not disrupt the current nature of insurance underwriting or the current regulatory structure for self-insured em-

ployers or of the insurance industry in sales, underwriting, pricing, administrative and other services, claims, and similar insurance related activities based on classification of risks as regulated by the States.

However, the decision to include this section may not be used to evade the protections of title I pertaining to employment, title II pertaining to public services, and title III pertaining to public accommodations beyond the terms of points (1) and (2), regardless of the date an insurance plan or employer benefit plan was adopted.

For example, an employer could not deny a qualified applicant a job because the employer's current insurance plan does not cover the person's disability or because of the increased costs of the insurance.

Moreover, while a plan which limits certain kinds of coverage based on classification of risk would be allowed under this section, the plan may not refuse to insure, or refuse to continue to insure, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

For example, a blind person may not be denied coverage based on blindness independent of actuarial risk classification. Likewise, with respect to group health insurance coverage, an individual with a pre-existing condition may be denied coverage for that condition for the period specified in the policy but cannot be denied coverage for illnesses or injuries unrelated to the pre-existing condition.

Specifically, point (1) makes it clear that insurers may continue to sell to and underwrite individuals applying for life, health, or other insurance on an individually underwritten basis, or to service such insurance products.

Point (2) recognizes the need for employers, and/or agents thereof, to establish and observe the terms of employee benefit plans, so long as these plans are based on underwriting or classification of risks.

In both cases, points (1) and (2) shall not be used as a subterfuge to evade the purposes of titles I, II and III of the legislation, regardless of the date the insurance plan or employer benefit plan was adopted.

As explained previously in this report, the Committee also wishes to clarify that in its view, as is stated by the U.S. Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), employee benefit plans should not be found to be in violation of this legislation under impact analysis simply because they do not address the special needs of every person with a disability, e.g., additional sick leave or medical coverage.

Moreover, this subsection must be read to be consistent with subsection (b) of section 501 pertaining to other Federal and State laws.

In sum, section 501(c) is intended to afford to insurers and employers the same opportunities they would enjoy in the absence of this legislation to design and administer insurance products and benefit plans in a manner that is consistent with basic principles of



insurance risk classification. Without such a clarification, this legislation could arguably find violative of its provisions any action taken by an insurer or employer which treats disabled persons differently under an insurance or benefit plan because they represent an increased hazard of death or illness.

The provisions recognize that benefit plans (whether insured or not) need to be able to continue present business practices in the way they underwrite, classify, and administer risks, so long as they carry out those functions in accordance with accepted principles of insurance risk classification.

While the bill is intended to apply nondiscrimination standards equally to self-insured plans as well as to third-party payer and third-party administered plans with respect to persons with disabilities, section 501(c) of this legislation should not be interpreted as subjecting self-insured plans to any State insurance laws of general application regarding underwriting risks, classifying risks, or administering such risks that are otherwise preempted by the Employee Retirement Income Security Act of 1974 (ERISA).

#### *Prohibition against retaliation and coercion*

Section 502(a) of the legislation specifies that no individual shall discriminate against any other individual because such other individual has opposed any act or practice made unlawful by this Act or because such other individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

Section 502(b) of the legislation specifies that it shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her have aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this legislation.

Section 502(c) of the legislation specifies that the remedies and procedures available under sections 106, 205, and 308 shall be available to aggrieved persons for violations of subsections (a) and (b).

#### *State immunity*

Section 503 of the legislation specifies that a State shall not be immune under the Eleventh Amendment to the Constitution of the United States from an action in Federal court for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

This provision is included in order to comply with the standards for covering states set forth in the *Atascadero State Hospital v. Scanlon*, 105 S. Ct. 3142 (1985).

#### *Regulations by the Architectural and Transportation Barriers Compliance Board*

Section 504 specifies that not later than 6 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that

shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III.

These guidelines shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

The "Minimum Guidelines and Requirements for Accessible Design" (MGRAD), as issued and revised by the Board have provided guidance to four Federal standard-setting agencies (the General Services Administration, the Department of Defense, the Department of Housing and Urban Development, and the U.S. Postal Service) in their regulations establishing the Uniform Federal Accessibility Standards (UFAS).

The ADA directs the Board to issue supplemental guidelines and requirements to guide two additional Federal standard-setting agencies—the Department of Transportation and the Department of Justice—in their development of regulations under this legislation.

The development of supplemental MGRAD will require the Board to complete and expand its previous guidelines and requirements. There are some areas within the Board's MGRAD authority in which it has not yet issued minimum guidelines. One such example is the area of recreation. In 1985, the Federal Government Working Group on Access to Recreation Developed for the Board a technical paper titled, "Access to Outdoor Recreation Planning and Design," including technical requirements and specific guidelines, but the Board has not officially issued minimum guidelines and requirements in this area. The Committee expects the Board to take prompt action to complete the filling of such gaps in the existing MGRAD.

In issuing the supplemental minimum guidelines and requirements called for under this legislation, the Board should consider whether other revisions or improvements of the existing MGRAD (including scoping provisions) are called for to achieve consistency with the intent and the requirements of this legislation. Particular attention should be paid to providing greater guidance regarding communication accessibility.

In no event shall the minimum guidelines issued under this legislation reduce, weaken, narrow, or set less accessibility standards than those included in existing MGRAD.

This legislation also explicitly provides that the Board is to develop minimum guidelines for vehicles. The Committee intends that the Board shall issue minimum guidelines regarding various types of conveyances and means of transport that come within the ambit of titles II and III of the legislation. Such guidelines should include specifications regarding wheelchair lifts and ramps on vehicles where necessary for boarding and getting off. The Board should also review its minimum guidelines regarding stations and other places of boarding or departure from vehicles to make sure that they are coordinated with and complementary to the minimum guidelines regarding vehicles.



### *Attorneys fees*

Section 505 specifies that in any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

### *Technical assistance*

Section 506 specifies that the Attorney General, in consultation with the Secretary of Transportation, the Chairman of the Federal Communications Commission, and the Secretary of Commerce, shall, within 180 days after the enactment of this legislation, develop and implement a plan to assist entities covered under this legislation.

The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out his or her responsibilities.

## VII. REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of S. 933 is made:

### A. ESTIMATED NUMBER OF INDIVIDUALS AND BUSINESSES REGULATED AND THEIR GROUPS OR CLASSIFICATIONS

S. 933 would regulate all private sector employers with 15 or more employees. Data from the Equal Employment Opportunity Commission for 1989 put the number of employers with 15 or more employees at 666,000. The bill would regulate all units of State and local government, which do not receive Federal aid. The total number of units of State and local government in the United States is 83,250. Many of these units of government already are subject to section 504 of the Rehabilitation Act of 1973, as amended, which contains similar requirements to this bill.

S. 933 would also regulate private businesses engaged in commerce and open to the general public, of which Census Bureau figures indicate there are approximately 3.9 million. For new construction, the ADA will add accessibility requirements not already contained in existing State laws to 44 percent of new commercial construction.

There are over 1500 telephone common carriers in the United States that will be subject to the provisions of this law. The law permits these companies to act in concert or to contract out to third parties to provide this service over their networks, much as they do today in providing various forms of operator services. The legislation deliberately leaves these options to the carriers in order to encourage them to find the most economically efficient means of providing the service.

Approximately forty-three million persons with disabilities will be entitled to the protections of this legislation as employees, job applicants, clients and customers of places of public accommodation, and users of telephone services. There are approximately 24 million hearing impaired and 2.75 million speech impaired persons in

the United States that will benefit from having telecommunication relay service available to them.

### B. ECONOMIC IMPACT ON THE INDIVIDUALS, CONSUMERS AND BUSINESSES AFFECTED

Individuals with disabilities will have barriers to participation in all aspects of our society eliminated, permitting them to be employed, use public transportation, enjoy the services of State and local governments and public accommodations and use telephone services.

Savings to the public and private sectors in the form of increased earnings for people with disabilities and decreased government benefit and private insurance and benefit payments is estimated to be in the billions of dollars per year.

Costs to businesses for reasonable accommodations are expected to be less than \$100.00 per worker for 30% of workers needing an accommodation, with 51% of those needing an accommodation requiring no expenses at all. A Louis Harris national survey of people with disabilities found that among those employed, accommodations were provided in only 35% of the cases.

For renovation and new construction, costs of accessibility are generally between zero and one percent of the construction budget. For new buses, lifts are available for approximately \$11,000 per bus, with a Federal subsidy for 80% of the capital costs of municipal buses. There are no reliable figures for determining how much the provision of telecommunications relay service will cost. AT&T has informally estimated the cost to be around \$300 million, while the Federal Communications Commission's estimate is \$250 million. This translates to about \$1.20 per customer per year.

### *Impact of the act on personal privacy*

The Committee believes that this legislation has no significant impact on personal privacy. With respect to telecommunications, the legislation contains provisions to ensure that the privacy of the individuals using the service is protected. Section 225(d)(1)(F) of the Communications Act of 1934, as added by this legislation, specifically prohibits relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any conversations beyond the duration of the call. Section 225(d)(1)(G) also prohibits relay operators from intentionally altering a relayed conversation. The Federal Communications Commission is directed to adopt regulations to enforce these provisions. Violators of these provisions are subject to the penalty provisions contained in the Communications Act.

### *Additional paperwork, time and costs*

With respect to titles I (employment), II (public services), and III (public accommodations), the bill would result in some additional paperwork, time and costs to the EEOC, the Justice Department, and the Department of Transportation, which are entrusted with the enforcement of the Act. The bill does not contain additional recordkeeping requirements.



With respect to title IV (telecommunication relay services), this legislation will require minimal amount of paperwork. The Federal Communications Commission must adopt rules to implement this legislation, and for this purpose should collect and review comments from interested parties. The Commission has an outstanding rulemaking proceeding at the present time which can be supplemented to implement this legislation. This should reduce the regulatory burden on the Commission and interested parties. Some additional paperwork will be required of States that wish to certify their programs with the Commission. One certified, however, the enforcement and paperwork burdens will be transferred to the State with minimal oversight by the Commission. Further, once the carriers have established systems that comply with this legislation, additional oversight and paperwork should be minor.

#### VIII. COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, August 29, 1989.

HON. EDWARD M. KENNEDY,  
Chairman, Committee on Labor and Human Resources,  
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 933, the Americans with Disabilities Act of 1989, as ordered reported by the Committee on Labor and Human Resources on August 2, 1989. CBO estimates enactment of S. 933 would result in no direct spending by the federal government. The bill would require several agencies to establish regulations and standards with regard to this bill. We estimate the costs of these activities to be \$20 million in fiscal year 1990 and \$19 million annually in 1991-1994, assuming appropriation of the necessary funds. The costs to state and local governments are likely to be greater, particularly for improvements in transit systems. While these costs cannot be precisely estimated, they are discussed under costs to state and local governments.

If enacted, S. 933 would prohibit discrimination against people with disabilities in areas such as employment practices, public accommodations and services, transportation services and telecommunication services. S. 933 would require that the Equal Employment Opportunities Commission, the Department of Transportation, the Architectural and Transportation Barriers Compliance Board, the Department of Justice, and the Federal Communications Commission develop and issue regulations and standards for implementation and enforcement of this Act.

#### IMPACT ON THE FEDERAL BUDGET

*Equal Employment Opportunities Commission (EEOC).*—Title II—Public Services—would prohibit discrimination by employers against qualified individuals with disabilities. S. 933 would require the EEOC to issue regulations to carry out Title II and to provide for enforcement of the provisions. Although no specific authorization level is stated in the bill, CBO estimates this cost would be \$15 million annually. This estimate is based on the EEOC's past experi-

ence with enforcing civil rights standards and assumes that approximately 240 additional full-time employees would be need for the Commission's 52 field offices and that approximately 70 additional staff would be needed for the EEOC headquarters.

*Department of Transportation.*—S. 933 would direct the Secretary of Transportation to issue regulations within one year including standards applicable to the facilities and vehicles covered by these provisions. CBO estimates that the cost to the federal government of developing these regulations would be about \$0.5 million in fiscal year 1990. In addition, the federal government might bear some part of the costs of making transit services accessible to the handicapped, which are discussed below. The capital and operating costs of most mass transit systems are heavily subsidized by the federal government through grants by the Urban Mass Transportation Administration. We cannot predict the extent to which these grants might be increased to compensate for the additional costs attributable to S. 933.

\**Architectural and Transportation Barriers Compliance Board.*—S. 933 would require the board to develop, issue, and maintain minimum guidelines for the design of accessible buildings, facilities and vehicles, and to establish an advisory committee for the following study. The board would be required to undertake a study to determine (1) the needs of individuals with disabilities with regards to buses and (2) a cost-effective method for making buses accessible and usable by those with disabilities. Although no specific authorization level is stated in the bill, CBO estimates the cost of the guidelines, study and advisory committee would be \$0.3 million in fiscal year 1990, \$0.3 million in 1991, \$0.1 million in 1992, \$0.1 million in 1993 and \$0.2 million in 1994. The cost estimate for this section fluctuates because: (1) salaries and expense costs (\$104,000) are reflected in all years, (2) the study costs (\$150,000) are reflected in fiscal years 1990 and 1991, (3) the advisory committee costs (\$40,000) are reflected in 1991 and 1992, and (4) the research contracts costs (\$80,000) for updating the minimum guidelines are reflected in 1994. This estimate assumes that 2.5 additional full-time employees would be needed as well as additional research contracts for the study and guidelines.

*Department of Justice.*—S. 933 also would require the Attorney General to develop regulations to carry out sections 201 and 202 of Title II—Public Services—and to investigate alleged violations of Title III—Public Accommodations—which includes undertaking periodic reviews of compliance of covered entities under Title III. These regulations would ensure that a qualified individual with a disability would not be excluded from participation in, or denied benefits by a department, agency, special purpose district or other instrumentality of a state or local government. Based on discussions with staff in the Department of Justice and on comparisons with the costs of similar tasks in other agencies, we estimate the cost of these activities would be \$4 million annually.

*Federal Communications Commission (FCC).*—S. 933 requires the FCC to prescribe and enforce regulations with regards to telecommunication relay services. These regulations include: (1) establishing functional regulations, guidelines and operations for telecommunication relay services, (2) establishing minimum standards



that shall be met by common carriers, and (3) ensuring that users of telecommunications relay services pay rates no greater than rates paid for functionally equivalent voice communication services with respect to duration of call, the time of day, and the distance from point of origination to point of termination. While no authorization level is stated, CBO estimates the cost of developing and enforcing these regulations to be \$0.1 million in fiscal year 1990, negligible in fiscal year 1991, \$0.2 million in 1992, \$0.2 million in 1993, and \$0.1 million in 1994. The FCC anticipates a lull in fiscal year 1991 because the states will be designing telecommunications relay systems and there won't be much FCC involvement. During fiscal years 1992 and 1993, the actual certification and evaluation of state programs would occur.

In addition to the federal costs of establishing and enforcing new regulations, S. 933 could also affect the federal budget indirectly through changes in employment and earnings. If employment patterns and earnings were to change, both federal spending and federal revenues could be affected. There is, however, insufficient data to estimate these secondary effects on the federal budget.

#### COSTS TO STATE AND LOCAL GOVERNMENTS

*Public Buildings.*—S. 933 would mandate that newly constructed state and local public buildings be made accessible to the handicapped. All states currently mandate accessibility in newly constructed state-owned public buildings and therefore would incur little or no costs if this bill were to be enacted. It is possible, however, in rare cases, for some local governments not to have such law. These municipalities would incur additional costs for making newly-constructed, locally-owned public buildings accessible if this bill were to become law. According to a study conducted by the Department of Housing and Urban Development in 1978, the cost of making a building accessible to the handicapped is less than one percent of total construction costs. This estimate assumes that the accessibility features are included in the original building design. Otherwise, the costs could be much higher.

*Public Transit.*—Due to the limited time available to prepare this estimate, CBO cannot provide a comprehensive analysis of the impact of S. 933 on mass transit costs of state and local governments. The scope of the bill's requirements in this area is very broad, many provisions are subject to interpretation, and the potential effects on transit systems are significant and complex. While we have attempted to discuss the major potential areas of cost, we cannot assign a total dollar figure to these costs.

S. 933 would require that all new buses and rail vehicles be accessible to handicapped individuals, including those who use wheelchairs, and that public transit operators offer paratransit services as a supplement to fixed route public transportation. In addition, the bill includes a number of requirements relating to the accessibility of mass transportation facilities. Specifically, all new facilities, alterations to existing facilities, intercity rail stations, and key stations in rapid rail, commuter rail, and light rail systems would have to be accessible to handicapped persons.

*Bus and Paratransit Services.*—CBO estimates that it would cost state and local governments between \$20 million and \$30 million a year over the next several years to purchase additional lift-equipped buses as required by S. 933. Additional maintenance costs would increase each year as lift-equipped buses are acquired, and would reach \$15 million by 1994. The required paratransit systems would add to those costs.

Based on the size of the current fleet and on projections of the American Public Transit Association (APTA), CBO expects that public transit operators will purchase about 4,300 buses per year, on average, over the next five years. About 37 percent of the existing fleet of buses is currently equipped with lifts to make them accessible to handicapped individuals and, based on APTA projections, we estimate that an average of 55 percent to 60 percent of future bus purchases will be lift-equipped in the absence of new legislation. Therefore, this bill would require additional annual purchases of about 1,900 lift-equipped buses. Assuming that the added cost per bus for a lift will be \$10,000 to \$15,000 at 1990 prices, operators would have to spend from \$20 million to \$30 million per year, on average, for bus acquisitions as a result of this bill.

Maintenance and operating costs of lifts have varied widely in different cities. Assuming that additional annual costs per bus average \$1,500, we estimate that it would cost about \$2 million in 1990, increasing to \$15 million in 1994, to maintain and operate the additional lift-equipped buses required by S. 933.

In addition, bus fleets may have to be expanded to make up for the loss in seating capacity and the increase in boarding time needed to accommodate handicapped persons. The cost of expanding bus fleets is uncertain since the extent to which fleets would need to be expanded depends on the degree to which handicapped persons would utilize the new lift-equipped buses. If such use increases significantly, added costs could be substantial.

These costs are sensitive to the number of bus purchases each year, which may vary considerably. In particular, existing Environmental Protection Agency emissions regulations may result in accelerated purchases over the next two years as operators attempt to add to their fleets before much more stringent standards for new buses go into effect. Such variations in purchasing patterns would affect the costs of this bill in particular years. In addition, these estimates reflect total costs for all transit operators, regardless of their size. Costs may fall disproportionately on smaller operators, who are currently more likely to choose options other than lift-equipped buses to achieve handicapped access.

The bill also requires transit operators to offer paratransit or other special transportation services providing a level of service comparable to their fixed route public transportation to the extent that such service would not impose an "undue financial burden". Because we cannot predict how this provision will be implemented, and because the demand for paratransit services is very uncertain, we cannot estimate the potential cost of the paratransit requirement, but it could be significant. The demand for paratransit services probably would be reduced by the greater availability of lift-equipped buses.



*Transit Facilities.*—We expect that the cost of compliance with the provisions concerning key stations would be significant for a number of transit systems, and could total several hundred million dollars (at 1990 prices) over twenty years. The precise level of these costs would depend on future interpretation of the bill's requirements and on the specific options chosen by transit systems to achieve accessibility. The costs properly attributable to this bill would also depend on the degree to which transit operators will take steps to achieve accessibility in the absence of new legislation.

In 1979, CBO published a study (*Urban Transportation for Handicapped Persons: Alternative Federal Approaches*, November 1979) that outlined the possible costs of adapting rail systems for handicapped persons. In that study, CBO estimated that the capital costs of adapting key subway, commuter and light rail stations and vehicles for wheelchair users would be \$1.1 billion to \$1.7 billion, while the additional annual operating and maintenance costs would be \$14 million to \$21 million.

Based on a 1981 survey of transit operators, the Department of Transportation has estimated that adapting key stations and transit vehicles would require additional capital expenditures of \$2.5 billion over 30 years and would result in additional annual operating costs averaging \$57 million (in 1979 dollars) over that period. Many groups representing the handicapped asserted that the assumptions and methodology used by the transit operators in this survey tended to severely overstate these costs. The department estimated that the cumulative impact of using the assumptions put forth by these groups could lower the total 30-year costs to below \$1 billion.

CBO believes that the figures in both these studies significantly overstate the cost of the requirements of S. 933, because, in the intervening years, several of the major rail systems have begun to take steps to adapt a number of their existing stations for handicapped access. In addition, based on a draft of language in the committee's report on this bill, we expect that the number of stations that would be defined as "key" under this bill would be much lower than that assumed in either of those studies. Furthermore, the Metropolitan Transit Authority in New York and the Southeastern Pennsylvania Transportation Authority in Philadelphia, two large rail systems, have entered into settlement agreements with handicapped groups that include plans for adaptation of key stations. The committee's draft report language indicates that these plans would satisfy the bill's requirement for accessibility of key stations. Other rail systems are also taking steps to make existing stations accessible. Therefore, we expect that the cost of the bill's requirements concerning key stations would probably not be greater than \$1 billion (in 1990 dollars) and might be considerably less.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Cory Leach (226-2820) and Marjorie Miller (226-2860).

Sincerely,

ROBERT D. REISCHAUER,  
*Director.*

#### IX. CHANGES IN EXISTING LAWS

In the opinion of the Committee, it is necessary to dispense with the requirements of paragraph (12) of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.



### ADDITIONAL VIEWS OF SENATOR HATCH

The story of America is one of ever growing inclusiveness, as more and more Americans have become able to participate in the great mainstream of American life. Persons with disabilities, no less than other Americans, are entitled to an equal opportunity to participate in the American dream.

Indeed, through their own efforts, and with the benefit of a growing array of programs and antidiscrimination provisions at the local, state, and federal levels designed to enhance their abilities to lead lives of independence, not dependence, persons with disabilities have long been writing an inspiring chapter in this quintessential American story. Persons with disabilities, through their hard work and determination, have already made great advances and destroyed many stereotypes which have been used to deny them equal opportunities in the past. They have demonstrated they are no "insular minority" in America. But more can still be done to provide equal opportunity for persons with disabilities.

At the outset of the hearings on S. 933, I stated my support for a comprehensive federal civil rights bill banning discrimination against persons with disabilities. Such protection against discrimination is long overdue. At the same time, I also expressed the view that such legislation must be both meaningful and reasonable. Accordingly, I was unable to endorse S. 933, as introduced. There were several serious problems with S. 933, as introduced, including: its excessive penalty scheme; its breadth of coverage of "public accommodations"; its significant departure from the standards of Section 504 of the Rehabilitation Act of 1973, which bans disability discrimination in programs or activities receiving federal aid and in federally conducted programs; and its onerous treatment of the private bus industry.

The substitute version, which emerged from a period of negotiations and was adopted unanimously by the Labor and Human Resources Committee, is still not a perfect compromise. It retains features that I believe merit further improvement. But it incorporated enough important changes to enable me to cosponsor it at the mark-up, while I reserved my right to pursue further changes on the Floor.

At the mark-up, the Committee accepted an amendment which I offered, requiring the Attorney General, in consultation with other federal agencies, to develop and implement a plan to assist covered entities in understanding their duties under the bill.

I also have further concerns about the bill in certain areas.

#### I. SMALL BUSINESS EXEMPTION FOR PUBLIC ACCOMMODATIONS

Title I of the bill bans employment discrimination and is effective in two years. At that time, the employment discrimination pro-

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visions will apply to employers with 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year. Two years thereafter—four years after enactment—the employment provisions will apply to employers of 15 or more employees.

Title III of the bill covers "public accommodations and services operated by private entities." Private entities defined as "potential places of employment" are subject only to accessibility requirements concerning new facilities designed and constructed for first occupancy later than 30 months after the bill's enactment. These entities include facilities intended for nonresidential use and whose operations affect commerce. Section 301(2).

Private entities defined as "public accommodations," which include much of the private sector, are subject not only to this new construction requirement but also to a wide variety of prohibitions and obligations with respect to their existing facilities and general policies. These prohibitions and obligations pertain to a business in its treatment of customers, clients, and visitors.

The term "public accommodation" is defined very broadly. It includes not only businesses covered by Title II of the 1964 Civil Rights Act, which bans racial, ethnic, and religious discrimination in public accommodations, defined as places of eating; places of lodging; places of entertainment; and gasoline stations, but it also includes retail stores, service establishments, and other elements of the private sector. Section 301(e).<sup>1</sup>

This ban on discrimination in privately operated "public accommodations" in Title III of the bill is effective 18 months after enactment. In stark contrast to the small business exemption from the bill's employment provisions, however, the bill contains no small business entity exemption whatsoever from these public accommodations provisions.

Thus, the bill creates the following anomaly: a mom-and-pop grocery store is not subject to the bill when it hires a clerk as a new employee, but it is subject to all of the bill's requirements in its treatment of customers, as well as to an extremely onerous penalty scheme when it violates any of these requirements.

Even under the standards of the substitute bill, the costs some small businesses may incur can be significant.<sup>2</sup> In the disability rights area, nondiscrimination requirements, including those in this bill, not only require elimination of outright exclusion based on stereotypes, they often impose additional duties to make reasonable accommodations to the needs of persons with disabilities. I support these requirements. But, we must acknowledge that these

<sup>1</sup> Religious organizations and entities controlled by religious organizations are completely exempt from coverage under Title III.

<sup>2</sup> Some persons may assert that costs should not be a factor in designing a disability civil rights law. In the context of a disability rights law, however, costs may have to be incurred in order to provide nondiscriminatory treatment; e.g., putting in a ramp, providing auxiliary aids and services, and other accommodations. Indeed, the failure to incur reasonable costs in order to provide access is regarded as discriminatory. At some point, however, the undertaking of an accommodation can be so costly or represent such a fundamental alteration in the covered entity's program that the failure to undertake the accommodation is simply not discriminatory. This principle reflects Supreme Court caselaw interpreting Section 504 of the Rehabilitation Act of 1973. E.g. *School Board of Nassau County v. Arline*, 480 U.S. 273, 287 n. 17 (1987); *Alexander v. Choate*, 469 U.S. 287 (1985); *Southeastern Community College v. Davis*, 442 U.S. 397, 409-414 (1979).



accommodations can cost money. Sometimes the cost is not great, but even under the standards of this bill, these costs can be more than *de minimus* where necessary to provide accessibility. This is a crucial difference between a disability civil rights statute and a civil rights statute in the race area. In order to provide equal treatment to racial minorities, a business need only disregard race and judge a person on his or her merits. To provide equal opportunity for a person with a disability will sometimes require additional actions and costs than those required to provide access to a person without a disability.

For example, under the public accommodations title of this bill, covered entities must seek to provide "full and equal enjoyment of [their] goods, services, facilities, privileges, advantages and accommodations." Section 302(a). Among the specific requirements applicable to the smallest businesses are:

1. The obligation to provide auxiliary aids and services to persons with disabilities, unless to do so would cause either an undue burden to the entity or a fundamental alteration in its activities. Section 302(b)(2)(A)(iii). Auxiliary aids and services are defined in Section 3(1) and can include providing qualified interpreters, qualified readers, signage, taped texts; the acquisition or modifications of equipment or devices; and similar actions and devices.

2. The obligation to make reasonable modifications in policies, practices, and procedures, unless doing so fundamentally alters the entity's activities. Section 302(b)(2)(A)(ii).

3. The obligation to remove "architectural barriers, and communication barriers that are structural in nature, in existing facilities \* \* \* where such removal is readily achievable." Section 302(b)(2)(A)(iv). The term "readily achievable" is defined in Section 301(5).

4. The obligation to remove "transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable." Section 302(b)(2)(A)(iv).

5. Where the removal of a barrier described in paragraphs 3 and 4 is not readily achievable, an obligation "to make [the entity's] goods, services, facilities, privileges, advantages available through alternative methods if such methods are readily achievable." Section 302(b)(2)(A)(v).

6. The elimination of eligibility criteria that screen out or tend to screen out a person or persons with disabilities unless the criteria are shown to be necessary to the conduct of the activity in question. Section 302(b)(2)(A)(i).

While these requirements will, in theory, generally translate into less actual cost the smaller the entity, any financial or administrative impact on the smallest businesses can be very troublesome for those businesses. Even comparatively "lesser" costs can be quite burdensome for a small business struggling to survive. Further, the determination as to whether an accommodation is an undue burden or a barrier removal is readily achievable may ultimately be made by a federal agency or judge. A small business is less able to absorb an overreaching determination by these authorities than a larger business.

Moreover, government compliance reviews (Section 308(b)(1)), and the costs of private as well as Attorney General litigation, will add further to those expenses small businesses must bear under the bill's public accommodation title. Indeed, in a private enforcement action, a plaintiff can obtain injunctive relief and attorneys fees. For larger businesses, these costs can be more readily absorbed and passed on to a large consumer base. For some smaller businesses, the cost of compliance with injunctive relief combined with attorneys fees might be onerous.

But it is the penalty scheme in an Attorney General action to enforce the public accommodations title that is of particular concern. In an Attorney General action, a court, at the request of the Attorney General, can order the smallest business to pay monetary damages to aggrieved persons. Moreover, the court can order such a business to pay a civil penalty of up to \$50,000 for a first violation and up to \$100,000 for subsequent violations. This remedy scheme is potentially a very heavy burden, which I will also address as a separate concern.

Opponents of a small business exemption in the public accommodations title of S. 933 claim that since Title II of the 1964 Civil Rights Act has no small business exemption, neither should S. 933. There are several responses to this argument:

1. S. 933 already departs from Title II of the 1964 Civil Rights Act in two important ways:

A. Title II only covers places of eating, lodging, entertainment, and gasoline stations. S. 933 goes well beyond such coverage, encompassing virtually all elements of the private sector as "public accommodations" or "potential places of employment," except religious organizations and entities controlled by religious organizations.

B. Title II provides only for injunctive relief in Attorney General actions; this bill, as mentioned earlier, permits recovery of monetary damages and huge civil fines in Attorney General actions.

Thus, it is inconsistent for the opponents of a small business exemption to rely upon Title II as the basis for their opposition when they have so readily departed from that parallel statute in other important respects.

2. In any case, compliance with Title II of the 1964 Civil Rights Act imposes no costs—it simply requires admitting and serving persons without regard to their color, ethnicity, or religion. As mentioned earlier, compliance with S. 933 can result in costs to covered entities. This difference between Title II and S. 933 alone justifies a small business exemption in public accommodations.

I favor an exemption of small businesses from the prohibitions and obligations in the public accommodations provisions of the bill, i.e., provisions relating to a business's existing facilities and general policies. I would not, however, exempt *any* public accommodation from the requirement that its new facilities be accessible. The cost of accessibility to a new facility when "built-in" to the plans and construction of such a new facility is not burdensome. But for businesses in the operation of their existing facilities and in the provision of auxiliary aids and services, modifications of policies, procedures, and criteria, a small entity exemption is appropriate.



I also believe that even with an exemption for small businesses, the marketplace will exert pressure on small businesses which will lead to increased accessibility. When a small business operator sees a larger competitor gain customers with disabilities because the latter business is accessible, the small business operator is likely to take steps it can afford to get some of those customers—even if those steps don't meet every single requirement of this title—without exposure to the costs of compliance reviews and litigation.

With this voluntary activity, the requirement that *all new* facilities be accessible, and the full coverage of all "public accommodations" other than small businesses, I believe we can provide genuine access to public accommodations for persons with disabilities, while assuring that we do not overly burden small businesses in America.

## II. EXCESSIVE PENALTIES AGAINST PUBLIC ACCOMMODATIONS

Under Title II of the 1964 Civil Rights Act (hereinafter "Title II"), as mentioned earlier, a private plaintiff can obtain injunctive relief and attorneys fees. The Attorney General can obtain injunctive relief. No monetary damages or civil penalties are available in either action.

Under S. 933, in an action for a violation of the public accommodations title, a private plaintiff can obtain an injunction and attorneys fees. I believe such relief, paralleling that of Title II, is appropriate.

But, in an Attorney General action under this bill the court can award not only an injunction, but also civil penalties of up to \$50,000 for a first violation, and up to \$100,000 for subsequent violations. Further, the court can award monetary damages to aggrieved persons when requested to do so by the Attorney General. This relief is excessive and unjustifiable.

The threat of litigation, its cost to covered entities, the added expense of paying the plaintiff's attorneys fees in private litigation, and marketplace factors are all powerful incentives for a business to comply with this bill in the first instance.

Moreover, if an entity is in noncompliance, injunctive relief is significant. An injunction requires the offending entity to cease its discrimination. If a ramp must be put in, a bathroom made accessible, or policies changed, pursuant to the entity's duties under the bill's public accommodations provisions, a court can order such relief.

Everyone knows that 25 years ago black people and other racial and ethnic minorities were routinely denied the opportunity to eat, to lodge, and to be entertained in places they could afford. Today, while there are still instances of racial and ethnic discrimination in public accommodations, we face an entirely different situation. The public accommodations covered by Title II are now essentially open on a nondiscriminatory basis. This resulted largely from Title II's enactment, with the injunctive relief and attorneys fees enforcement scheme previously described.

Yet, relief in an Attorney General action against a public accommodations under this bill goes well beyond the relief available in an Attorney General action under Title II.

Ironically, a private party, in his own action, cannot obtain monetary damages for himself. The court can award monetary damages, however, to an aggrieved person, in an Attorney General action.

There is a further anomaly in the bill. The bill subjects state and local governments to the remedies available under Section 505 of the Rehabilitation Act of 1973. Under Section 505, a federal agency, in an enforcement action, may either terminate federal aid to the part of a covered entity where the discrimination occurs or it may refer the case to the Department of Justice for injunctive relief. Civil penalties are not recoverable by the federal government in an enforcement action. Thus, in an Attorney General action, state and local governments, with their enormous tax resources, are subject to lesser penalties than the private sector, which is not supported by tax revenues or, for the most part, federal aid. The potential for a sole proprietor, a mom-and-pop business, or any other business to be more harshly sanctioned than a state or local government in an Attorney General action requires further consideration.

Our purpose here should not be punitive. Providing for monetary damages and huge civil penalties in Attorney General actions is excessive. To the extent we are trying to provide access by enacting this bill, since such access can impose costs on covered entities, rather than penalize a public accommodation by imposing monetary damages and huge civil penalties, we should keep the money available to the entity for use in providing access pursuant to the injunctive relief.

Proponents of the stiff remedy provisions in S. 933 assert that it parallels remedies now available in an Attorney General action under the Fair Housing Act, as amended last year. This analogy, however, is unpersuasive.

In the field of housing, the original remedies of the 1968 Fair Housing Act proved inadequate to the task of rooting out racial and ethnic discrimination in housing as quickly as hoped. Why? In my opinion, it is because housing discrimination is probably the most persistent form of racial discrimination in the nation today. Thus, toughening the penalties for such discrimination in 1988 made sense and I supported the effort to do so.

But the record in the public accommodations area is much different. As mentioned earlier, the Title II penalties—injunctive relief and attorneys fees—have been adequate to work a revolution of equal opportunity.

If the Fair Housing Amendments Act of 1988 had not added disability discrimination to the list of prohibited conduct under the Fair Housing Act, and a ban on housing discrimination on the basis of disability was being added in this bill, the use of Fair Housing Act remedies for such housing discrimination would be appropriate. It is inappropriate, however, to use the Fair Housing Act, rather than Title II of the 1964 Civil Rights Act, as the analogue for the remedies in the public accommodations context in this bill.

I note that, with respect to employment discrimination, S. 933 uses the remedies available under the parallel civil rights statute,



Title VII of the 1964 Civil Rights Act. Unfortunately, this parallelism was not maintained with respect to public accommodations.

I prefer to retain such parallelism in remedies. I am prepared, however, to break the parallelism with Title II and to consider a more modest enforcement scheme in this area that goes beyond Title II relief but is more reasonable than the provision currently in the bill.

### III. THE BILL'S THREAT TO THE PRIVATE BUS TRANSPORTATION INDUSTRY

The bill applies to transportation services "provided by a privately operated entity that is primarily engaged in the business of transporting people," except for air carriers. Section 304(a). This coverage includes private rail, limousine, taxi, and bus companies.

I am especially concerned about this bill's impact on the private bus transportation industry. The bill imposes a variety of requirements on these companies, including:

1. The obligation to make reasonable modifications in policies, practices, and procedures, unless to do so would fundamentally alter the company's activities. Section 304(b)(2)(A).

2. The obligation to provide auxiliary aids and services to persons with disabilities, unless to do so would cause an undue burden or fundamentally alter the company's activities. Section 304(b)(2)(B).

3. The obligation to remove "transportation barriers in existing vehicles \* \* \* where such removal is readily achievable." This obligation does not include the addition of a lift. Section 304(b)(2)(C).

4. Where the removal of a barrier described in paragraph 3 is not readily achievable, an obligation "to make [the entity's] goods, services, facilities, privileges, advantages available through alternative methods if such methods are readily achievable." Section 304(b)(2)(C).

I favor these provisions.

The truly onerous provision, however, is the requirement that all small bus companies must purchase or lease all new over-the-road buses with lifts six years after the bill's enactment; large bus companies must do so beginning five years after enactment. In the meantime, ironically having imposed this major requirement on the private bus transportation industry, the bill requires a three-year study to determine whether this requirement is, in effect, feasible. The requirement, however, is not contingent on the results of the study—it remains in place under this bill even if the study shows that the requirement is excessive.

The bill, in its present form, presents the strong likelihood that private intercity and charter and tour bus service will be seriously curtailed soon after the bill's new bus requirements become effective, if not virtually eliminated at some point thereafter. The stakes are that high.

Unlike state and local government mass transit, which is heavily subsidized by the federal government, private transportation companies receive virtually no federal aid. Private companies provide virtually all of the intercity bus transportation in the country. There are well over one thousand such private, intercity bus companies, such as Greyhound, Gold Line, East Coast Parlor, and Peter

Pan. Some of these companies provide two kinds of services: over the road regular route service—that is, scheduled service between communities—and charter and tour services. Other companies provide only charter and tour services.

These companies serve about 10,000 communities, most of which have no other intercity transportation available to them. The number of communities served has been declining in the last 30 years. According to an Interstate Commerce Commission staff analysis, there was a net loss of nearly 3,400 communities receiving intercity bus service between 1982 and 1986 alone. Ninety percent of the communities losing this service had populations of less than 10,000. This industry operates on a low profit margin. In many rural areas, including in Utah, this private bus service is the only available intercity transportation. There is only token Amtrak service available. Intercity buses provide transportation for those who need a low cost transportation alternative.

The requirement that all new buses have wheelchair lifts would quickly accelerate the loss of private, intercity bus service to our nation's communities, if not entirely end such service, according to the American Bus Association, United Bus Owners of America, and Greyhound (the largest company). Delaying this result by five or six years, in the hope an efficient and economical lift will appear on the scene, is small comfort.

A lift for an intercity bus is more expensive than for an intracity bus, such as the Metrobuses used in the District of Columbia, because with the baggage compartment and other differences, access to the intercity bus is higher off the ground—as much as four or six feet, rather than one foot for an intracity bus.

The added costs for new buses for these private companies include not only the cost of the lift but widening the aisles and making the bathrooms accessible. There are maintenance costs—and there is little experience with maintenance of intercity bus lifts. There will be a loss of as many as four seats, which especially hurts bus companies during their peak periods, such as holiday periods. Moreover, particularly in rural areas, these companies are successful because of their package express service. The room available for carrying such packages, however, is reduced in lift-equipped buses.

Even if the least expensive lift is used on all new buses—and this is, I am told, a lift which has had little use in this country and one which not all bus companies might feel is suited to their operations—the cost of this provision is unreasonable. Indeed, I understand that the principal basis for this provision is information from the Regional Transportation District of Denver, Colorado. According to the Department of Transportation, however, Denver has only 17 buses which use a "less expensive" lift developed in Germany. I understand these buses have been in use in Denver for about one year. Moreover, according to the Department of Transportation, Denver uses these buses on one-way routes of less than 30 miles. This usage is atypical for the private bus industry as a whole, which consists of some 20,000 buses which travel far greater distances on trips.

Representatives of the private bus transportation industry have stated that their lowest annual cost estimate for the bill's require-



ment regarding new buses, which includes lift and accessible restroom installation, loss of revenue seats for lift and restroom accessibility, maintenance costs, and training costs would be so high as to seriously threaten the viability of the private bus transportation industry. This lowest annual cost estimate is based on a cost of \$10,100 per new bus for each year its service, and assumes a 10-year life span for the industry's 20,000 bus fleet. In other words, under this analysis, each new bus will cost a company \$101,000 over the life of the bus. I note that representatives of the industry believe these estimates are unrealistic and actual costs will be higher.

The Committee heard virtually no testimony on this vital issue.

I, along with proponents of the present provision, can point to correspondence from officials of the Denver system and the American distributor of the lift in question citing a variety of different figures and costs related to wheelchair accessibility for these over-the-road buses. Following the hearings on the bill, the cost figures have been flying back and forth concerning costs associated with the lift which has recently begun to be used in Denver. The dispute over the utility of any particular lift and its costs are precisely why a study is most appropriate.

I support a requirement that bans discrimination based on stereotypes against persons with disabilities in their use of privately operated buses. I also support a requirement that private bus companies make reasonable accommodations to the needs of persons with disabilities with respect to their current bus fleet.

The Committee, however, simply has not been presented with enough clear testimony and data to know what is reasonable with respect to requirements such as lifts on new buses purchased or leased by the private bus industry. That is why a study of private bus accessibility, followed by Congressional action based on the study, is the most sensible course of action with respect to any future requirements, such as lifts, concerning new buses.

It might be suggested that this bill will have no significant impact on bus companies for the next five years. Even this suggestion is doubtful. In an August 1, 1989, letter to Roger Porter, domestic policy advisor to the President, Theodore Knappen, a Senior Vice President at Greyhound Lines, Inc., opposed this provision of S. 933. He wrote, "Greyhound Lines Inc. is a new company, which is the result of the merger of two failing bus systems, Greyhound and Trailways. We are highly leveraged with \$375 million in debt \* \* \* Greyhound "lost \$17 million last year and will be marginally profitable this year. The annual cost of full implementation of S. 933 will be at a minimum, \$40 million. Even if the startup is delayed for five years, the financial institutions upon which we rely are not likely to continue to support us in light of this burden. The system will inevitably crumble with the marginal rural service being the first to go. I should add that most small bus companies are in a similar financial situation."

In summary, the current provision regarding the private bus transportation industry's purchase and lease of readily accessible new buses rests on inadequate and contested data and runs a serious risk of unintentionally causing devastating effects in the private bus industry. The prudent course is to study the issue first

and then to impose appropriate requirements based on the study—not the reverse, as currently provided for in the bill.

ORRIN G. HATCH.

*[Faint, mostly illegible text, likely bleed-through from the reverse side of the page.]*



ADDITIONAL VIEWS OF SENATOR COATS

I am pleased to have been able to vote in favor of reporting S. 933 favorably out of Committee despite certain problems that I see in this legislation. Full and equal protection under the law for persons with disabilities is long overdue. Our society must no longer tolerate discrimination against any of its citizens, especially those with physical and mental impairments.

I believe that this landmark civil rights bill, despite its flaws, will accomplish its goals. The ADA bill is comprehensive, far-reaching, fair and tough. It has real teeth in its enforcement provisions. I believe that it will ensure that Americans with disabilities will no longer face discrimination in employment, in public accommodations, in public services, transportation or communications services. I earnestly believe that the provisions of S. 933, together with the force of Judaeo-Christian good will and a healthy and vibrant free market economy, will help bring all disabled persons into the mainstream of American life.

I am pleased that my amendments relating to drug and alcohol abuse and religious institutions were substantially incorporated into the ADA bill during the lengthy negotiations that resulted in the radically amended, much improved version of S. 933 that the Committee finally approved. Despite certain ambiguities that remain in the bill, I am satisfied that S. 933 will ensure that employers can implement a zero tolerance policy and maintain a drug-free workplace. Section 103(c) of Title I is intended to make clear that an individual applicant or employee who currently uses alcohol or illegal drugs is not protected by the ADA's nondiscrimination provisions. Similarly, this section makes clear that an individual who is an alcoholic or current or past user of drugs—illegal or legal—can be held to the same standards of job performance and behavior as other individuals, even if the unsatisfactory performance or behavior is related to the drug use or alcoholism. At the same time, and consistent with the Rehabilitation Act of 1973, it is intended that rehabilitated alcoholics and drug users will be protected under this law. I believe that the bill's language and accompanying report make clear that an employer can subject job applicants and employees to drug urinalysis or other testing to determine the unlawful use of drugs or the presence of alcohol, and can refuse to hire job applicants and can discipline or discharge employees who are found to be using illegal drugs or alcohol, without being charged with discrimination.

Having stated my support for S. 933 and my intention to work for its speedy passage, I also wish to associate myself with the additional views of Senator Hatch. I share many of the concerns he has expressed so clearly, particularly with regard to the need for a small business exemption and the problems facing the bus industry as a consequence of the costly requirements imposed on both by this legislation. I am hopeful that the spirit of compromise and determination which resulted in the amended legislation that we voted out of committee will carry the day, so that these remaining problems can be worked out to the satisfaction of all parties, and

this legislation, which has White House support, will be enacted into law.

DAN COATS.

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# AMERICANS WITH DISABILITIES ACT OF 1988

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**JOINT HEARING**  
BEFORE THE  
SUBCOMMITTEE ON THE HANDICAPPED  
OF THE  
COMMITTEE ON  
LABOR AND HUMAN RESOURCES  
UNITED STATES SENATE  
AND THE  
SUBCOMMITTEE ON SELECT EDUCATION  
OF THE  
COMMITTEE ON EDUCATION AND LABOR  
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

**S. 2345**

TO ESTABLISH A CLEAR AND COMPREHENSIVE PROHIBITION OF  
DISCRIMINATION ON THE BASIS OF HANDICAP

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SEPTEMBER 27, 1988

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**Serial No. 104**

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Printed for the use of the Committee on Labor and Human Resources and the  
House Committee on Education and Labor

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AMERICANS WITH DISABILITIES ACT OF 1988

TUESDAY, SEPTEMBER 27, 1988

U.S. SENATE, SUBCOMMITTEE ON THE HANDICAPPED, OF  
THE COMMITTEE ON LABOR AND HUMAN RESOURCES,  
U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON  
SELECT EDUCATION, OF THE COMMITTEE ON EDUCATION  
AND LABOR,

Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room SH-216, Hart Senate Office Building, Senator Tom Harkin (chairman of the subcommittee) presiding.

Present: Senators Harkin, Kennedy, and Weicker, Representatives Owens, Coelho, Martinez, and Jeffords.

OPENING STATEMENT OF SENATOR WEICKER

Senator WEICKER [presiding]. The joint committee hearing of the U.S. Senate and the U.S. House of Representatives on the Americans With Disabilities Act will come to order.

It is a great pleasure to welcome my colleagues from the House, to welcome all those in attendance, whether as observers or as witnesses. This is a historic occasion.

I have a prepared statement, which will be submitted in its entirety for the record. I would just like to make the following comments.

I, like you, have lived through weeks, indeed months, of those earth shattering, heartstopping issues such as patriotism and Pledges of Allegiance and all those things which are of deep concern to America. Somehow, I have heard absolutely nothing about 36 million Americans with disabilities.

I think it is to the credit of both candidates, both the Governor and the Vice President, that they support the legislation that is the subject matter of this hearing. Yet, I think the time has come for the Nation, never mind the candidates, to insist that we start to discuss the realities of the world around us. Those realities include 36 million of our neighbors who have particular problems with discrimination.

As is well known I have spoken in the past, not only as a U.S. Senator, but as the father of a disabled child. Within the last several weeks, I find I have another disabled child, this time a learning disabled child. As we grow older, the discrimination that takes place against the ailments of infirmity become more obvious and more frequent.

As new situations confront us, such as AIDS, discrimination once again raises its head, a discrimination which so many of you in this



room know all too well, insofar as your particular disabilities are concerned.

Now, the agenda of the Nation is going to be set in the next several weeks, not after the election is over. If both parties and their candidates can tiptoe off the stage without mentioning the Americans With Disabilities Act and its passage immediately, in the next Congress, if they can do that then there will be no Americans with Disabilities Act enacted by the next Congress. If there is silence now, there will be silence later. If there is indifference to discrimination now, there will be indifference later.

This is the moment in the time of all Americans when they set the priorities and the goals of this Nation. Foremost among them should be the fact that for 36 million, and growing in number, Americans, the time has come to end all discrimination, in whatever form. If we do that, that is a patriotism of which we can all be proud.

[The prepared statement of Senator Weicker follows:]

Opening Statement  
Senator Lowell Weicker, Jr.  
September 27, 1988

I am very pleased to join my colleagues this morning in convening a joint hearing on a subject of deep concern to me: discrimination on the basis of disability.

In its 1986 report, *Toward Independence*, the National Council on the Handicapped noted: "People with disabilities have been saying for years that their major obstacles are not inherent in their disabilities, but arise from barriers that have been imposed externally and unnecessarily." That report went on to recommend that "Congress... enact a comprehensive law requiring equal opportunity for individuals with disabilities, with broad coverage and setting clear, consistent, and enforceable standards prohibiting discrimination on the basis of handicap."

Earlier this year, in direct response to the Council's recommendation, Senator Harkin and I introduced S.2345, the Americans with Disabilities Act. Drafted principally by the Council, this legislation would prohibit discrimination against people with disabilities in employment, public accommodations, transportation, communication and public services. And it goes a step further in describing specific methods by which such discrimination is to be eliminated.

The bill has strong, bipartisan backing in both houses of Congress, including 25 cosponsors in the Senate and 114 in the House. It has been endorsed by more than 50 national organizations representing people with a wide variety of disabilities. It is also supported by the Leadership Conference on Civil Rights, an umbrella group of 185 organizations active in the area of civil rights.

As a prelude to further Congressional action on S.2345, we look forward this morning to hearing expert testimony on the types of discrimination experienced by people with disabilities. Most of our witnesses came by their expertise the hard way. They know first-hand what it is like to be shunned in the mainstream and shunted off into the margins of American life. They know first-hand that a disease like AIDS or a condition such as cerebral palsy can not only rob individuals of their health but also be used to deny them a table in a restaurant, a job, a home, and -- finally -- any shred of human dignity.

This hearing is also about fighting back and the rewards reaped as a consequence. We will learn of the difference early intervention has made in the life of a mentally retarded youth. We will revisit the triumph experienced by the students at Gallaudet when they succeeded in their battle for a deaf university president.

Their stories offer us a glimpse of a nation changing for the better. But the transformation has been much too long in coming and is proceeding at too slow a pace. It took the Civil Rights Act of 1964 and subsequent statutes to make plain this nation's opposition to racism, sexism and discrimination based on a person's age. It will take the Americans with Disabilities Act to set the record straight as to where we stand on discrimination based on disability.



Senator WEICKER. I understand that Senator Harkin, who is the chairman of the subcommittee and cosponsor of the legislation, is here.

But first, however, we will let Congressman Owens proceed, and then we will get to Senator Harkin.

**STATEMENT OF HON. MAJOR R. OWENS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. OWENS. Thank you, Senator.

On behalf of the Subcommittee on Select Education of the Education and Labor Committee, I want to thank Senator Harkin and his colleagues for hosting this very important hearing. I have a brief opening statement.

For some of us, the Americans With Disabilities Act of 1988 represents the next giant step in the American civil rights movement. This legislation grants full rights to Americans with disabilities and moves our great Nation from a respectable position of official compassion for those with impairments to a more laudable position of empowering disabled Americans.

This legislation grows out of a vast movement for disability rights and empowerment, a movement made highly visible this spring when the students and faculty of Gallaudet University successfully campaigned for the installation of the first ever deaf president, and more deaf board of directors members of the university. One of the campaign student leaders is a witness in this morning's hearing, and he will testify as a participant on the third panel.

During the Gallaudet campaign, a faculty member characterized that historic effort as "our Selma." As of 1965 the Voting Rights Act was the legislative outgrowth of the 1965 civil rights march from Selma to Montgomery, AL, the Americans with Disabilities Act is part of a journey toward full empowerment for Americans with disabilities.

The measure prohibits discrimination on the basis of disability in such areas as employment, housing, public accommodations, travel, communications, and activities of state and local governments. To guide the journey toward full empowerment of disabled Americans, I have, in my capacity as chairman of the House Subcommittee on Select Education, created a task force on the rights and empowerment of Americans with disabilities.

I have appointed Justin Dart, a former Rehabilitation Services Administration Commissioner, to chair the task force. Mr. Dart is one of the most committed advocates for disabled Americans in this country, and he has made several unique contributions to the field of disability rights.

The task force and the selection of its membership was designed to be broadly representative of people with various disabilities. It has convened forums of public meetings of disabled consumers, rehabilitation professionals, parents, advocates, and Government officials in 44 States. Since May 23 of this year, over 500 people have been present at the forums and 10,000 people have attended the public meetings. Many of them have presented publicly aspects of the discrimination that they have faced on the basis of disability.

The task force is preparing an interim report documenting evidence of discrimination on the basis of disability in America, which will be ready by late October. An executive summary of the interim report is currently available for distribution. The final report of the task force is scheduled for release next year.

The task force is also recommending options for short and long term actions related to Congress, the executive branch, and the public. The information collected by the task force will be invaluable to my subcommittee and to Congress as a whole, as we consider the Americans with Disabilities Act and subsequent legislation to implement the integration of disabled Americans into the production mainstream of our society.

In the America of 1988, people with disabilities understand that democracy and self-help are synonymous. Americans with disabilities are mobilizing to help themselves. Power is their greatest need. With empowerment, all problems can be resolved, all public officials and programs can be held accountable.

Passage of the Americans with Disabilities Act of 1988 will greatly help in the empowerment of disabled Americans. With the power and authority of their Government fully behind them, combined with their own energies, Americans of disabilities can become the masters of their own fates.

[The prepared statement of Congressman Owens follows:]



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**Congressman  
MAJOR OWENS  
NEWS RELEASE**

FOR IMMEDIATE RELEASE

Contact: Margaret Summers  
(202) 225-6231

**OWENS SAYS DISABILITY RIGHTS ACT WILL HELP "EMPOWER" DISABLED AMERICANS**

"The Americans with Disabilities Act of 1988 represents the next giant step in the American civil rights movement," says Congressman Major Owens (D-NY), Chairman of the House Subcommittee on Select Education. The Subcommittee, along with the Senate Subcommittee on the Handicapped, will hold a hearing on the legislation Tuesday, September 27, 10 a.m., Room 216 in the Hart Senate Office Building. Among the scheduled witnesses are Gregory Hlibok, a student leader of Gallaudet University demonstrations for a deaf president and deaf board members earlier this year, and Jade Calgory, a star of the film "Mac and Me" and the first disabled child to be featured in a commercial movie.

The disability rights measure prohibits discrimination on the basis of disability in such areas as employment, housing, public accommodations, travel, communications, and activities of state and local governments. It covers employers engaged in commerce who have 15 or more employees; housing providers covered by federal fair housing laws; transportation companies; those engaged in broadcasting or communications; and state and local governments. Congressman Owens notes that the Act will not repeal Sections 503 and 504 of the Rehabilitation Act of 1973 and all regulations issued under those sections will remain in full force and affect. Enforcement procedure for the Act includes administrative remedies, a private right of action in federal court, monetary damages, injunctive relief, attorney's fees, and cutoffs of federal funds.

The measure is being sponsored in the House by Congressmembers Owens, Tony Coelho (D-Calif.), and Silvio Conte (R-Mass.). Its Senate sponsors are Tom Harkin (D-Iowa) and Lowell Weicker (R-Conn.).

(MORE)

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In addition to the measure, Congressman Owens, in his capacity as the House Select Education Subcommittee Chairman, has created a Task Force on the Rights and Empowerment of Americans with Disabilities "to guide the journey toward full empowerment of disabled Americans." He appointed Justin Dart, a former Rehabilitation Services Administration Commissioner, to chair the Task Force. "Mr. Dart is one of the most committed advocates for disabled Americans in this country," says Congressman Owens, "and he has made several unique contributions to the field of disability rights."

The Task Force is gathering evidence of discrimination against disabled Americans, and is seeking examples of successful local, state, national and international efforts to overcome barriers to self-realization of disabled people. It is also recommending options for short and long-term actions relating to Congress, the Executive Branch, and the public. "The information collected by the Task Force will be invaluable to my Subcommittee and to Congress as a whole, as we consider this and subsequent legislation to implement the integration of disabled Americans into the productive mainstream of society," says Congressman Owens.



### OPENING STATEMENT OF SENATOR HARKIN

Senator HARKIN [presiding]. Thank you very much, Congressman Owens.

Again, I want to welcome all of you here. I want to also welcome my colleagues here. I would say without hesitation that you see in front of you really the vanguard in the Congress of those who care about and fight for Americans with disabilities. Senator Kennedy, Congressman Coelho, Congressman Owens, Senator Weicker, and Congressman Jeffords. I am really proud that you are all here.

We are holding this joint hearing on the pervasive problem of discrimination in our Nation against Americans with disabilities. This hearing will go down, I believe, in history as another significant step in Congress' effort to ensure equal opportunity for our 42 million Americans with disabilities.

People with disabilities, like racial and ethnic minorities and women, are entitled to obtain a job, enter a restaurant or hotel, ride a bus, listen to and watch the TV, use the telephone, and use public services free from invidious discrimination and free from policies that exclude them solely on the basis of their disability. Every American must be guaranteed genuine opportunities to live their lives to the maximum of their potential.

Almost a quarter of a century ago, Congress took the historic step of passing the Civil Rights Act of 1964 which, among other things, bars discrimination against persons on the basis of race, color, and national origin by recipients of Federal aid, and in such areas as employment and public accommodations. Americans with disabilities were not protected by this landmark legislation.

In 1968, the Congress and the President took another historic step when it passed the fair housing legislation barring discrimination in housing. Once again, people with disabilities were not extended protections by this legislation.

In 1973, some 15 years ago, the Congress finally adopted section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicaps. However, this legislation only prohibits discrimination by recipients of Federal aid. It does not cover discrimination by private employers; nor does it prohibit discrimination in public accommodations.

Thus, today under our Nation's civil rights laws, an employer can no longer say to a prospective employee, "I will not hire you because of the color of your skin, or because you are a woman, or because you are Jewish." If they did, a person could march over to the courthouse, file a law suit, win, and collect damages and attorney's fees.

Yet, to this day, nothing prevents an employer or an owner of a hotel or restaurant from excluding Americans with disabilities. The courthouse door is still closed to Americans with disabilities.

On April 28 of this year, several Senators and Representatives introduced the Americans With Disabilities Act of 1988 and took the first step in opening up the courthouse door to Americans with disabilities. The Americans With Disabilities Act prohibits discrimination against persons with disabilities in areas of employment, public accommodations, transportation, communications, and public services.

It is my expectation that this legislation will become the law of the land during the 101st Congress. However, the road to enactment will be filled with potholes and roadblocks. But if we stick together as a community, and we work with the groups representing employers and the hotel, restaurant, communications, and transportation industries, I believe we can succeed.

We have momentum on our side. When this Administration vetoes the Civil Rights Restoration Act, this Congress overrode it overwhelmingly. When the Fair Housing Act Amendments came before the Congress, we worked closely with the realtors and the homebuilders. We put together a broadbased coalition to get this passed. Again, overwhelmingly, we did it.

We can do the same with the Americans With Disabilities Act. It is good legislation, important legislation, needed legislation, and it is the right thing to do. Almost a quarter century after the passage of the Civil Rights Act of 1964, it is long overdue.

[The prepared statement of Senator Harkin follows:]



OPENING STATEMENT OF TOM HARKIN (D. Iowa), CO-CHAIRMAN  
JOINT HEARING ON DISCRIMINATION ON THE BASIS OF HANDICAP  
SENATE SUBCOMMITTEE ON THE HANDICAPPED  
HOUSE SUBCOMMITTEE ON SELECT EDUCATION  
SEPTEMBER 27, 1988

The Senate Subcommittee on the Handicapped and the House Subcommittee on Select Education are proud to hold this joint hearing on the pervasive problem of discrimination in our Nation against Americans with disabilities. I would like to extend a warm welcome to the witnesses and to the hundreds of persons in the audience. This hearing will go down in history as another significant step in Congress' effort to ensure equal opportunity for our 42 million Americans with disabilities.

People with disabilities, like racial and ethnic minorities and women, are entitled to obtain a job, enter a restaurant or hotel, ride a bus, listen to and watch the TV, use the telephone, and use public services free from invidious discrimination and policies that exclude them solely on the basis of their disability. Every American must be guaranteed genuine opportunities to live their lives to the maximum of their potential.

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We have momentum on our side. When the Administration vetoed the Civil Rights Restoration Act, this Congress overrode that veto overwhelmingly. And, when the Fair Housing Act Amendments came before this Congress, we worked closely with the realtors and the homebuilders and we put together a broad-based coalition to get this landmark legislation passed, again overwhelmingly.

We can do the same with the Americans With Disabilities Act. It's good legislation, important, needed, it's the right thing to do—and almost a quarter-century after the passage of the Civil Rights Act of 1964, it is long overdue.

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For further information, contact Pam McKinney at 202-224-3254, or Bobby Silverstein at 202-224-6265.

Senator HARKIN. I would like to recognize Congressman Coelho now and welcome him to this hearing.

STATEMENT OF HON. TONY COELHO, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COELHO. Thank you, Mr. Chairman.

First off, Mr. Chairman, I would like to thank you and Chairman Owens for holding this hearing. As you and the chairman have both indicated, this is a historic hearing. I think it starts us down a path that has been needed for years.

As you have all indicated, there are approximately 36 million, some people say 43 million, Americans with disabilities that basically do not have their basic civil rights.

As one with a hidden disability, as one who openly discusses my epilepsy, I know what discrimination is. I am not going to go into detail of what is in this bill, because that has already been discussed and will be discussed more. I am only going to discuss briefly with my colleagues, and with those of you in this room, as to why I feel so strongly that this legislation is needed.

I have said repeatedly over the years, please do not dwell on the things that I cannot do, help me do the things that I can do. I can be a wonderfully productive American citizen if you will help me do that. Every American citizen, regardless of their ability or disability cannot do certain things. Just because those of us who are disabled are limited in our ability of doing certain things, does not mean that we are unable of being productive citizens.

It is time that our Government recognizes our abilities and gives us the dignity to do what we can do.

As a young man, I developed seizures, later diagnosed as epilepsy. For many years, for 5 years, as I had my seizures on a regular basis, I did not know what they were. I went to every doctor that you could think of. I also went to three witch doctors because I was supposedly possessed by the devil. My Republican colleagues think I am, but others believed I was. [Laughter.]

As I went to college, I was an achiever. I got outstanding grades in high school and outstanding grades in college. I was student body president in high school and student body president in college. I was outstanding senior in college. I was sought after by different businesses and groups, to be involved in their activities and be employed by them. I had decided that I wanted to be an attorney.

In my senior year, I changed my mind. I decided I wanted to become a Catholic priest. As I graduated with honors, I then had a physical exam in order to enter the seminary. The physical exam pointed out that these seizures that I had been having for 5 years meant that I had epilepsy.

I always remember very well what happened, in that I walked to the doctor's office from my car, sat in the doctor's office, was told about my epilepsy, walked back to my car, got back in my car and drove back to my fraternity house and I was the same exact person. But only in my own mind because the world around me changed.



My doctor had to notify the legal authorities of my epilepsy. My church was notified and immediately I was not able to become a Catholic priest, because my church did not, at the time, permit epileptics to be priests. My driver's license was taken away, my insurance was taken away. Every job application has the word epilepsy on it and I marked it, because I was not going to lie. I could not get a job.

My parents refused to accept my epilepsy. I became suicidal and drunk by noon. The only reason is because I had not changed as a person. The only reason is that world around me had changed. The light had been turned off, the light of opportunity, the light of hope. Not until a priest friend of mine turned me over to a man of hope by the name of Bob Hope did the light get lit again.

I am here today, serving in the capacity that I serve, because some people believe not because my Government protected me, not because my Government protected my basic civil rights.

I am a major advocate of this bill because I want to make sure that other young people, as their looking for hope, as they believe that the system should work for them, have that hope, have that opportunity.

What happened at Gallaudet University was not only an inspiration, I am sure, to the hearing impaired. What happened at Gallaudet University was an inspiration to all of us with disabilities, in that if we ourselves believe in ourselves and are willing to stand up we can make a difference.

That is what this bill is all about; 36 million Americans deciding it is time for us to stand up for ourselves, to make a difference, to say that we want our basic civil rights also. We deserve it.

Give us an opportunity to do what we can do, do not keep telling us what we cannot do.

I thank my colleagues.  
[The prepared statement of Congressman Coelho follows:]

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House of Representatives  
Office of the Majority Whip

THE AMERICANS WITH DISABILITIES ACT OF 1988  
Statement by Rep. Tony Coelho  
September 27, 1988

The joint hearing we are participating in today represents another important step in the struggle to secure civil rights protections for Americans with disabilities, our nation's largest minority. The time has come to send a message across America that people with disabilities can no longer be locked out, stigmatized or ignored. The time has finally come to end the discrimination 43 million Americans with disabilities face as they strive to take their rightful place in every aspect of our society.

I am honored to co-chair today's hearing because I belong to this minority. We are a diverse group -- we use wheelchairs, we are blind, we are deaf, many of us have hidden disabilities - epilepsy, cancer, HIV infection, diabetes, mental illness. We have lived in the White House. We live in institutions and nursing homes. We live in large cities and in rural communities. We work in Congress and we work at McDonald's. Many of us aren't permitted to work at all.

No matter our what our disability is, where we live, or what we do, we all share the common experience of discrimination. And we all share a common dream: to live wherever we choose, to work and achieve whatever career goals we strive toward, to communicate with our neighbors, to travel where we choose, and, like all other Americans, to freely use and enjoy public accommodations in our communities.

The Americans with Disabilities Act is a major step towards achieving our dream of equality. This act was developed by the National Council on the Handicapped, an independent federal agency appointed by President Reagan to investigate the status of disabled Americans. Over the past five years, the Council conducted innumerable hearings and forums across this country and reached the same inescapable conclusions again and again: barriers and discrimination, rather than the inherent physical or mental characteristics of persons with disabilities themselves, are to blame for the staggering unemployment and isolation of these citizens, our nation's largest minority.

The Americans with Disabilities Act proposes a series of protections against discrimination which parallel existing civil rights statutes. In drafting this bill, the Council has drawn also on the successful model used by the federal government in eliminating discrimination on the basis of handicap in federally-funded activities. This vision of the National Council on the Handicapped, that existing civil rights could and should be extended to protect the disabled, has been shaped by the input of hundreds of disabled Americans and parents of disabled children.

As the Council found, unfair discrimination is the daily experience of many of the 43 million Americans with disabilities. Every sphere of life is affected: housing, employment, recreation, transportation; even the ability to operate independently in the commercial sphere, or to vote, or to raise children. Our entire society has been inadvertently structured in a way that unnecessarily denies innumerable opportunities, great and small, to people with disabilities, in ways that are never even noticed by most Americans.



Simple daily tasks, like visiting the grocery store or the bank, going to a restaurant or a movie, using the telephone to report an emergency, taking the bus to the doctor, or even getting in and out of one's own home, can become monumental tasks or impossible barriers to overcome -- not due to the actual physical and mental conditions of disabled Americans, but due to prejudice, fears, and unnecessary obstacles which have been placed in their path.

Countless numbers of our fellow citizens who are veterans of foreign conflicts, have acquired a disability while defending their country, only to come home to a society that subjects them to discrimination and injustice, a society that shuns them merely because they are disabled. The architectural, communication and transportation barriers they face do not affect them and their families alone. Our entire society bears the economic burdens of this prejudice: dependency is expensive. It increases benefit entitlements and decreases productive capacity sorely needed by the American economy.

As I can tell you from my own experience with epilepsy, employment discrimination is one of the most pervasive problems affecting Americans with disabilities. Jobs are unfairly denied every day to thousands of capable people with epilepsy and other disabilities due to prejudice, stereotypes and groundless myths about our lack of abilities or because we are erroneously perceived to pose dangers to ourselves and others.

For example, I know one woman with epilepsy who was employed for nearly eight years as a secretary for a company. One day she had a seizure at work and was fired, simply because her employer felt that her co-workers should not have to work with someone like her.

Similarly, a young man with multiple sclerosis was fired from his job because he was unable to handwrite his reports even though he was perfectly capable of dictating them. Or, what of the veteran who lost a leg in Vietnam and was denied a job in a factory line even though he was totally able to perform the job?

These stories, sadly, are all true. Yet these individuals, like many other American citizens, have no remedy to challenge the denial of employment. They want to be productive, self-supporting and tax-paying participants in society, but they have been told that they cannot do so, for reasons that are irrational, illogical, and unjust. This bill gives these persons a remedy.

People with disabilities want to work. This has been confirmed by numerous studies, including the 1986 Lou Harris survey which found that two-thirds of the disabled people polled who are not employed said that they wanted to work. One-quarter of these Americans attributed their unemployment to employer discrimination and an additional 28 percent attributed it to transportation barriers.

The full and dramatic reality of this problem has been largely hidden, denied, and explained away. When a program, or a job, or a school, has excluded disabled people, or segregated them in a separate facility, this has been justified through the unchallenged myth of equating disability with inability. When taking stock of the status of unemployment in our society, the staggering level of disabled employment - 66 percent - is not viewed as a solvable problem, it's viewed as an inevitability. You hear things like, "Of course they can't work. They're disabled." This alleged self-truth has gone substantially unchallenged and is one of the most fundamental errors our society has ever made.

Equating disability with inability is false. In employment, for example, numerous studies have shown that employment for the disabled is restricted more by misconceptions, stereotypes, and generalizations about handicaps, unfounded fears about increased costs and decreased productivity, and outright prejudice, than by people's disabilities themselves. Overwhelmingly, the documentation shows that disabled workers equal or outperform non-disabled workers, without increasing insurance benefits or worker's compensation costs. We have allowed our discomfort with the handicapped, and our feelings of hostility toward them to create this gigantic and wasteful injustice.

Society has neglected to challenge itself and its misconceptions about people with disabilities. When people don't see the disabled among our co-workers, or on the bus, or at the sports field, or in a movie theater, most Americans think it's because they can't. It's time to break this myth. The real reason people don't see the disabled among their co-workers, or on the bus, or at the sports field, or in a movie theater is because of barriers and discrimination. Nothing more.

It is barriers and discrimination that have caused an "out of sight, out of mind" situation with disabled people. When housing is inaccessible and unavailable, the disabled have to stay at home, under the care of their families, or live in nursing homes and other institutions, rather than establishing and controlling their own households next door to you and me. When regular transportation is inaccessible, and transit services for the disabled are segregated, you won't see them on your bus or commuter train. When prejudice dictates that the handicapped can be productively employed only in separate sheltered workshops, you won't see too many in your workplace.

The exclusion and segregation of people with disabilities has had an insidious partner: the gloss of good intentions. An atmosphere of charity and concern has cloaked our ill-treatment of disabled people and permeated our excuses for denying them access to the full benefits of the complex fabric of modern American society. The institutions and the token van rides and the overprotective denials of employment have all been provided with the noblest intent.

While the charity model once represented a step forward in the treatment of persons with handicaps, in today's society it is irrelevant, inappropriate and a great disservice. Our model must change. Disabled people are sometimes impatient, and sometimes angry, but for good reason: they are fed up with discrimination and exclusion, tired of denial, and are eager to seize the challenges and opportunities as quickly as the rest of us.

It is time to stop the excuses and the veneer of good intentions. We must stop the cycle of separateness which hides the people with disabilities, and creates prejudice, which creates more separateness.

In the past, concerns about cost have been raised as an obstacle to our addressing this problem. Estimates of these costs are inflated. For example, when the implications of Section 504 of the Rehabilitation Act of 1973 were debated, universities and hospitals claimed that non-discrimination was absolutely beyond their financial means. We have now had regulations implementing Section 504 over 10 years. During that time, these institutions have not complained of financial difficulties due to accommodating the disabled.

I believe we will find that in the long run, ending discrimination will actually lower costs to our society as a whole. Maintaining discrimination is



expensive because discriminatory barriers keep people out of work, lowers our gross national product and our tax revenue and, what's more, swell benefits payments. Government studies have estimated that eliminating employment discrimination in even a narrow spectrum of jobs would add \$58 million to annual government revenues. A Department of Transportation study indicated that, with accessible transportation, SSI benefit savings due to increased employment would account for \$276 million a year. Statistics indicated that funds generated by eliminating handicap discrimination would return more than three dollars for every dollar spent. We as a nation stand to cash in quite a bit on the integration, and subsequent enhanced productivity, of people with disabilities.

The Americans with Disabilities Act addresses these basic areas: employment, transportation, public accommodations, public services and communication barriers.

In employment, this Act will make it illegal to deny job opportunities to qualified applicants on the basis of handicap. The Act will cover the same range of employment activities as those covered by Title VII of the Civil Rights Act of 1964.

In transportation, the Act will eliminate barriers by requiring new transportation equipment to be accessible to the disabled. This follows a national trend, in which the current federal mandate to provide useable public transportation for the disabled is being done through lift-fitted and otherwise-accessible equipment. The next step, barriers in existing equipment, will be dealt with by allowing phase-in periods. This way, transit systems will slowly become more and more accessible to the disabled without creating a burdensome cost to the transit districts. The bill provides that para-transit (separate, subsidized door-to-door van systems) can and should still be used, but not as a substitute for regular fixed-route service.

In mandating this particular configuration of transportation services, Congress will be affirming the consensus which is being reached in both the disability community and the transit community after a decade of much experimentation in how best to eliminate transportation barriers. An increasing number of cities large and small, including New York, Denver, Seattle, San Francisco, Tacoma, Johnstown, and Champagne-Urbana, have successfully integrated large numbers of disabled people into their entire transit systems. These cities serve as models to the rest of the country, illustrating how to maximize disabled ridership, minimize costs, and work harmoniously with the disability community.

The Act will prohibit discrimination in public accommodations covered by Title II of the 1964 Civil Rights Act. Also, it will prohibit discriminatory activities of state and local governments resulting from ordinances, laws, regulations, or rules. It includes the continued phase-in of closed captioning in television broadcasts, viewable by deaf and hearing-impaired watchers upon purchase of decoder. Such measures will begin to bring down the many barriers that are so debilitating to the disabled on a day-to-day basis.

The Americans with Disabilities Act of 1988 provides the vehicle through which we can address the critical problem of discrimination on the basis of handicap in our country. We must provide disabled citizens the same equality of opportunity which our nation values so highly. We must all work together toward the day when disabled people face no discrimination. I urge all my colleagues to join us in this fight.

Senator HARKIN. Congressman Coelho just again showed what we know around here to be true, that that testimony that comes from the heart is always the best testimony.

I would like to recognize our distinguished chairman of the Labor and Human Resources Committee, the Senator from Massachusetts, Senator Kennedy.

#### OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. Mr. Chairman, just for a moment, because we all want to hear the witnesses, I too want to commend you, Senator Weicker, Major Owens, Congressman Coelho, Congressman Jeffords, for holding these hearings.

I think, as you listen to those who have spoken today, you realize that there probably has not been a family in the country that has not been touched by some form of physical or mental challenge. You have heard some statements today, very moving statements of members of the family. That has been true in the Kennedy family, as well, a sister who is retarded, my own son who has lost a limb to cancer. I bet if you go across this country, there really is not a member of a family or an extended family that has not been touched.

This legislation will become law. I think those that have physical or mental challenge has to take heart by the actions that have been taken very recently in the Congress, with the Fair Housing Act and the Civil Rights Restoration Act. There is a movement and it is alive and it is growing. And it should grow.

This legislation will become law. It will become law not because of the people up here, although all of us want it to become law, but because of you all across this Nation, in the small towns and communities, in the plants and factories all across this Nation, that are really challenging our country to ensure that we are basically going to have an even playing field and we are going to eliminate the barriers that keep people out, so that people can become a real part of the American dream.

I just want to give the assurance to both Senator Harkin, who is the chairman of the Subcommittee on the Handicapped, and Senator Weicker, who has done such a great job in this area as well, that this will be the first order of business when the next Congress meets, assuming that we are all here.

Senator HARKIN. That is great news, the first order of business next year.

[The prepared statement of Senator Kennedy follows:]



STATEMENT OF SENATOR EDWARD M. KENNEDY  
ON S. 2345, THE AMERICANS WITH DISABILITIES ACT

For Immediate Release:  
September 27, 1988  
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Today marks the first day of hearings by the Senate Subcommittee on the Handicapped on the Americans with Disabilities Act. At the outset, I want to commend Senator Harkin and Senator Weicker for their leadership on this issue, and for their tireless support in working toward a more just society for the disabled and for all Americans.

The 100th Congress has already adopted two landmark bills to protect the rights of the disabled. The Civil Rights Restoration Act, enacted over the veto of the President, provides substantial protections for the handicapped against discrimination. And the Fair Housing Act of 1988 includes for the first time a series of provisions to bring the disabled within its far-reaching protections.

The Americans with Disabilities Act is the essential next step in our ongoing effort to guarantee that the 36 million physically and mentally challenged citizens of our nation enjoy the same fundamental rights as all other Americans. We recognize that enactment of a law does not necessarily end discrimination or prejudice in our society, but it is often the indispensable means of advancing toward that goal.

With the help of medical science and the commitment of growing numbers of concerned citizens in public and private life throughout the country, we are poised on the threshold of a new era of opportunity in our society for millions of fellow citizens who have been unfairly left out. We are beginning to learn that disabled people are not unable. The old barriers of fear and prejudice and ignorance are crumbling, and the Americans with Disabilities Act will speed the day when those ancient attitudes are finally and fully overcome, and disabled Americans enjoy the right to realize their full potential.

In 1973, Congress took the first step in ensuring that the civil rights of millions of Americans with disabilities are protected. Section 504 of the Rehabilitation Act has served as a symbol of equal citizenship for disabled Americans, an incentive for self-advocacy and community education -- and when necessary, a basis for court action. The legislation we are discussing today builds on what we started in 1973 -- it will provide disabled Americans with the same rights already accorded to women and minorities -- the right to be free from discrimination in all its insidious forms.

Finally, the Americans with Disabilities Act will also halt discrimination against individuals suffering from AIDS or who are infected with the AIDS virus. I am delighted that Admiral Watkins is with us today. The report of his Presidential Commission makes clear that discrimination against victims of AIDS is seriously impairing our ability to halt the spread of the AIDS epidemic, and action by Congress is overdue.

I look forward to this hearing, and I commend all those who have worked so hard to develop this legislation. The Americans with Disabilities Act deserves our high priority in Congress, and I intend to do all I can as chairman of the Labor and Human Resources Committee to expedite its enactment.



Senator HARKIN. I want to recognize my former colleague from the House, an individual I worked very closely with for many years during the House, again an eloquent spokesman for the right of Americans with disabilities, Congressman Jeffords from Vermont.

STATEMENT OF HON. JAMES M. JEFFORDS, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF VERMONT

Mr. JEFFORDS. Thank you very much, Mr. Chairman.  
As has been pointed out, individuals with disabilities have been denied for so long, services, jobs, housing, transportation, hotel rooms, a means to communicate, access to Government officials, voting polls, and yes, even restrooms. Such denials have been sustained, systematic and yes, tolerated. No more.

With the introduction of the Americans With Disabilities Act of 1988 and this hearing, we begin in earnest to undo the remaining forms of discrimination against individuals with disabilities.

I wish to commend the National Council on the Handicapped, my esteemed colleagues especially those here today, Mr. Justin Dart, and others for their untiring efforts to document the full range of discrimination experienced by persons with disabilities, thus creating a moral and practical foundation for the expectations reflected in the ADA.

I am looking forward to the testimony of the witnesses here today. They represent a source of guidance and energy, a reflection of potential and determination, and the spirit of cooperation and partnership. They know what discrimination is and how to overcome it. They know what patience is and how to show it. They know what credibility is and how to judge it.

Our family members, our friends and our neighbors with disabilities ask for one simple right, the right to control their own lives, to make choices and to choose. This will not happen until we eliminate all forms of discrimination.

We continue the process of transforming the ADA into law. Its effects should not be judged in terms of cost, but rather realized potential; not be measured in terms of effort, but in increased productivity; and not be characterized as preferential treatment, but as reaffirmed human dignity. Starting today, we must work together to make the ADA a fact, not a gesture; reflected in practice, not promises; and grounded in commitment, not hope.

I was elected in Congress in 1974 and I worked with my colleagues on many acts along these lines, the Education of all Handicapped Children Act, the Rehabilitation Act, especially to extend the protections under section 504 to people seeking services and jobs directly with the Federal Government, the Civil Rights Restoration Act, the Technology Related Assistance Act or Individuals with Disability Act of 1988, and now the ADA.

Although our efforts reflect progress, we know from experience that comprehensive legislation takes great effort. As two of my distinguished figures have recently said, read my lips, the ADA will be enacted.

Thank you. [Applause.]

Senator HARKIN. I recognize our colleague from California, Congressman Martinez.

STATEMENT OF HON. MATTHEW G. MARTINEZ, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MARTINEZ. Senator Harkin, thank you very much.

Let me start off by commending you and Congressman Owens for holding this hearing today on discrimination against disabled Americans.

For too long, these 32 million Americans have been ignored and their civil rights have been denied. They represent the largest minority group in this Nation and it is time that the Congress listened and acted on their concerns.

As chairman of the House Subcommittee on Employment Opportunities, I am proud of the great strides that the Rehabilitation Act has made in fighting employment discrimination, but it is not enough. While the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin by most employers, no similar protection is provided for disabled workers in the private sector.

I believe the Americans With Disabilities Act would be a giant step in providing that protection. Each and every qualified American should have the right to work to the best of his or her ability and this legislation will ensure that right. Americans willing and capable of work should no longer be judged on their disability but rather on their abilities.

Society and our Nation could benefit greatly from the integration of these individuals, not only into the work force but society as a whole. The ADA will give disabled Americans the right to have a full and productive life, a right which, in today's society, is often denied them.

During the past two Congresses, the Subcommittee on Employment Opportunities has also held hearings on discrimination against disabled Americans. In fact, we had a very eloquent testimony given by the son of Senator Kennedy.

It became evident during those hearings, and I am sure it will become evident today that society and Congress have begun a process of integration, but more needs to be done. I look forward to the testimony of the witnesses today. Senator Harkin, these are the individuals that know firsthand what it is like not to be given a fair and equal chance in the world based not on their ability, but on their disability.

Thank you.

[The prepared statement of Congressman Martinez follows:]



OPENING STATEMENT OF CONGRESSMAN MATTHEW G. MARTINEZ  
BEFORE THE SENATE SUBCOMMITTEE ON THE HANDICAPPED  
AND THE HOUSE SUBCOMMITTEE ON SELECT EDUCATION

HEARING ON DISCRIMINATION ON THE BASIS OF DISABILITY  
SEPTEMBER 27, 1988  
216 HART, 10:00 A.M.

SENATOR HARKIN AND CONGRESSMAN OWENS, I WANT TO COMMEND YOU FOR HOLDING THIS HEARING TODAY ON DISCRIMINATION AGAINST DISABLED AMERICANS. FOR TOO LONG, THESE 32 MILLION AMERICANS HAVE BEEN IGNORED AND THEIR CIVIL RIGHTS DENIED. THEY REPRESENT THE LARGEST MINORITY GROUP IN THIS NATION AND IT IS TIME THAT CONGRESS LISTENED AND ACTED ON THEIR CONCERNS.

AS CHAIRMAN OF THE HOUSE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES, I AM PROUD OF THE GREAT STRIDES THE REHABILITATION ACT HAS MADE IN FIGHTING EMPLOYMENT DISCRIMINATION AGAINST THE DISABLED AMONGST FEDERAL AGENCIES AND CONTRACTORS. HOWEVER, IT HAS NOT BEEN ENOUGH. WHILE THE CIVIL RIGHTS ACT OF 1964 PROHIBITS EMPLOYMENT DISCRIMINATION ON THE BASIS OF RACE, COLOR, RELIGION, SEX OR NATIONAL ORIGIN BY MOST EMPLOYERS, NO SIMILAR PROTECTION IS PROVIDED FOR DISABLED WORKERS IN THE PRIVATE SECTOR. I BELIEVE THE "AMERICANS WITH DISABILITIES ACT" WOULD BE A GIANT STEP IN PROVIDING THAT PROTECTION.

Although our efforts reflect progress, we must continue to work for comprehensive legislative action. As two of my distinguished colleagues have recently said, and my legs, the ADA will be enacted.

Thank you, Legislators!

Senator Harkin, I represent the citizens of California. Congressman Martinez.

EACH AND EVERY QUALIFIED AMERICAN SHOULD HAVE THE RIGHT TO WORK TO THE BEST OF HIS OR HER ABILITY AND THIS LEGISLATION WILL ENSURE THAT RIGHT. AMERICANS WILLING AND CAPABLE OF WORK SHOULD NO LONGER BE JUDGED ON THEIR DISABILITY BUT ON THEIR ABILITIES. SOCIETY AND OUR NATION COULD BENEFIT GREATLY FROM INTERGRATING THESE INDIVIDUALS, NOT ONLY INTO THE WORKFORCE, BUT SOCIETY AS A WHOLE. THE ADA WILL GIVE DISABLED AMERICANS THE RIGHT TO HAVE A FULL AND PRODUCTIVE LIFE, A RIGHT WHICH IN TODAY'S SOCIETY IS OFTEN DENIED TO THEM.

DURING THE PAST TWO CONGRESSES, THE SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES HAS ALSO HELD HEARINGS ON DISCRIMINATION AGAINST DISABLED AMERICANS. WHAT HAS BECOME EVIDENT DURING THOSE HEARINGS, AND I AM SURE WILL BECOME EVIDENT TODAY, IS THAT SOCIETY AND CONGRESS HAVE BEGUN THE PROCESS OF INTERGRATION BUT MORE NEEDS TO BE DONE.

I LOOK FORWARD TO THE TESTIMONY OF THE WITNESSES. THESE ARE THE INDIVIDUALS THAT KNOW FIRST HAND WHAT IT IS LIKE NOT TO BE GIVEN A FAIR AND EQUAL CHANCE IN THE WORLD, BASED NOT ON THEIR ABILITY, BUT ON THEIR DISABILITY.



Senator WEICKER [presiding]. Congressman, thank you very much. I ask unanimous consent that a statement by Senator Simon of Illinois be included in the record in its entirety.  
[The prepared statement of Senator Simon follows:]

PAUL SIMON  
ILLINOIS

COMMITTEE  
LABOR AND HUMAN RESOURCES  
JUDICIARY  
FOREIGN RELATIONS  
BUDGET

**United States Senate**

WASHINGTON, DC 20510

STATEMENT OF SENATOR PAUL SIMON

HEARING ON DISCRIMINATION ON THE BASIS OF DISABILITY

September 26, 1968

Mr. Chairman, I deeply regret that I will not be able to attend this very important hearing. I would like to welcome the witnesses in person, and particularly welcome Mary Linden, from Morton Grove, Illinois. I will be looking forward to reading the testimony of all of the witnesses.

The topic of this hearing is important not only to the millions of Americans who continue to suffer directly the effects of discrimination, but also to our nation. We all feel the effects and are clearly lessened as a nation when we fail to guarantee the rights and use the abilities of all of our citizens.

A recent article in the magazine *Business Week* called Americans with disabilities the "last minority." We know from experience that civil rights legislation does not automatically end unfair and unequal treatment of people who have historically been left out of the mainstream. But we have also seen the enormous difference that comprehensive civil rights laws have made in the lives of other American "minorities." We know we can do better -- much better -- in bringing Americans with disabilities into the mainstream of our society -- into the workplace, our communities, our lives. We need the Americans with Disabilities Act to complete the civil rights agenda in this country and to bring equality of opportunity to our "last minority."

I sense we are ready to take the final steps to bring about full equality for Americans with disabilities -- and we will be a far richer nation when we do.

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91-312 42



Mr. COELHO. Mr. Chairman, can I have unanimous consent that a statement by me be put in the record at the end of my remarks?

Senator WEICKER. Indeed, a statement by Congressman Coelho will be included in the record at this point in its entirety, or at the conclusion of his statement.

We now go to the first witness, Sandy Parrino of the National Council on the Handicapped. I would like to say that this is a courageous lady. I might add, she represents a courageous group, the entire council, because indeed theirs has not been an easy road in bringing this legislation before us.

They have resisted the importunings of those that were dedicated either to partisanship or philosophy or special interest, and have tried to bring forth a work product that will do the job for the disabled, period. That was the only thing they had in mind.

I want to thank you, Sandy, by way of this introduction. The floor is yours.

#### STATEMENT OF SANDRA PARRINO, CHAIRPERSON, NATIONAL COUNCIL ON THE HANDICAPPED, WASHINGTON, DC

Ms. PARRINO. Thank you. Good morning.

My name is Sandra Swift Parrino. I am very honored to lead off testimony about a piece of legislation that is very close to my heart—the Americans With Disabilities Act of 1988.

I am, in private life, a mother with an involvement and commitment to two children born with serious disabilities. I am, in public life, the Chairperson of the National Council on the Handicapped, an independent Federal agency whose Board is comprised of 15 knowledgeable persons with disabilities—and experts on disability service programs. All of us, appointed by the President and confirmed by the Senate.

We are the only Federal agency mandated to address, analyze, and make recommendations on issues of public policy affecting Americans with disabilities. The main thrust of our efforts is toward eliminating barriers which prevent disabled persons from full participation in the mainstream of American life. Barriers, as you will see, that will topple upon passage of the Americans with Disabilities Act which you will hear referred to as ADA.

The National Council on the Handicapped has not been timid in its efforts in both originating and spearheading this legislation. Legislation we first recommended in a report titled "Toward Independence" that was sent to both the President and Congress in 1986.

Legislation we designed after indepth analysis and study. Legislation that is of clear importance to persons with disabilities and to Federal policy regarding disability programs. Legislation that offers constructive, realistic, and fiscally sound solutions to enhance independence and productivity of people with disabilities. Landmark legislation that is a civil rights, equal opportunity bill for 36 million disabled Americans. Legislation that will, in essence, no longer allow 36 million Americans to be left out of the American dream scenario.

The Americans with Disabilities Act of 1988 is not only important to 36 million citizens with disabilities—it is also—as I will il-

lustrate a bit later—of the highest importance to our Nation. From the quadriplegic as the result of a football injury . . . to the child in a hospital crib from rapidly growing numbers of senior citizens to 75,000 Vietnam veterans—the basic nugget of truth is that—due to discriminatory practices—persons with disabilities continue to suffer from the highest rates of unemployment and poverty than any other group of Americans. Less access to decent schooling—housing—work and transportation than anyone in this country—including noncitizens.

ADA is critically important because its provisions are shaped to break the chains that bind many of the 36 million people into a bondage of unjust, unwanted dependency on families, charity, and social welfare. Dependency that is a major and totally unnecessary contributor to public deficits and private expenditures.

These hearings will provide you with a vital source of information to assess the scope and meaning of the Americans With Disabilities Act. On behalf of 36 million citizens, I ask you to keep in mind that for decades disabled people have been waiting. For decades disabled people have seen laws enacted by their elected Representatives that prohibit discrimination for other categories of individuals. For decades, disabled Americans have had to live with the realization that there are no similarly effective laws to protect them.

Today, I am proud to say, there is an emerging group consciousness on the part of disabled Americans, their families, friends and advocates. A consciousness toward mounting political activism.

Martin Luther King had a dream. We have a vision. Dr. King dreamed of an America "where a person is judged not by the color of his skin, but by the content of his character." ADA's vision is of an America where persons are judged by their abilities and not on the basis of their disabilities; 36 million Americans, our Nation's largest and no longer silent minority. Ladies and gentlemen, American cannot afford to discard her disabled brothers and sisters.

In "Toward Independence", our 1986 report to Congress, our vision has been to shape responsible legislation by which Federal disincentives and barriers to employment are removed so that disabled Americans can go to work.

In the 1984 report to Congress by the Rehabilitation Services Administration, it was indicated that for every \$1 spent to return a disabled person to work, \$18 were returned to the tax base upon their placement. This would include not only taxes paid by the individual, but money saved from the removal of public expenditures.

ADA seeks to protect disabled citizens against discrimination in such areas as transportation, private sector employment, public accommodations, housing and communications and where appropriate the activities of State and local Government agencies.

America cannot afford to discard her disabled people. The majority of disabled people not working said they want to work. The first Louis Harris poll showed that disabled workers in the workplace are rated "good" to "excellent" by an overwhelming majority of their employers. Disability does not mean incompetence. The perception that disabled people are flawed and incapable of caring for themselves is the result of discriminatory attitudes, not the result of disability.



In a nation with a labor shortage, two-thirds of all disabled Americans between the ages of 16 and 64 years of age are not working. No one demographic group under 65 has such a small proportion working. The two words "not working" are perhaps the truest definition of what it means to be disabled in America today.

As Louis Harris discovered, people with disabilities want to become involved in their communities as taxpaying contributors.

It is contrary to sound principles of fiscal responsibility to spend billions of Federal tax dollars to relegate people with disabilities to positions of dependency upon public support.

People with disabilities represent America's greatest untapped resource of employables who want to work. As we all know, in America, jobs are a major source of status, dignity, and self-esteem. "What do you do," is a conversational staple. To contribute to society and support yourself is a cherished precept of our American vision.

ADA sweeps into obsolescence those obstacles that limit opportunity, promote discrimination, prevent integration, restrict choice and frustrate self-help for the working aged disabled Americans who are unemployed.

May I remind you, America cannot afford to discard her disabled brothers and sisters. Advancing age, economic circumstances, illness, and accident will someday, according to reputable statistics, put most of us, in the category of a person with a disability.

The goals espoused in the Americans with Disabilities Act are economically practical as well as morally correct and humanely necessary. The ADA is legislation that does away with troubling historical echoes. Echoes that must no longer be interpreted by America's disabled citizenry as a life sentence.

Esteemed Members of Congress, in closing, I wish to relay a message from 36 million Americans with disabilities. For decades, we have retained a faith in the reformability and adaptability of our Government. For decades we have been told to have patience, but patience is not an inexhaustible commodity. People with disabilities have waited long enough. America has waited long enough. The Americans with Disabilities Act must be enacted now.

The vision of equality for 36 million Americans with disabilities now rests with you.

I thank you. [Applause.]

[The prepared statement of Ms. Parrino follows:]

TESTIMONY OF SANDRA SWIFT PARRINO, CHAIRPERSON  
NATIONAL COUNCIL ON THE HANDICAPPED

GOOD MORNING

MY NAME IS SANDRA SWIFT PARRINO.

I AM HONORED TO LEAD OFF TESTIMONY ABOUT A PIECE OF LEGISLATION THAT IS VERY CLOSE TO MY HEART... THE AMERICANS WITH DISABILITIES ACT OF 1988.

I AM, IN PRIVATE LIFE, A MOTHER WITH AN INVOLVEMENT AND COMMITMENT TO TWO CHILDREN BORN WITH SERIOUS DISABILITIES.

I AM, IN PUBLIC LIFE, THE CHAIRPERSON OF THE NATIONAL COUNCIL ON THE HANDICAPPED. AN INDEPENDENT FEDERAL AGENCY WHOSE BOARD IS COMPRISED OF 15 KNOWLEDGEABLE PERSONS WITH DISABILITIES...AND EXPERTS ON DISABILITY SERVICE PROGRAMS. ALL OF US, APPOINTED BY THE PRESIDENT AND CONFIRMED BY THE SENATE.

WE ARE THE ONLY FEDERAL AGENCY MANDATED TO ADDRESS, ANALYZE AND MAKE RECOMMENDATIONS ON ISSUES OF PUBLIC POLICY AFFECTING AMERICANS WITH DISABILITIES. THE MAIN THRUST OF OUR EFFORTS IS TOWARDS ELIMINATING BARRIERS WHICH PREVENT DISABLED PERSONS FROM FULL PARTICIPATION IN THE MAINSTREAM OF AMERICAN LIFE. BARRIERS, AS YOU WILL SEE, THAT WILL TOPPLE UPON PASSAGE OF THE AMERICANS WITH DISABILITIES ACT WHICH YOU WILL HEAR REFERRED TO AS ADA.



THE NATIONAL COUNCIL ON THE HANDICAPPED HAS NOT BEEN TIMID IN ITS EFFORTS IN BOTH ORIGINATING AND SPEARHEADING THIS LEGISLATION. LEGISLATION WE FIRST RECOMMENDED IN A REPORT TITLED "TOWARD INDEPENDENCE" THAT WAS SENT TO BOTH THE PRESIDENT AND THE CONGRESS IN 1986.

LEGISLATION WE DESIGNED AFTER IN-DEPTH ANALYSIS AND STUDY. LEGISLATION THAT IS OF CLEAR IMPORTANCE TO PERSONS WITH DISABILITIES AND TO FEDERAL POLICY REGARDING DISABILITY PROGRAMS. LEGISLATION THAT OFFERS CONSTRUCTIVE, REALISTIC AND FISCALLY SOUND SOLUTIONS TO ENHANCE INDEPENDENCE AND PRODUCTIVITY OF PEOPLE WITH DISABILITIES.

LANDMARK LEGISLATION THAT IS A CIVIL RIGHTS, EQUAL OPPORTUNITY BILL FOR 36 MILLION DISABLED AMERICANS. LEGISLATION THAT WILL, IN ESSENCE, NO LONGER ALLOW 36 MILLION AMERICANS TO BE LEFT OUT OF THE AMERICAN DREAM SCENARIO.

THE AMERICANS WITH DISABILITIES ACT OF 1988 IS NOT ONLY IMPORTANT TO 36 MILLION CITIZENS WITH DISABILITIES....IT IS ALSO....AS I WILL ILLUSTRATE A BIT LATER...IMPERISHABLY IMPORTANT TO OUR NATION.

FROM THE QUADRIPLAGIC AS THE RESULT OF A FOOTBALL INJURY....TO THE CHILD IN A HOSPITAL CRIB....FROM RAPIDLY GROWING NUMBERS OF SENIOR CITIZENS...TO 75 THOUSANDS VIETNAM VETERANS...THE BASIC NUGGET OF TRUTH IS THAT.... DUE TO DISCRIMINATORY PRACTICES....PERSONS WITH DISABILITIES CONTINUE TO SUFFER FROM THE HIGHEST RATES OF UNEMPLOYMENT AND POVERTY THAN ANY OTHER GROUP OF AMERICANS. LESS ACCESS TO DECENT SCHOOLING..HOUSING..WORK AND TRANSPORTATION THAN ANYONE IN THIS COUNTRY....INCLUDING NON-CITIZENS.

ADA IS OF CRITICALLY IMPORTANT BECAUSE ITS PROVISIONS ARE SHAPED TO BREAK THE THE CHAINS THAT BIND MANY OF THESE 36 MILLIONS INTO A BONDAGE OF UNJUST, UNWANTED DEPENDENCY ON FAMILIES, CHARITY AND SOCIAL WELFARE. A DEPENDENCY THAT IS A MAJOR AND TOTALLY UNNECESSARY CONTRIBUTOR TO PUBLIC DEFICITS AND PRIVATE EXPENDITURES.

THESE HEARINGS WILL PROVIDE YOU WITH A VITAL SOURCE OF INFORMATION TO ASSESS THE SCOPE AND MEANING OF THE AMERICANS WITH DISABILITIES ACT. ON BEHALF OF 36 MILLION CITIZENS I ASK YOU TO KEEP IN MIND THAT...FOR DECADES DISABLED PEOPLE HAVE BEEN WAITING.

FOR DECADES THE DISABLED HAVE SEEN LAWS ENACTED BY THEIR ELECTED REPRESENTATIVES THAT PROHIBIT DISCRIMINATION FOR OTHER CATEGORIES OF INDIVIDUALS. FOR DECADES DISABLED AMERICANS HAVE HAD TO LIVE WITH THE REALIZATION THAT THERE ARE NO SIMILARLY EFFECTIVE LAWS TO PROTECT THEM. TODAY, I AM PROUD TO SAY, THERE IS AN EMERGING GROUP-CONSCIOUSNESS ON THE PART OF DISABLED AMERICANS, THEIR FAMILIES, FRIENDS AND ADVOCATES. A CONSCIOUSNESS TOWARD MOUNTING POLITICAL ACTIVISM. MARTIN LUTHER KING HAD A DREAM. WE HAVE A VISION. KING DREAMED OF AN AMERICA WHERE A PERSON WAS JUDGED NOT BY THE COLOR OF HIS SKIN, BUT BY THE NATURE OF HIS CHARACTER. ADA'S VISION IS OF AN AMERICA WHERE PERSONS ARE JUDGED BY THEIR ABILITIES AND NOT ON THE BASIS OF THEIR DISABILITIES.

36 MILLION AMERICANS...OUR NATION'S LARGEST AND NO LONGER SILENT MINORITY. LADIES AND GENTLEMEN, AMERICA CANNOT AFFORD TO DISCARD HER DISABLED BROTHERS AND SISTERS.



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IN SHEPHERDING THIS LEGISLATION FROM RICHLY DESERVED CONCEPT TO STATUTORY CIVIL RIGHTS UMBRELLA...IN "TOWARDS INDEPENDENCE," OUR 1986 REPORT TO CONGRESS, OUR GOAL HAS BEEN TO DEVISE PRACTICAL, RESPONSIBLE LEGISLATION BY WHICH FEDERAL EXPENDITURES RELATING TO DISABILITY ARE MORE PRUDENTLY SPENT WHILE INEFFECTIVENESS AND COUNTER PRODUCTIVITY ARE MINIMIZED.

"IN THE 1984 REPORT TO CONGRESS BY THE REHABILITATION SERVICES ADMINISTRATION, IT WAS INDICATED FOR EVERY \$1.00 SPENT TO RETURN A DISABLED PERSON TO WORK, \$18.00 WERE RETURNED TO THE TAX BASE UPON THEIR PLACEMENT. THIS WOULD INCLUDE NOT ONLY TAXES PAID BY THE INDIVIDUAL, BUT MONEY SAVED FROM THE REMOVAL OF PUBLIC EXPENDITURES. (SINCE DISABILITY INCREASES WITH AGE, THE COUNCIL'S ROLE IN PREVENTION COULD BE MENTIONED IN THE TESTIMONY)."

ADA SEEKS TO PROTECT DISABLED CITIZENS AGAINST DISCRIMINATION IN AREAS SUCH AS TRANSPORTATION...PRIVATE SECTOR EMPLOYMENT...PUBLIC ACCOMMODATIONS...HOUSING AND COMMUNICATIONS AND WHERE APPROPRIATE THE ACTIVITIES OF STATE AND LOCAL GOVERNMENT'S AGENCIES.

IN FACT, BOTH LOUIS HARRIS POLLS SUBSTANTIATED THAT THE TWO WORDS "NOT WORKING" ARE PERHAPS THE TRUEST DEFINITION OF WHAT IT MEANS TO BE DISABLED IN AMERICA TODAY.

AMERICA CAN NOT AFFORD TO DISCARD HER DISABLED PEOPLE. THE MAJORITY OF DISABLED PEOPLE NOT WORKING SAID THAT THEY WANT TO WORK. THE FIRST LOUIS HARRIS POLL SHOWED THAT DISABLED WORKERS IN THE WORKPLACE ARE RATED "GOOD" TO "EXCELLENT" BY AN OVERWHELMING MAJORITY OF THEIR EMPLOYERS.

DISABILITY DOES NOT MEAN INCOMPETENCE. THE PERCEPTION THAT THE DISABLED ARE FLAWED AND INCAPABLE OF CARING FOR THEMSELVES IS THE RESULT OF

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DISCRIMINATORY ATTITUDES...NOT THE RESULT OF DISABILITY. AS LOUIS HARRIS DISCOVERED, PEOPLE WITH DISABILITIES WANT TO BECOME INVOLVED IN THEIR COMMUNITIES AS TAXPAYING CONTRIBUTORS.

IT IS CONTRARY TO SOUND PRINCIPLES OF FISCAL RESPONSIBILITY TO SPEND BILLIONS OF FEDERAL TAX DOLLARS TO RELEGATE PEOPLE WITH DISABILITIES TO POSITIONS OF DEPENDENCY UPON PUBLIC SUPPORT.

MAY I REMIND YOU, PEOPLE WITH DISABILITIES REPRESENT AMERICA'S GREATEST UNTAPPED RESOURCE OF EMPLOYABLES WHO WANT TO WORK.

AS WE ALL KNOW, IN AMERICA JOBS ARE A MAJOR SOURCE OF STATUS, DIGNITY AND SELF-ESTEEM. "WHAT DO YOU DO?" IS A CONVERSATIONAL STAPLE, TO CONTRIBUTE TO SOCIETY AND SUPPORT YOURSELF IS A CHERISHED PRECEPT OF OUR AMERICAN VISION.

ADA SWEEPS INTO OBSOLESCENCE THOSE OBSTACLES THAT LIMIT OPPORTUNITY, PROMOTE DISCRIMINATION, PREVENT INTEGRATION RESTRICT CHOICE AND FRUSTRATE SELF-HELP FOR THE 65 PERCENT OF NON-INSTITUTIONAL WORKING AGE DISABLED AMERICANS WHO ARE UNEMPLOYED.

AMERICA CAN NOT AFFORD TO DISCARD HER DISABLED BROTHERS AND SISTERS.

ADVANCING AGE, ECONOMIC CIRCUMSTANCES, ILLNESS, ACCIDENT WILL SOMEDAY, ACCORDING TO REPUTABLE STATISTICS, PUT ALL OF US, OR A LOVED ONE, IN THE CATEGORY OF A PERSON WITH A DISABILITY.

THE GOALS ESPOUSED IN THE AMERICANS WITH DISABILITIES ACT ARE ECONOMICALLY PRACTICAL AS WELL AS MORALLY CORRECT... AND HUMANELY NECESSARY. THE ADA IS LEGISLATION THAT DOES AWAY WITH TROUBLING HISTORICAL ECHOES. ECHOES THAT MUST NO LONGER BE INTERPRETED BY AMERICA'S DISABLED CITIZENRY AS A LIFE SENTENCE.



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IN CLOSING I WISH TO RELAY A MESSAGE FROM 36 MILLION DISABLED AMERICANS. FOR DECADES WE HAVE RETAINED A FAITH IN THE REFORMABILITY AND ADAPTABILITY OF OUR GOVERNMENT. FOR DECADES WE HAVE BEEN TOLD TO HAVE PATIENCE. BUT PATIENCE IS NOT AN INEXHAUSTIBLE COMMODITY. PEOPLE WITH DISABILITIES HAVE WAITED LONG ENOUGH. AMERICA HAS WAITED LONG ENOUGH. THE AMERICANS WITH DISABILITIES ACT MUST BE ENACTED NOW. THE HOPES, ASPIRATIONS AND VISIONS OF 36 MILLION AMERICANS WITH DISABILITIES NOW RESTS WITH YOU.

Senator WEICKER. Sandy, thank you very much.

To the members of the panel, we have extraordinary individuals who have come to testify on this act. I would hope we could keep our questions down to a minimum, in order that all might have a chance to present their story, possibly each one of us only asking a question or two.

Sandy, very briefly, has a position been stated on this legislation by the Administration?

Ms. PARRINO. At this time, this legislation reflects the views of the members of the National Council on the Handicapped. However, both Presidential nominees have endorsed the bill.

Senator WEICKER. Last, in your view, is it possible to eliminate discrimination against persons with disabilities without Federal legislation?

Ms. PARRINO. I think the testimony answers that question. We have waited. We have been patient. It has not happened. I think that it is necessary to have this legislation.

Personally, I find that the fact that my two children are not protected under the Constitution to be unacceptable to me and it is unacceptable to me that 36 million disabled Americans are not protected under the Constitution. I think we need the legislation.

Senator WEICKER. Congressman Owens.

Mr. OWENS. Mr. Chairman, I have no questions. I would just like to join Senator Harkin in congratulating Mrs. Parrino on the magnificent job that was done in achieving consensus on this piece of legislation, and to thank her for the many years of hard work it took to get to this point.

Senator WEICKER. Congressman Jeffords.

Mr. JEFFORDS. Just one question. You mention a labor shortage which would indicate a need and if we end discrimination we would have an available resource, a human resource. Is the training that is available under present Federal legislation sufficient to handle the ability to make that resource available?

Ms. PARRINO. There is not enough training at the moment. We spend much too much in sustaining dependency and not enough in rehabilitating and training and educating.

Mr. JEFFORDS. Thank you.

Senator WEICKER. Senator Kennedy.

Senator KENNEDY. Just one question. We will probably hear a good deal of discussion about the cost of this legislation. I think it has been well documented, and you have certainly referred to the fact, that if this legislation is actually implemented, the possibilities that it gives for those that are physically handicapped and handicapped will be able to be much more productive in terms of the kinds of returns that will come back, not only in human terms but actually in financial terms, will be useful as well.

I wonder if you would just address that briefly, because this will certainly that, on the floor of the Senate, will be asked about. If you could tell us, if we achieve this legislation, whether people will be able to, you believe, be much more productive in terms of being involved in our economy? I am sorry we have to have this kind of a bottom line type of a question, but I think that is what is on people's minds these days, unfortunately.



Ms. PARRINO. The National Council is seeking to provide Congress with some kind of economic analysis of this bill. We are in the process of finding the appropriate people to do that, because it will be asked in the winter or the spring, we are sure.

There is a lot of data available in some of the areas, and there is also a lot of data that is not available. We are trying to first find what has already been done, what analysis has been done, and then see where the holes are, what has to be looked into.

I think we will be able to put some kind of a picture together by the spring. It is certainly a question that will be asked and has to be answered, but your reference to the labor shortage, we wonder just what this country is going to do as we know there is going to be a tremendous shortage of workers. It is a perfect match that we have here.

I certainly would hope we would not go looking outside the country to fill those jobs when we have a population here who wants to work in all levels of employment. So I think economically, if we look at it that way, it will be a great plus to us.

Senator KENNEDY. I appreciate that, and I hope you will keep us informed. It seems to me to be reasonably self-evident. If you eliminate these barriers and people are able to participate, that they are going to be productive members of society and they will also be contributing members to the society, in terms of their involvement in our whole economy.

I think whatever material we can have on that will be generally useful. Thank you very much.

Senator WEICKER. Congressman Coelho.

Mr. COELHO. Thank you, Senator.

Sandy, outstanding statement. Very, very nicely done. All of us appreciate your work and your effort and your presentation today.

Only one comment and one question. The comment is, do not have any more patience.

Ms. PARRINO. I think it has run out, do you not?

Mr. COELHO. It is time, I think, to stand up. I think Gallaudet proved that and sort of lit a spark not only with the hearing disabled but with the disability community all over the country. We do not want to be patient anymore. So I hope that you do not believe that anymore. Let us move on.

The question I have is that your statement that it is up to us now to adopt it is correct, but you understand politics. You know that that is not the way it is done. What is really important is the grassroots.

You and I talk about 36 million or 43 million—and we move between those numbers, it is somewhere in there—Americans with disabilities. If 36 million Americans would contact their legislative leaders, and urge upon them the need for this legislation, it would be done. That is a tremendous political force.

I am, as I said, one of those in the disabled community. I do not think we have done enough of educating my colleagues, as to what we want and what we do not want. That is why I say patience is over with.

I would just ask the question what are you doing, in the grassroots, to get all the groups to lobby on the ADA bill? We have 130

sponsors in the House. I do not know how many in the Senate. But that is not enough.

Ms. PARRINO. To try and answer your question, of course the members of the National Council on the Handicapped are not allowed to lobby, and of course we do not.

Mr. COELHO. We understand that. Not that we have got that out of the way.

Ms. PARRINO. Now that that is out of the way. [Laughter.]

However, we certainly believe in education. The Council is preparing some information on the bill, some questions and answers and an explanation, sort of in plain English, what the bill means. We hope to go, the staff and the members, to all 50 States and to just educate people at a State level, and then encourage them to educate people down to the grassroots level.

We are only 15 members and our staff, we only have 8, so it is a very large job. But we are going to attempt to do it. We will not go out and tell people what they should do regarding their Congressmen, but we will educate them about the bill, tell them what it means, and why it has been written and why it has been introduced.

Mr. COELHO. Thank you.

Senator WEICKER. Congressman Martinez.

Mr. MARTINEZ. Thank you, Senator Weicker.

I have a question along the same line that the Senate asked. Maybe it is a little bit different, or maybe the response to his was not exactly what I was looking for. I am interested in what the present administration's reaction was to the Council's report, first. Second, we have, in the Federal sector, a law that is supposed to protect the physically challenged. I am wondering if the Council, in its examination of everything, made a determination of whether that law is effective.

Anytime Congress acts, it holds out great hope to the people that look to benefit from that act of Congress. In many instances the followup or administration of that law does not occur. So those people that held up that hope are very disappointed. In this particular area, I would hate to see these people disappointed because they have worked so hard to see this come about.

So the two questions are one, what was the administration's reaction? Two, in your observations, how is the present law in the Federal sector working?

Ms. PARRINO. Well, to answer your first question, sitting behind me is our new Executive Director, Paul Hearne. Paul was sworn in to his position in August by the Vice President. At that swearing in, he indicated a need for Federal antidiscrimination legislation, to protect the rights of disabled people, and he mentioned this bill.

So that, I would say, there has been a level of acceptance of this legislation from the administration.

Mr. MARTINEZ. The second question regards the law that presently exists in the Federal sector, that protects the physically disabled.

Ms. PARRINO. Are you referring to 504 regulations?

Mr. MARTINEZ. Yes.

Ms. PARRINO. Is that adequate?

Mr. MARTINEZ. Is it working? As with various other things, under our supervision as the oversight subcommittee on Employ-



ment Opportunities, we find that the EEOC has not really placed enough emphasis on those things that provide affirmative action in the workplace.

I am wondering if, in this instance, the same thing is occurring, that where we have the law on the books really no one is paying attention to it and the physically disadvantaged continue to be discriminated against?

Ms. PARRINO. Well, here goes my hometown. I agree with you, not enough is being done. There is not enough compliance.

The village I live in, in Westchester County, Briar Cliff Manor, which does participate in revenue sharing, could not see fit to put a ramp in until just this year. Therefore, people in that town, that village, who wanted to go into the town hall and participate in town meetings or decisions that were being made for the population, disabled were not able—certainly physically disabled people were never able to get into that town hall.

That is just one example that has certainly irritated me for many years. I think it is true in communities all over the country. There has not been enough compliance in the 504 regulations. That is a personal opinion.

In that regard, then, does there need to be something put into the law that has teeth in it to force compliance?

Ms. PARRINO. I am not an attorney, and I do not know that I can really answer that, but my uneducated guess would be yes, that there has to be something. It is not enough to just have it down on the books because the similar situation with education.

All the classrooms were supposed to have been made accessible, but many schools are not. Many schools do not have the elevators or the accessibilities, to this day, 13 years after the bill was enacted. They still are not accessible and the classrooms are not accessible.

I would say that we would need some more, I guess, teeth you call it.

Senator WEICKER. Sandy, thank you very much. There will be further questions which can be submitted for the record. Thank you for your effort. Thank you for your courage. It is good to have the endorsement of the National Council. We will take it from here.

Ms. PARRINO. Thank you.

Senator WEICKER. Our next witness is Admiral Watkins. Again, in this particular instance, I would like to commend the Admiral for his courage for bringing sanity and common sense and fact to the discussion of AIDS within this Nation.

Before you arrived on the scene with your Commission, we were dealing with ignorance, superstition, fear, and philosophy. You have turned that around. You have my eternal gratitude for turning it around, you and your entire Commission.

Again, I will use that by way of introduction at this hearing. Thank you very much.

STATEMENT OF ADM. JAMES WATKINS, CHAIRPERSON, PRESIDENT'S COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC, WASHINGTON, DC

Mr. WATKINS. Thank you, Senator Weicker.

It is not only a pleasure to come over again to Capitol Hill to talk to important committees, but I am particularly honored that you would ask me to come over to testify on behalf of the Americans With Disabilities Act.

As former chairman of the President's Commission on the HIV Epidemic, I spent most of my time in the last year working with those who have a disability, the HIV infection, and those who, because of their infection, join millions of other Americans with handicaps and disabling conditions.

The Commission held over 45 days of public hearings and site visits in preparation for its report to the President. As I participated in these rigorous and, to my knowledge, unparalleled set of hearings, one point became clear early on, that without strong Federal antidiscrimination laws, to protect those with HIV from discrimination in both the public and private sectors, they would continue to face the unfair discrimination that other disabled persons have always faced.

As I prepared for this testimony today, I went back to read the section of our Commission's report on discrimination. Quite frankly, I felt it impossible to improve upon the words that we labored over for some weeks, so I would like to submit that section of the report in its entirety for my formal written statement.

Now, I would also like to summarize some of its points. Of course, my focus is obviously on AIDS and the HIV infection. Nevertheless, if the HIV epidemic had never occurred and, having experienced a unique opportunity over the past year to witness behaviors of many Americans toward their own neighbors, I would support the Americans With Disabilities Act so that all of our citizens with disabling conditions be guaranteed fair treatment in the workplace, schools, and housing.

My predecessor here this morning said enough time has, in my opinion, been given to the States to legislate what is right. Too many States, for whatever reason, still perpetuate confusion. It is time for Federal action.

Throughout our investigation of the spread of HIV in the United States, the Commission was confronted with a problem of discrimination against individuals with HIV seropositivity and all states of HIV infection, including AIDS.

At virtually every commission hearing, witnesses attested to discrimination's occurrence and its serious repercussions for both the individual who experiences it and for this Nation's effort to control the epidemic. Many witnesses indicated that addressing discrimination is the first critical step in the Nation's response to the epidemic.

HIV-related discrimination is impairing this Nation's ability to limit the spread of the epidemic. Crucial to this effort are epidemiological studies to track the epidemic as well as the education, testing and counseling of those who have been exposed to the virus. Public health officials will not be able to gain the confidence and



cooperation of infected individuals or those at risk for infection if such individuals fear that they will be unable to retain their jobs and their housing, and that they will be unable to obtain the medical and support services that they need because of discrimination based on a positive HIV antibody test.

As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the epidemic, and will leave HIV-infected individuals isolated and alone.

In general, because HIV is blood-borne and sexually transmitted, there is no need to treat those infected with HIV in a manner different from those not infected in such settings as the workplace, housing, and the schools. In the vast majority of workplace and public settings, there is virtually no risk of direct exposure to body fluids which could result in HIV transmission.

Detailed Centers for Disease Control guidelines have been issued for dealing with HIV infection in those cases which require special handling, such as health care workers and other workers who might be exposed to blood or those school children who lack control of bodily secretions.

Therefore, discrimination against persons with HIV infection in the workplace setting, or in the areas of housing, schools, and public accommodations, is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care or associate with such individuals.

As a witness at the Commission's hearings on discrimination explained, individuals infected with HIV face two fights: The fight against the virus and the fight against discrimination. Just as the HIV-infected must have society's support in their fight against the virus, these individuals must have society's support in their fight against discrimination and must have assurances that policies will be implemented to prevent discrimination from occurring in the future.

Furthermore, each act of discrimination, whether publicized or not, diminishes our society's adherence to the principles of justice and equality. Our leaders at all levels, National, State, and local, should speak out against ignorance and injustice, and make clear to the American people that discrimination against those disabled for whatever reasons will not be tolerated. This is the guts of your act.

The National Council on the Handicapped, an independent Federal agency comprised of 15 members appointed by the President to make recommendations on public policy issues affecting people with disabilities, included the proposal for a comprehensive Federal law of this kind in their January 1988 report to the President.

Their proposal, the Americans With Disabilities Act of 1988, of course, is the focal point of these hearings here today. It is what the Commission believes is the type of comprehensive, disability antidiscrimination legislation which should then serve as a model for all Federal legislation in this area.

I would like to close, Mr. Chairman, with one final comment. As the Commission debated this section of our report, one of the physicians on our panel, Dr. Burton Lee, a distinguished cancer specialist, made the following point. Dr. Lee said that in treating literally tens of thousands of lymphoma patients, even today, these patients faced almost inevitably some sort of discrimination once news of their disease became public.

Dr. Lee strongly supports the ADA because of the incredibly debilitating effects discrimination has on his own patients. He said that such a protection in law, particularly at a cancer patient's most vulnerable moment, can mean the difference between a premature death, or years more of life with family and friends.

Work, a decent place to live, a chance for an education are the essentials of life. Passage of the ADA will ensure that no one will lose these essentials simply because they have a disabling condition.

Thank you, Mr. Chairman, for allowing me to appear before you this morning.

[The prepared statement of Admiral Watkins, with an attachment, follows.]



STATEMENT OF ADMIRAL JAMES WATKINS

GOOD AFTERNOON:

I GREATLY APPRECIATE THE OPPORTUNITY THIS AFTERNOON TO BRIEFLY ADDRESS THE PRIVATE SECTOR LEADERSHIP CONFERENCE ON AIDS. AS YOU KNOW, FROM OCTOBER OF 1987 UNTIL JULY, I WAS THE CHAIRMAN OF THE PRESIDENTIAL COMMISSION ON THE HIV EPIDEMIC, A JOB WHICH REQUIRED MY FULL-TIME ATTENTION. I CAN TRUTHFULLY SAY THAT, HAVING BEEN INVOLVED IN PUBLIC SERVICE FOR THE LAST \_\_\_\_\_ YEARS, MY ROLE AS CHAIRMAN OF THE COMMISSION WAS THE MOST COMPLICATED AND DIFFICULT OF MY CAREER.

IN RETROSPECT, I SEE THAT THE COMMISSION BEGAN AS MANY AMERICAN INSTITUTIONS ARE STILL OPERATING, IN THE DARK, WITHOUT DIRECTION, THAT IS WITHOUT THE PROPER PLANNING NECESSARY TO DEAL WITH AIDS. AFTER THE COMMISSION CONDUCTED 50 DAYS OF PUBLIC HEARINGS AND SITE VISITS, OUR PERSPECTIVE WAS MUCH DIFFERENT AND WE WERE ABLE TO PUT TOGETHER A FINAL REPORT WHICH HAS BEEN WIDELY PRAISED.

YOU SEE, AFTER YOU'VE DONE YOUR HOMEWORK, THE HIV EPIDEMIC REALLY ISN'T SO HARD. ABOUT FIVE MONTHS INTO OUR

ASSIGNMENT, IT BECAME CLEAR TO ALL THE COMMISSIONERS THAT WE WERE HEARING AN INCREDIBLE AMOUNT OF CONSENSUS FROM OUR WIDE VARIETY OF HUNDREDS OF WITNESSES. THESE WERE PEOPLE FROM ALL WALKS OF LIFE, ALL POINTS OF VIEW. WHILE THEY DIFFERED ON SOME OF THE FINE POINTS OF PUBLIC POLICY, THE GREAT MAJORITY SUPPORTED A COMMON SENSE APPROACH TO DEALING WITH THE HIV EPIDEMIC.

THIS CONSENSUS OF ACTION IS WHAT YOU SEE IN THE COMMISSION'S REPORT--A COMMON SENSE APPROACH. WE TRY, AND I BELIEVE WE SUCCEEDED, TO SPEAK TO THE BASIC GOODNESS AND FAIRNESS THAT IS THE CENTERPIECE OF AMERICAN LIFE. NOBODY SHOULD GET SPECIAL TREATMENT, AND EVERYONE SHOULD BE TREATED FAIRLY WHEN THEY ARE SICK.

THIS IS MY FIRST PUBLIC APPEARANCE SINCE I LEFT FOR VACATION IN A REMOTE PART OF CANADA IN MID-JULY. BECAUSE I WAS NOT IN WASHINGTON, OR REACHABLE BY PHONE WHEN THE PRESIDENT ISSUED HIS FIRST IN A SERIES OF IMPLEMENTING ANNOUNCEMENTS, I MISSED BEING PART OF THE FIRST WAVE OF REACTION. I WOULD LIKE



TO GIVE YOU MY REACTION TODAY, AS IT IS RELATED TO THE SPECIAL MISSION AMERICAN BUSINESS AND LABOR HAVE IN DEALING WITH THE HIV EPIDEMIC.

AS MANY OF YOU KNOW, THE CENTERPIECE OF THE COMMISSION'S AIDS STRATEGY WAS PASSAGE OF FEDERAL AND STATE ANTIDISCRIMINATION LAWS WHICH CLEARLY STATE THAT THOSE WITH HIV ARE DISABLED AND HAVE A HANDICAPPING CONDITION. SO FAR, MANY STATES HAVE PASSED SUCH LAWS, BUT ACTION ON THE FEDERAL LEVEL HAS BEEN MUCH SLOWER. THE SENATE SUBCOMMITTEE ON THE HANDICAPPED WILL BE HOLDING ITS FIRST DAY OF HEARINGS ON SUCH A LAW ON SEPTEMBER 29TH AND I WILL BE A WITNESS AT THAT HEARING IN STRONG SUPPORT OF THE AMERICANS WITH DISABILITIES ACT. SO FAR, THE HOUSE HAS NOT HELD ANY HEARINGS ON THE ADA BILL, AND SEPARATE LEGISLATION TO EXTEND CIVIL RIGHTS COVERAGE FOR ONLY THOSE WITH HIV WAS DROPPED FROM A HOUSE BILL IN JUNE. THIS LEGISLATION IS ESSENTIAL AS, AND I QUOTE FROM OUR REPORT, "HIV-RELATED DISCRIMINATION IS IMPAIRING THIS NATION'S ABILITY TO LIMIT THE SPREAD OF THE EPIDEMIC...AS LONG

AS DISCRIMINATION OCCURS...INDIVIDUALS WHO ARE INFECTED WITH HIV WILL BE RELUCTANT TO COME FORWARD FOR TESTING, COUNSELING, AND CARE. PUT YOURSELF IN THE SHOES OF SOMEONE WHO IS AFRAID HE WILL LOSE HIS JOB AND HOME, AND WHO MIGHT HAVE 10 OR 15 YEARS FROM TIME OF INFECTION UNTIL <sup>any</sup> SYMPTOMS ARE PRESENT. THE COMMISSION FELT THAT THIS PERSON SHOULD BE TREATED LIKE ANYONE ELSE WHO HAS CANCER, HEART DISEASE, DIABETES OR ANY OTHER DISABLING CONDITION. NO SPECIAL TREATMENT, JUST FAIR TREATMENT.

AS YOU CAN SEE, THE CONGRESS HAS NOT GOTTEN VERY FAR IN THIS PROCESS. I INTEND TO WORK WITH MEMBERS OVER THE NEXT YEAR TO MAKE SURE THIS NECESSARY LEGISLATION TO COVER THE RIGHTS OF ALL ILL AND DISABLED PEOPLE IN BOTH THE PUBLIC AND PRIVATE SECTORS IS ENACTED AND SIGNED INTO LAW. BOTH PRESIDENTIAL CANDIDATES HAVE ENDORSED THIS TYPE OF LEGISLATION.

HOWEVER, AS IMPORTANT AS PASSAGE OF A FEDERAL ANTIDISCRIMINATION LAW IS, THE COMMISSION ALSO RECOGNIZED THAT



PASSAGE OF CIVIL RIGHTS LAWS CAN BE A SLOW PROCESS. I QUOTE:

"THE COMMISSION RECOGNIZES THAT PASSAGE OF MORE COMPREHENSIVE DISABILITY DISCRIMINATION LEGISLATION BY CONGRESS MAY TAKE TIME. THEREFORE, THE COMMISSION BELIEVES THAT IT IS IMPERATIVE FOR THE FEDERAL GOVERNMENT TO TAKE IMMEDIATE STEPS TO INFORM THE PUBLIC REGARDING EXISTING FEDERAL ANTIDISCRIMINATION LAW AND REGARDING THE REMEDIES WHICH ARE AVAILABLE...."

I AM CONCERNED THAT THE DEBATE OF THE LAST TWO MONTHS HAS NOT FOCUSED PROPERLY ON WHAT WAS ACTUALLY IN THE PRESIDENT'S STATEMENT, AND THAT IS AN ENDORSEMENT OF THE OFFICE OF PERSONNEL MANAGEMENT GUIDELINES FOR ALL FEDERAL AGENCIES, BUT ALSO, MOST IMPORTANTLY, AS A STANDARD OF CONDUCT FOR THE NATION.

WE DO NOT HAVE TO WAIT UNTIL THE ADA BILL IS PASSED NEXT YEAR TO USE THE OPM GUIDELINES AS A MODEL FOR ALL AMERICAN BUSINESSES. I URGE EVERYONE HERE TODAY TO GET A COPY OF THE

GUIDELINES AND ENDORSE THEM IN YOUR WORKPLACE. WHEN I FIRST HAD A CHANCE TO REVIEW THEM, I WAS SO IMPRESSED WITH THEIR CLARITY. CONNIE HORNER, THE DIRECTOR OF OPM, HAD PUT INTO WORDS THE COMMON SENSE WE NEED ON THIS ISSUE.

THE ROLE OF AMERICAN BUSINESS AND LABOR IS CENTRAL IN ESTABLISHING FAIR EMPLOYMENT POLICIES AS WELL AS POTENTIALLY BEING THE MAJOR AVENUE OF EDUCATION ON THE HIV EPIDEMIC FOR THE AVERAGE AMERICAN. LET US TAKE THE TRAGEDY OF AIDS AND TURN IT INTO AN OPPORTUNITY TO IMPROVE THE EDUCATION AND HEALTH OF ALL AMERICANS. WHAT THE WORKER LEARNS IN THE WORKPLACE ABOUT THE HIV EPIDEMIC, AS WELL AS HIS OR HER OWN HEALTH, IS TAKEN HOME AND SHARED WITH THE REST OF THE FAMILY. WE MUST NOT MISS THE OPPORTUNITY TO EDUCATE WORKERS ABOUT HOW THEY CAN MAINTAIN A HEALTH LIFESTYLE FOR THEMSELVES AND THEIR FAMILIES.

MANY PEOPLE HAVE ASKED ME WHAT MY GREATEST WORRY IS FOR THE FUTURE WITH THE HIV EPIDEMIC, AND I ALWAYS ANSWER--OUR TEENAGERS, AND THE ROLE OF DRUG ABUSE IN FUTURE SPREAD OF HIV. WITH REGARD TO THE LATTER, IT IS TIME THAT WE COLLECTIVELY



RENOUNCE THE USE OF ILLEGAL DRUGS. WE NEED STRONGER LAW ENFORCEMENT POLICIES THAT REACH NOT ONLY THE STREET MERCHANT IN HARLEM, BUT THE YUPPIE ON WALL STREET. WE NEED A GREATLY EXPANDED TREATMENT SYSTEM, SO THAT ANYONE WHO DESIRES HELP IN KICKING THE HABIT CAN DO SO. PERIOD. ANYONE, ANYTIME, NO MORE SIX MONTH WAITING LISTS.

WITH REGARD TO OUR YOUNG PEOPLE, THE FUTURE OF OUR NATION, WE ARE LEARNING MANY LESSONS FROM THIS EPIDEMIC. WE HAVE SEEN THAT IT IS BETTER, LESS EXPENSIVE, AND FAR MORE HUMANE TO PREVENT A PROBLEM THAN TO CORRECT IT -- AND IF THIS IS TRUE FOR HIV, IT IS EVEN MORE TRUE FOR DRUG ABUSE. WE HAVE SEEN THAT SCIENCE DOES NOT HOLD ALL THE ANSWERS TODAY, AND MAY NOT TOMORROW. WE HAVE SEEN THAT EDUCATION IS OUR GREATEST WEAPON AGAINST THIS EPIDEMIC, AND AGAINST SO MANY OF OUR OTHER PROBLEMS NEEDING SOLUTIONS. AND WE HAVE SEEN THAT WE CANNOT FIND THOSE SOLUTIONS ALONE. ONLY THROUGH THE EFFORTS OF MANY, WORKING TOGETHER, WILL THESE BOULDERS FINALLY BEGIN TO BE ROLLED AWAY.

LET US USE THIS EPIDEMIC AS A CATALYST. LET US SEE IT AS PROVIDING OPPORTUNITIES TO CREATE A BETTER NATION FOR OUR CHILDREN TO INHERIT. LET US ELIMINATE INEQUITIES IN OUR HEALTH CARE DELIVERY SYSTEM; EDUCATE OUR YOUNG PEOPLE ABOUT THEIR OWN HUMAN BIOLOGY; ELIMINATE DISCRIMINATION, AND HARNESS THE GOODNESS ALREADY AT WORK OUT THERE INTO AN UNBEATABLE ARMY AGAINST THIS DISEASE.

YOUR LEADERSHIP IN ACHIEVING THESE GOALS IS ESSENTIAL, AND I APPLAUD ALL THAT MANY OF YOU HAVE ALREADY DONE TO ATTACK AND CONQUER SO MANY OF THESE PROBLEMS. I AM ALSO GRATEFUL THAT YOU ALLOWED ME TO COME BEFORE YOU TODAY TO CHALLENGE YOU CONTINUE TO WORK -- SINGLY AND TOGETHER, WITH GOVERNMENT, AND TO IMPROVE THAT GOVERNMENT WHEN NECESSARY -- TO REMOVE THE MANY OBSTACLES IN THE WAY OF FREE AND HEALTHY LIVES FOR OUR YOUNG PEOPLE.

FINALLY, I WANT TO PAY A SPECIAL TRIBUTE TO THE WORK OF B.J. STILES AND THE NATIONAL LEADERSHIP COALITION ON AIDS. NOT ONLY HAVE THEY PROVEN AN EFFECTIVE NATIONAL ORGANIZATION

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NCOO



ENCOURAGING DEVELOPMENT OF AND OTHER RATIONAL WORKPLACE AND PUBLIC POLICIES, BUT AT OUR DARKEST HOUR LAST OCTOBER, B.J. AND HIS BOARD STEPPED FORWARD TO EXTEND THE HAND OF FRIENDSHIP TO ME AND THE OTHER COMMISSIONERS, AND WISH US WELL IN OUR WORK. IT WAS A GENEROUS GESTURE, AND THE WORKING RELATIONSHIP BETWEEN THE LEADERSHIP COALITION AND THE COMMISSION WAS EXCELLENT THROUGHOUT MY TENURE. I WANTED TO THANK B.J. PUBLICLY TODAY FOR THAT.

THANK YOU.

*Alvin  
James  
Watkins*

## CHAPTER NINE: LEGAL AND ETHICAL ISSUES

### Section I. Discrimination

Throughout our investigation of the spread of HIV in the United States, the Commission has been confronted with the problem of discrimination against individuals with HIV seropositivity and all stages of HIV infection, including AIDS. At virtually every Commission hearing, witnesses have attested to discrimination's occurrence and its serious repercussions for both the individual who experiences it and for this nation's efforts to control the epidemic. Many witnesses have indicated that addressing discrimination is the first critical step in the nation's response to the epidemic.

HIV-related discrimination is impairing this nation's ability to limit the spread of the epidemic. Crucial to this effort are epidemiological studies to track the epidemic as well as the education, testing, and counseling of those who have been exposed to the virus. Public health officials will not be able to gain the confidence and cooperation of infected individuals or those at high risk for infection if such individuals fear that they will be unable to retain their jobs and their housing, and that they will be unable to obtain the medical and support services they need because of discrimination based on a positive HIV antibody test.

As long as discrimination occurs, and no strong national policy with rapid and effective remedies against discrimination is established, individuals who are infected with HIV will be reluctant to come forward for testing, counseling, and care. This fear of potential discrimination will limit the public's willingness to comply with the collection of epidemiological data and other public health strategies, will undermine our efforts to contain the HIV epidemic, and will leave HIV-infected individuals isolated and alone.

On the other hand, the Commission has also received testimony about situations in which HIV-infected individuals have been treated with compassion and understanding by employers, coworkers, fellow students, and members of their local community. From these contrasting experiences, it is clear that the key to an enlightened and compassionate response is education and the planning and development of HIV programs and policies well in advance of the occurrence of the first case of HIV infection. The Commission believes that every employer, school system, and community should start that education and planning process now.

In general, because HIV is blood-borne and sexually transmitted, there is no need to treat those infected with HIV in a manner different from those not infected in such settings as the workplace, housing, and the schools. In the vast majority of workplace and public settings there is virtually no risk of the direct exposure to body fluids which could result in HIV transmission. Detailed Centers for Disease Control (CDC) guidelines have been issued for dealing with HIV infection in those cases which require special handling, such as health care workers and other workers who might be exposed to blood or those schoolchildren who lack control of their body secretions.

Therefore, discrimination against persons with HIV infection in the workplace setting, or in the areas of housing, schools, and public accommodations, is unwarranted because it has no public health basis. Nor is there any basis to discriminate against those who care for or associate with such individuals.

It is illegal to discriminate against persons with AIDS in those local jurisdictions with AIDS-specific anti-discrimination statutes, in those states which include AIDS as a protected



handicap under their disability anti-discrimination laws, and in programs which receive federal funds. Section 504 of the Rehabilitation Act of 1973 is the federal anti-discrimination statute which prohibits discrimination against otherwise qualified persons with disabilities (including persons subject to a range of AIDS-related discrimination) in any program or activity receiving federal funds.

Nevertheless, complaints of HIV-related discrimination persist and their number is increasing. For example, HIV-related cases handled by the New York City Commission on Human Rights have risen from three in 1983, to more than 300 in 1986, to almost 600 in 1987. Similarly, the Office of Civil Rights which enforces federal disability discrimination law in programs funded by the Department of Health and Human Services reports a rise in complaints related to HIV infection in the past few years. AIDS advocacy groups and civil rights organizations nationwide also are experiencing an increase in HIV-related discrimination cases.

As a witness at the Commission's hearing on discrimination explained, individuals infected with HIV face two fights: the fight against the virus and the fight against discrimination. Just as the HIV-infected must have society's support in their fight against the virus, these individuals must have society's support in their fight against discrimination and must have assurances that policies will be implemented to prevent discrimination from occurring in the future.

One of the primary causes of discriminatory responses to an individual with HIV infection is fear, based on ignorance or misinformation about the transmission of the virus. We cannot afford to let such ignorance and misinformation persist. Each publicized incidence of discrimination, such as the picketing of a school that has admitted a child with HIV infection, perpetuates this ignorance and sows doubts in the minds of those who hear of it. This undermines current and future HIV education programs as well as rational HIV policies.

Furthermore, each act of discrimination, whether publicized or not, diminishes our society's adherence to the principles of justice and equality. Our leaders at all levels—national, state, and local—should speak out against ignorance and injustice, and make clear to the American people that discrimination against persons with HIV infection will not be tolerated.

Just as our society has taken a definitive stand on discrimination against persons with other handicapping conditions and illnesses—such as cerebral palsy, mental retardation, and cancer—society must take a stand on discrimination against persons with HIV infection. The United States has been an international leader in affirming and promoting the civil rights of persons with disabilities. While much remains to be done, as a nation we can take great pride in the progress we have made in embracing persons with disabilities as a part of the mainstream of society. Persons with HIV infection must be clearly and definitively guaranteed their civil rights and be protected against discrimination just as persons with other disabilities are. Such protection enables the HIV-infected person to become a partner with social institutions in limiting further spread of the infection and supporting effective care-giving systems.

#### Obstacles to Progress

The Commission has identified the following obstacles to progress in combating discrimination against persons with HIV infection:

- There is not a societal standard or national policy statement clearly and unequivocally stating that discrimination against persons with HIV infection is wrong.
- There is no comprehensive, national legislation clearly prohibiting discrimination against persons with HIV infection as a handicapping condition.
- There is a lack of coordinated leadership from our public and private institutions on the issue of discrimination against persons with HIV infection.
- A patchwork of federal, state, and local laws is both confusing and, ultimately, ineffective in preventing discrimination or providing remedies.
- Enforcement of existing anti-discrimination laws is slow and ineffective.
- Education about transmission of the virus and about the laws banning HIV-related discrimination is insufficient. This results in ignorance, misinformation, acts of discrimination, and, in some persons, an irrational fear of association with those who are HIV-infected.

The Commission believes that removing these obstacles and eliminating HIV-related discrimination will require coordinated action by all Americans—by individuals and organiza-

ered under Section 504. The Commission supports the position that Section 504 coverage applies to persons who are HIV positive yet asymptomatic.

Section 504's prohibition against discrimination extends, however, only to federally funded programs and activities. Thus, large segments of the population in the private sector do not fall within its jurisdiction. There is no existing federal anti-discrimination protection for persons with disabilities facing discrimination in the workplace, housing, or public accommodations which do not receive federal funds.

#### RECOMMENDATIONS

The Commission believes that federal disability anti-discrimination law should be expanded to cover the private as well as the public sector. Specifically, the Commission recommends:

- 9-4 Comprehensive federal anti-discrimination legislation which prohibits discrimination against persons with disabilities in the public and private sectors, including employment, housing, public accommodations, and participation in government programs, should be enacted. All persons with symptomatic or asymptomatic HIV infection should be clearly included as persons with disabilities who are covered by the anti-discrimination protections of this legislation.

The National Council on the Handicapped, an independent federal agency comprised of 15 members appointed by the President to make recommendations on public policy issues affecting people with disabilities, included a proposal for a comprehensive federal law of this kind in their January 1988 report to the President. Their proposal, the Americans with Disabilities Act of 1988, was recently introduced in the United States Congress. The Commission believes that this type of comprehensive, disability anti-discrimination legislation should serve as a model for federal legislation in this area.

The Commission does not intend for anti-discrimination legislation to invoke affirmative action for persons with HIV infection. In other words, no one would be required to hire an individual with HIV infection based on that status.

The Commission recognizes that particular attention will need to be paid to the impact of such legislation on small employers, as has been done in other civil rights laws. Any dis-

ability anti-discrimination law passed should be consistent with, and not go beyond, the reach of existing civil rights laws for other groups such as minorities and women. In carrying out provisions of the new legislation, all persons with disabilities should have access to the same support services as those covered under other comprehensive federal anti-discrimination laws.

The Commission recognizes that passage of more comprehensive disability discrimination legislation by Congress may take time. Therefore, the Commission believes that it is imperative for the federal government to take immediate steps to inform the public regarding existing federal anti-discrimination law and regarding the remedies which are available for those who experience HIV-related discrimination by entities that receive federal financial assistance. Enforcement of existing law must be strengthened.

In 1986, the Department of Justice issued a memorandum which concluded that although federal disability law prohibits discrimination based on the disabling effects of AIDS, discrimination based on fear of contagion was not covered. The absence of any further statement from the Department of Justice has created confusion and uncertainty about its position, particularly since *Arline* rejected the fear of contagion argument. Specifically, the *Arline* decision stated:

We do not agree with petitioners that, in defining a handicapped individual under Section 504, the contagious effects of a disease can be meaningfully distinguished from the disease's physical effects on a claimant in a case such as this.

To eliminate uncertainty and clarify the applicability of federal disability law to HIV-related conditions, the Commission recommends:

- 9-5 The Department of Justice, which has been designated to coordinate the enforcement of disability discrimination law for all federal agencies, should issue a follow-up memorandum expressing support for the *Arline* decision and withdrawing its earlier opinion that fear of contagion is not a basis for Section 504 coverage. In addition, the Department of Justice memorandum should take the lead in endorsing lower court rulings by clarifying that persons who are HIV-infected yet asymptomatic, as well as persons with symptomatic HIV infection, are covered by Section 504.



- 9-6 The Office of Civil Rights within each agency should develop policy guidelines stating that all HIV-infected persons, including those who are asymptomatic, are subject to the jurisdiction of the Office. The agencies should publicize the availability of the services of their Offices of Civil Rights to those who have experienced HIV-related discrimination and should publish their intent to investigate actively all complaints. The agencies should distribute these policy guidelines to all contractors and grantees.
- 9-7 All agency Offices of Civil Rights should establish a system of aggressive investigation of violations of Section 504 in HIV infection-related cases, including expedited procedures for review of complaints and regular monitoring of those procedures.
- 9-8 Supplemental funds should be allocated to all agency Offices of Civil Rights to increase staff and resources for the enforcement of Section 504.

**State and Local Government Response**

In addition to strong federal anti-discrimination legislation, state and local legislation is needed to provide the local administrative procedures and courts as an alternative to federal litigation for enforcement of the rights of the HIV-infected. Local government officials are able to intervene quickly and utilize ongoing relationships in the community for rapid resolution of discrimination complaints. Rapid resolution is needed as the infected individual may well die in the time interval that a typical case is processed.

**RECOMMENDATIONS**

For state and local governments, the Commission recommends:

- 9-9 If not now the case, states should amend their disability laws to prohibit discrimination against persons with disabilities, including persons with HIV infection who are asymptomatic or symptomatic, and persons with AIDS, in public and private settings including employment, housing, public accommodations, and governmental services.
- 9-10 State-sponsored HIV education campaigns should include anti-discrimination components.
- 9-11 Arbitration, mediation, and accelerated settlement procedures and programs should be developed and utilized to

assist in the speedy resolution of HIV-related discrimination complaints. Mediators and arbitrators should be trained to deal with the special circumstances surrounding HIV-related discrimination cases.

**Community Response**

One of the primary barriers between those infected with HIV and those not infected is the widespread belief that HIV infection is someone else's problem—there is no need to become educated about it. Individuals in large and small communities across the country are discovering that this is not the case, as they have learned to accommodate individuals with HIV infection living in their midst. In those communities which have developed HIV-related policies and guidelines for health care settings, the workplace, and the schools, and had their programs in place before the first case of HIV infection appeared, fears were reduced and individuals with HIV infection have been accepted. In some cases, where community leaders have not educated the community and not developed policies in advance, the result has been discrimination fueled by fear and ignorance, leading to divisiveness in the community and suffering for the family and friends of the infected individual.

To prevent discrimination, the primary tools at the local level are comprehensive, participatory educational programs, advance planning, and preparation. Educational programs about the transmission of the virus, the laws against discrimination, and the reasons for compliance should be developed by employers, school systems, and health care providers. Education should be provided in simple language for the layman and it should come from a person who has the confidence of those being offered the information. Local officials in government, business, public health, schools, and religious and community organizations should assume a leadership role in this effort.

**RECOMMENDATIONS**

Specifically, the Commission recommends:

- 9-12 Organizations representing health professionals should adopt a public policy stating that their members have an ethical obligation to treat patients with HIV infection in a non-discriminatory fashion. These organizations should develop education programs for their members

- 9-13 Religious leaders should take an active role in the anti-discrimination education effort with members of their parish or congregation. In addition, religious institutions should develop outreach programs for individuals in their community with HIV infection and should involve the congregation or parish members in volunteer activities.
- 9-14 Employers should develop an HIV education program for all employees. Education programs to combat discrimination should emphasize two goals: information about transmission to prevent the further spread of HIV infection and education about legal issues—such as how to ensure confidentiality and prevent discrimination. This approach should be used in all workplace settings.
- 9-15 Employers should have each department or office review and revise policies and procedures in light of medical and legal information related to HIV infection, and, where applicable, interact with the community to further public education about HIV infection. This last step may be most applicable to the public sector.

**HIV and the Schools**

The Commission has heard testimony about the experiences, both good and bad, of a number of HIV-infected schoolchildren. Important lessons can be learned from those model communities which have policies in place regarding HIV infection in advance of the first case, and have been able to accept the HIV-infected individual in their schools without fear and discrimination. In some school districts, a well-coordinated system of educational programs has produced an enhanced sense of community pride and satisfaction from having worked together to fashion an enlightened, rational policy on HIV infection for the schools. The Commission has been impressed with the courage and compassion which school and public health officials have displayed in planning and preparing for a positive outcome. A number of common principles emerge from the experiences of these model communities. The recommendations in this section should be implemented in conjunction with the school-based education recommendations in the education chapter of this report.

**RECOMMENDATIONS**

Specifically, the Commission recommends:

- 9-16 Each school system should establish a board-developed policy, with accompanying guidelines, for dealing with an individual with HIV infection in the school before it is confronted with the first case. The Centers for Disease Control or other public health guidelines should be utilized but the policy should be flexible and allow each case to be dealt with on an individual basis, based on medical facts.
- 9-17 Educational materials about the transmission of the disease and the anti-discrimination laws should be developed and disseminated and, where necessary, explained fully by legal and medical experts. Age-appropriate materials on these topics should be developed for students.
- 9-18 School officials should identify a decision-making structure to review all HIV policies and procedures and to deal with each individual case. Legal, medical, and public health consultants from the community should be involved.
- 9-19 Open public meetings should be scheduled, featuring school officials, medical and legal consultants, and community officials, to discuss the board's policies and the rationale for its decisions. School officials must be prepared to educate the entire community, including parents, public officials, clergy, pediatricians, students, and media representatives, about the reasons for the board's decisions. Support and counseling should be offered to employees, parents, or children who are troubled by the board's decision.
- 9-20 In any communications about specific HIV-infected individuals, the confidentiality of the schoolchild or staff member should be maintained to minimize the opportunity for discriminatory behavior.
- 9-21 A team should be formed with responsibility for reviewing all aspects of the case on an ongoing basis and monitoring medical or legal developments that might affect school district decisions.
- 9-22 School officials should actively participate in community education efforts so that they support acceptance of HIV-infected individuals in the schools in a non-discriminatory manner.



9-23 Educational associations should disseminate information to their members on the policies and procedures used by those communities which have accepted an HIV-infected individual in their schools without fear and discrimination.

**HIV and Health Care Settings**

The Commission has heard testimony that some hospitals and some health care workers in hospitals have been unwilling to care for HIV-infected persons or have provided inappropriate care because of fear. Steps must be taken to eradicate this fear because these institutions are critical sources of care and are leaders in community attitudes.

Over the next five to 10 years, even more community-based health care facilities, such as group homes, nursing homes, hospices, and mental health facilities, will be needed in many communities to care for patients with HIV infection. Long-range planning for these facilities must be undertaken now in order to avoid fearful and discriminatory reactions from the community.

**RECOMMENDATIONS**

Specifically, the Commission recommends:

9-24 Hospitals and providers of health care to HIV-infected patients should establish a mandatory education program for all hospital employees, including an anti-discrimination component and professional, confidential counseling for all employees. Health care workers need to be reminded about the social context of HIV infection and the need for confidentiality and protection of private medical information.

9-25 Health care providers dealing with patients with HIV should make available a patient care advocate, if one does not yet exist, to regularly contact individuals with HIV, so that patients could confidentially report treatment problems. Health care professionals who have repeated, substantiated complaints made against them, and who resist education, should be formally reprimanded and placed on probation. In general, the Commission feels that remedies such as this should be short-term in nature and could gradually be phased out.

9-26 State and local governments and health care providers should develop long-range plans now to anticipate the need for community-based health care facilities, and should develop a strategy to

educate community members to accept facilities and prevent discriminatory responses.

9-27 Those working to educate a community in preparation for acceptance of patients with HIV infection should develop a strategy to prevent discrimination. Some important points to include are: allowing time for education; knowing the legal issues involved; mobilizing political, community, and religious leaders for support; bringing in legal and public health experts; meeting with people who have concerns and listening to their concerns.

Senator WEICKER. Thank you very much. Before I proceed to questions with Admiral Watkins, those that are in wheelchairs, I would like to get as many as possible up here. This is a tremendous statement by the entire community. I think we have the entire community right in this hearing room. [Applause.]

If you want to just come forward, that will enable more that are in the back to be in a comfortable position, as comfortable as possible during such as this. I think it is terrific that you are all here.

Admiral Watkins, one question that I have is that the words that I hear all over the place are well, we like that Presidential Commission report, but we do not like the antidiscrimination aspect of it. We can take the report, but we do not want that antidiscrimination aspect of it. Have you heard this, also?

Mr. WATKINS. Yes, I have, Senator Weicker.

Senator WEICKER. That is what we are contending with here. That is why it is such a privilege to have you here, because it is not just a question of discrimination against AIDS, which is the most recent discrimination, but the decades old discrimination that so many have suffered with here in this room.

I could not help but think, with all the concern for the ritual of the Pledge of Allegiance, how many people think about those last words, indivisible with liberty and justice for all? And justice for all. That is what the Americans with Disabilities Act is all about, justice for all.

So instead of being a ritual, let us make it a reality. [Applause.]  
Congressman Owens.

Mr. OWENS. I have no questions, Admiral, but since you first came to my office for a brief introductory session, I have been quite pleased with the way you have moved in this city and the Nation as a whole, to establish a certain kind of calm and a return to reason on this whole issue. I want to congratulate you on a magnificent job that you have done.

We recently passed legislation related to AIDS on the House level. It may have some shortcomings, but I think that the positive, upbeat nature of that legislation is due primarily to the fact that you established an environment in which we could work; an environment where anybody who was not a reasonable person was isolated. In several votes that we took, we isolated those unreasonable and hysterical people.

I think you are to be congratulated for helping to establish that atmosphere which made possible the passing of the current legislation.

Mr. WATKINS. Thank you, Congressman Owens.

Senator WEICKER. Thank you, Congressman. Congressman Jeffords.

Mr. JEFFORDS. Admiral, it is good to see you again. I deeply appreciate the earlier conversation we had on the dynamics of the work force, which put me a little ahead of the curve in understanding, and I appreciate that, and your dedication to public service after work as a tremendous member of our naval establishment.

Congressman Waxman introduced a bill earlier this year, and I joined him on that, on counseling and testing and discrimination. I just want to alert everyone that all we could get out was counseling and testing. The problems of discrimination, the inability to ar-



ticulate anything which we could get past the House on the floor debate, many of these things indicate that that is going to be the most serious problem that we face when we get to ADA, is how we can work in to ensure the rights of those that have AIDS.

I appreciate very much your very excellent testimony on that. I want to alert my colleagues that it is going to be no easy task and hopefully we will find a rational way to deal with this. Your statements are going to be so helpful in that regard, and I thank you for that.

Mr. WATKINS. Thank you, Mr. Jeffords.

Senator WEICKER. There will be further questions for response to the record, more particularly those of the Chairman, Senator Harkin, who I might add, without his help, without his hard driving on this issue, we would not be here today. He is a magnificent chairman.

He has specific questions for you, Admiral Watkins, which I would appreciate your responding for the record.

Mr. WATKINS. Thank you, Mr. Chairman.

Senator WEICKER. Thank you very, very much for all you have done for the Nation. Thank you. [Applause.]

Now we have a panel of witnesses, Mary Linden from Morton Grove, IL; Dan Piper from Ankeny, IA, accompanied by his mother, Sylvia; Jade Caleyory from Corona Del Mar, CA; and Lakisha Griffin, from Talladega, AL.

I think that we will go in order of how I called the witnesses. Please be relaxed. You are among friends, both in front and behind you. I think we want, and America wants, to hear your story. Please proceed. Mary, you are the first witness.

**STATEMENTS OF MARY LINDEN, MORTON GROVE, IL; DAN PIPER, ANKENY, IA, ACCOMPANIED BY SYLVIA PIPER, ANKENY, IA; JADE CALEGORY, CORONA DEL MAR, CA; AND LAKISHA GRIFIN, ALABAMA SCHOOL FOR THE BLIND, TALLADEGA, AL**

Ms. LINDEN. I am deeply honored to be asked to speak before the committee. The Americans with Disabilities Act is the greatest act ever passed in the 20th century, I believe, sir.

You see before you a woman who, until 1987, did not even believe that she could help with anything or even change her own outlook. My father had always chosen my path, before his death in 1964. There was no accessible housing for him to use for me, so he put both my mother and myself in a retirement home. Upon her death, I moved to their adjacent nursing home. His access still provides for my care.

His words, "As long as I am paying for your keep, you take my orders" still go through my mind every time new challenges offer themselves.

At 7 years of age, I entered the Jesse Spalding School for the Crippled, a venerable institution of the Chicago school system, a segregated institution of the Chicago school system which is still in operation today. I was there and they never even taught me to write. I learned to print after, I taught myself to print after I finished high school, with a class rank of 9 out of a class of 45, in 1951.

No career plans or educational plans were made for me because the school and my parents thought I was too disabled to compete. I have been after my education for 20 years. I got most of it after transportation became accessible, after a fashion that is. It is not. I have got 61 hours of credit.

But we cannot get from Morton Grove to Northeastern University because the two transportation organizations will not unite, so discrimination still exists. I want my 4 year degree so that I can go and have Executive Director Jim DeJong of the Coalition for Citizens with Disabilities [CCDI] in Illinois, for the most precious thing in the world, a paying job.

I beg of you to pass this act, so that other children will not have to go through what I went through, will not be stared at, will not be limited as to how many times they can see things. It will not be once every 6 months that we get to go shopping. If we pass it, we can go stare at the glass windows any time we want to.

The youngsters here will have much more chance than I did, but they should have a chance to work and to contribute as much as they can.

I thank you.

[The prepared statement of Ms. Linden follows:]



Testimony of Mary Ella Linden  
before the  
Senate Subcommittee on the Handicapped  
September 27, 1988

on the  
Americans with Disabilities Act (ADA)

Ladies and Gentlemen, I am deeply honored to speak before you in support of the Americans with Disabilities Act of 1988. This legislation is very much needed, not only for the provisions it contains, but also for the principle it embodies: freedom from discrimination on the basis of a disability which will give us the opportunity to participate in American society as equal members, as fully human beings.

When the Act becomes law, people with disabilities will have several accepted, legal, legitimate channels through which to air their needs and grievances. There will no longer be a necessity for those demonstrations which the noninvolved world may find so distasteful. Freer access to job opportunities will allow people with disabilities to be seen as human beings with the same needs, drives, and desires as the nonimpaired in the workplace. Perhaps people will learn not to stare so hard, too.

You see before you a woman who did not learn until August 10, 1987, that she had the strength to help with anything or to change her own outlook. My father had always chosen my path until his death in 1964. There was no alternative housing situation for my father to use for me after his death, but a nursing home. And so, at the age of 34, I was placed in a retirement home with my mother upon his death. And upon her death I was

placed in the adjacent nursing home. His estate still provides for my care. His words, "As long as I'm paying the bills, you take my orders", have echoed through my mind whenever new challenges have offered themselves.

I was born in Chicago in 1930, attended segregated public schools, and graduated from high school in 1950 with a class rank of ninth out of forty five. But no plans were made for me for a career or for higher education, because I was considered too crippled to compete by both the school and my parents. In fact, the school never even took the time to teach me to write! I taught myself to print in 1951 after I had graduated from the public school system. However, I can still neither read nor write in cursive. It is very embarrassing to have to ask someone to read a letter or a professor's comments. The effects of the school's failure to teach me are still evident today. Fortunately I had been taught to use the typewriter by a very creative and resourceful aunt. This skill has enabled me to obtain sixty-one hours of college credit. But I am getting ahead of myself.

Both of my parents were children of Swedish immigrants -- eager to succeed and to be American. They believed the doctors who made surgical adjustments on my leg and heel chords in successive operations between the ages of 18 months and three years. I spent most of that time in the hospital. When I was six years old, a specialist told my parents that the doctors had cut too much and that I would never be able to walk. Nowadays a malpractice suit might have been brought against the surgeons or even the doctor who delivered me, but not in the 1950s and certainly not by my parents!

When I was seven years old I entered the Jesse Spalding School for the Crippled, a venerable institution even then of the Chicago public school system which is still in existence today. I always attended segregated



schools, rode to and from school in a cab (paid for by the school system) and had little or none of the usual childhood activities, especially those involving socialization. As an only child, I had no sibling to play with, to interact with, to learn from, or just to be with. The few school activities that did occur, my parents did not encourage me to attend. And shopping expeditions -- which all children love -- were not often possible. Twice a year I went to the dentist, went shopping, and to a restaurant. Otherwise I saw little of the "outside world" and they saw little of me, as was the custom. The accessibility of public accommodations, especially in public meeting places, will open the doors for all people with disabilities and the general public will finally begin to see us as we are and learn not to stare, cringe, or otherwise react to our mere presence among them. But, back to school, the teachers in the sight saving class were unable to show a pupil with one usable hand how to form the letters of the alphabet. The embarrassment of trying to write on the blackboard in front of the other students who could write is something I still dread to remember. After the teachers had declared me unable to acquire writing skills, my patient aunt taught me how to use a typewriter during my tenth summer. A lack of training in activities of daily living skills meant that I had to learn them on my own.

The years from my graduation from high school in 1951 until 1987 are one big blur of discrimination. In 1951 I studied history by a correspondence course. Each of the two courses took two years to finish because I had not learned correct study habits in the public school system. Over those many years I have managed to acquire sixty-one hours of college credit, much of it when accessible public transportation finally became available through the Rail Corridor Access System. The regional transit authority provides a lift equipped bus that will travel along the same route

as the suburban train system. However, at this time I am unable to enroll in a four year college and complete my degree because of the inability of the transit systems to cooperate within the same regional authority! I want to complete my degree so that I can go to Director Jim DeJong of the Coalition of Citizens with Disabilities in Illinois and ask him for the most precious thing in the world, a paying job! More than anything else I want to devote the rest of my life to the Coalition and its work on behalf of people with disabilities.

I beg you to pass this bill. Let each of us make as tangible a contribution to American society as we can. The ADA will make things possible for today's children with disabilities that I never even dreamed were possible for me. It is deeply needed for many reasons, chief among these is that it will show people with disabilities, as well as the whole community, that we are entitled to become full human beings, participating in our community. No longer will a person need to grow up without knowing how to write because teachers did not take the time to show them how to form their letters. The increased transportation services demanded under ADA will make possible much greater integration of the whole community. There will be no cases like mine where the disability alone determines where we live and what we do. God only knows how many contributions society has missed because there were no provisions for the disabled to move about freely and to determine their own lives. I pray that the Americans with Disabilities Act will be passed as soon as possible so that we may become another melted minority. Thank you very much for your patience and for this opportunity to speak today.



Senator WEICKER. Mary, I thank you. That is courage and optimism. Just great. Just great.

Our next witness is Jade Category from Corona Del Mar. Jade, nice to have you with us.

Mr. CATEGORY. Thanks.

Hi. My name is Jade Category. I am 12 years old and I go to Corona Del Mar High School, CDM for short, in California. I am in the seventh grade and I just started this new school last week. I have been mainstreamed since the second grade.

You see, I was born with spina bifida and I have had lots of operations. I started kindergarten on a gurney and had to go to a separate school. But now that I am OK enough, I go to a regular school. So I wanted to thank you all for passing that law, 94-142, so I can go to a school with all of my friends.

CDM is my third regular school. When I was a little kid, I got called names and was teased a lot because of my disability. I know now that it was just because those kids did not understand, but the kids at my new school are smart enough to know that I am not different because of my disability.

But still, sometimes when I meet new people, I wish they would talk to me first, before they ask what is wrong with me, or what happened to me. It makes me feel like my wheelchair is more important than I am.

Anyway, I was born in 1976, 200 years after the Constitution promised freedom and independence for all of us, no matter what. Thanks to you, and the people who sat in those seats before you, I am lucky to grow up in a world that is different than when you folks were kids. Thanks to you, people are not separated as much by their age, religion, color of their skin, disability, whether they are men or women, stuff like that. Things are getting better, but it sure does take a long time.

Even though some things have gotten better, there is more that can and should be done. It is kind of like my grades in school. They are good, but I know that if I work harder, they can get even better. [Applause.]

I guess that is why I am here today, not because America's 36 million citizens are physically challenged, but because we are also politically challenged.

Although there are over 4.5 million other kids with disabilities, there are only a few of us who have the chance to work and pay taxes. I guess I am luckier than a lot of other kids with disabilities, I work as an actor.

My movie, "Mac and Me" is out right now. Maybe you have seen it. I like it because it shows that kids with disabilities are not any different and can do the same things as other kids without disabilities, if given a chance. It is the first movie to star a kid with a disability, and it is a great family film full of adventures. I even got to do some of my own stunts.

I also think "Mac and Me" is terrific because it shows a kid with a disability giving help instead of just getting help, and nobody tries to cure me, or take away my disability by the end of the movie. [Applause.]

That gives people the idea that it is okay to be disabled and just be accepted for who you are. I hope there will be more non-disabled

movie roles for disabled actors. We could be anybody, because after all we are, in real life.

R.J. Louis, who produced "Mac and Me", auditioned only disabled kids for the role. He knew disabled kids could be good actors. He gave us a chance.

At least one-half million dollars from "Mac and Me" is going to the Ronald McDonald Children's Charities to help kids with cancer. McDonald's is a good friend to the disability community. McJobs helps mentally retarded people train for a job. McDonald's has made seven TV commercials with disabled actors and was the first to have braille menus for blind customers.

McDonald's is a great company. They are a good example of how a big company should help people with disabilities become more independent. But if other companies cannot learn from McDonald's, then this American With Disabilities Act can teach them that 36 million Americans with disabilities are an important part of this world, too.

Orion Pictures wanted to advertise those theaters showing "Mac and Me" that were accessible to people using wheelchairs, but the theater owners would not let them. Here is this great family movie and a lot of people from the disability community do not even know if they can get into the theater to see it. I do not think that is fair.

I learned in my school that you are the Congress and that you have the power and the responsibility to change the laws that make life better for everyone. TV and movies have the power and responsibility to change the attitudes that also makes life better for those of us with disabilities. Without new laws like this one, and new attitudes, 36 million of America's citizens will be stuck without equal rights, and that is not fair.

Aside from acting, I like racing in my wheelchair. I have won 5K and 10K races. After my mom and I go jogging on the beach back in California, we sometimes take the bus back home, or at least we try to. Most of the buses do not have lifts on them. Some of the drivers are very rude and get mad if I want to take the bus. Can you believe that?

I work and part of my taxes pay for public buses and then they get mad just because I am using a wheelchair. I do not think that is fair or right. I am important, too.

If I really have to, I could get out of my wheelchair and climb up the stairs, but I do not think I should have to. Maybe another person using a wheelchair is trying to go to work or school and they should not have to crawl up the stairs and get dirty. Or maybe they cannot even get out of their wheelchair by themselves.

Anyway, I was thinking, if all of the buses had lifts on them, it would be better for all of us. It is hard for people to feel good about themselves if they have to crawl up the stairs of a bus, or if the driver passes by without stopping. They could be late to work or school and that is not even their fault.

I guess my teacher was right about history repeating itself. I learned in school that black people had problems with buses, too. They had to sit in the back of the bus, but some of us with disabilities cannot even get on the bus at all. Black people had to use sep-



arate drinking fountains and those of us using wheelchairs cannot even reach some drinking fountains. We get thirsty, too.

Black people had to go to separate theaters, schools, restaurants, and some of us have to, also. That is not because we want to, but because we cannot get in. That means that we do not have a choice. I think that everybody should be able to have choices, do you not?

In "Mac and Me", my family moves from Chicago to Los Angeles, and as we talk about the new house, we talk about lowered counters, no stairs, and wide hallways. I am excited that Congress has already dealt with things like accessible housing in passing the Fair Housing Act. That is neat. Thanks.

Because of "Mac and Me", I have been traveling around the country and I noticed that Chicago and New York are harder to get around. There are not as many cuts in the curbs, and the bathrooms in the hotels are not made for those of us using wheelchairs. I hope that you will help us make this world more open to people with disabilities.

You can help us make that happen. We have a right to have a world where people do not build houses and schools with steps and no ramps, buses without lifts, curbs without cuts, TV and movies without captions. I am not old enough to vote yet, but if I were, I would vote for this bill. I am sure that some of the people from your States and hometowns who voted for you were disabled. They would vote for this bill, too.

This is our future and just like Martin Luther King 25 years ago, we have a dream, too. The Americans with Disabilities Act of 1988 can help to make that dream a reality. Thanks for listening and helping us with our political challenge to make this world a better place to live for all of us with disabilities. [Applause.]

Senator HARKIN [presiding]. Thank you very much.

Bobby Silverstein, who a lot of you know here, our staff director, saw the movie last weekend. I have two young kids and this weekend I am home, so I get to go see it this weekend. Now I really want to see it.

I apologize to many of you for having been gone for a short period of time, especially those who have testified. As so often happens around here, things conflict. I am on the Appropriations Committee and we had to wrap up a certain item that I was involved in, so I apologize for having been gone for a small amount of time.

I also want to do two more things. I want to recognize a group of individuals, citizens, who have come down here from New Jersey. I understand they all got on the train this morning and came down here, a group of about 40 or more citizens, some of whom use chairs. Over 100, 170.

Raise your hands. All of those of you who came down on that train this morning. Look at that.

[A show of hands.] [Applause.]

I welcome you here and we really thank you for taking the time and the energy to come down to this important hearing.

Second, I do not know what your time element is right here, but I want to publicly say thank you to Senator Weicker for his many years of championing the cause of many Americans, not just those with disabilities, but those who perhaps find themselves at a disad-

vantage one way or another, and fighting for the underdog. I know of no more eloquent nor determined individual in the entire Congress than Senator Weicker, in what I call fighting for the underdog and not the topdog.

I just want to publicly say thank you for your many years of service and thank you for chairing this subcommittee before I took over, and also for you and your staff's work in really making this subcommittee work well and getting this legislation through. He really deserves our thanks. [Applause.]

Now I would like to turn to two individuals that I hold in very high esteem, Dan Piper and his mother, Sylvia, from Ankeny, IA.

I want you to know, Dan, that I often use you as an example when I go around the country, talking about what early intervention can do. Dan, to me, represents a prime example of why we must push very hard on early intervention. I think you will shortly see what I mean.

We welcome you here, Dan, and welcome your mother, Sylvia. Please proceed as you so desire.

Ms. PIPER. OK. Dan, how old are you?

Mr. PIPER. I am 17.

Ms. PIPER. What is your address?

Mr. PIPER. 406 N.E. Sherman Drive, Ankeny, Iowa.

Ms. PIPER. Dan, you attend Ankeny High School. Do you have friends at Ankeny High School?

Mr. PIPER. Yes. I have Jeff Bachman, Cory Heagle, Jayme Martin, Chris Piper, Aaron Baugher, Melissa Berry and Melissa Berry is a nice girl.

Ms. PIPER. That is Dan's girlfriend and he is also mentioning his brother. It is interesting to note, he considers him a friend today.

Dan, have you had any jobs?

Mr. PIPER. Yes. I work at a job. I work at Parkview Junior High.

Ms. PIPER. Where else have you worked?

Mr. PIPER. I worked at Walmart, Hardee's, Dillows other stuff.

Ms. PIPER. When you are an adult, and you are not going to school anymore, do you want to work?

Mr. PIPER. Yes.

Ms. PIPER. Where would you like to work when you are an adult, and earn some money?

Mr. PIPER. I want to earn money in a video store.

Ms. PIPER. Dan, where would you like to live?

Mr. PIPER. I want to live in an apartment, number 3999.

Ms. PIPER. Where would the apartment be?

Mr. PIPER. Des Moines.

Ms. PIPER. That is interesting. Dan's father and I are kind of gearing his adult life in Ankeny, but he is obviously choosing otherwise.

I would like to share with you and do appreciate the opportunity. At the time of Dan's birth in 1979, his father and I were advised by the attending physician and pediatrician to place Dan in an institution. It was a very difficult time for his father and I and the grief overrode logical decision making.

Dan's development was described as hopeless. His dad and I rejected this recommendation, and Dan has been living at home with his family since his birth. I might mention here that his birthday is



Sunday, and that is a really important moment to him. He will be turning 18, age of majority.

Dan received services through the Child Study Center at 6 months of age. Our area education agency provided an in-home teacher until age 4, when Dan was enrolled in a segregated pre-school program in Des Moines. His integrated educational experience began at 8 years of age until the present.

Dan, despite an IQ of 39, is a typical teenager who has just entered his fourth year of quality integrated special education in the Ankeny School District, which is his home community. This was only achieved through intense advocacy efforts by his father and me, coupled with representatives from ARC/Iowa, the Association for Retarded Citizens.

In Ankeny, Dan finally has had the opportunity to form friendships with his nondisabled peers who live in his community. He serves as manager for the football team. He was elected as his regular ed homeroom representative for the Pep Club. He attends all school and community functions. Dan participates in music, art, physical education, industrial arts, and home economics in regular ed classrooms with his nondisabled peers.

Since Dan is now rapidly approaching the end of his school years, the major thrust of his educational experience is onsite vocational training within cooperative businesses in Ankeny.

Positive relationships with regular education high school students resulted in Dan's favorite activity, The Greasers, a lip sync group of high school students featuring Dan as lead performer. The group makes appearances at various functions within the Des Moines area. This is an ideal opportunity for a young man who has speech problems to express himself with the arts.

Dan, a young man with Down Syndrome, is considered medically fragile. He is dependent upon insulin and a rigid diet to respond to his diabetic condition. Dan has learned to administer his own injections in spite of the doubts held by the adults in his life, and his parents are included as doubters.

Transition into adulthood holds many fears for Dan's father, his brothers Larry and Chris, and me. Dan can work and can live independently in the community with services, but how many doors will be closed to employment and community living when his parents are no longer around to break down those barriers?

Our family has served as effective advocates for Dan. Many children, with whom I have contact, do not have the luxury of consistent support. The reality is that, while our advocacy has proven successful, we will soon face the private sector where there are no assurances.

We have invested in Dan's future. The State of Iowa has invested in Dan's future. And the Ankeny Public School District has made an investment in Dan's future. We fear that he will be denied employment based on disability rather than capability. He has already encountered discrimination with employment.

Dan indicates that he chooses to live in an apartment, of course in Des Moines as opposed to our choice in Ankeny. Will the landlord decide, because Dan has mental retardation, that he is incapable of independent living? Will he be denied access to transporta-

tion? Will restaurants refuse service? Will hotels refuse accommodations?

Senators and Representatives, are we going to allow this investment of time, energy and dollars, not to mention Dan's ability and quality of life, to cease when he reaches age 21? Over a decade ago, the U.S. Congress enacted Public Law 94-142, which guaranteed Dan the right to special education, and 504 to address disabilities in the public sector. It is now time to expand handicapped antidiscrimination to the private sector so that Dan's and our visions for his adult life and the lives of many others can finally become a reality.

We implore you to enact the Americans With Disabilities Act as quickly as possible. Thank you. [Applause.]

Senator HARKIN. We are going to hold the questions until we finish the panel, but I just say that I saw Dan this summer at the fair grounds. Jade, you better look out, he is coming.

Our last witness is Lakisha Griffin from the Alabama School for the Blind in Talladega, AL. Lakisha will describe her background. She's had no schooling until recently. Her positive experience at her current school, where she is an A student, and her hopes for the future.

Lakisha, I hope I pronounced your first name correctly. We welcome you here and you are among friends. Please proceed to tell us about your experiences and what you would like us to know about this bill.

Ms. GRIFFIN. Good morning, Mr. Chairman. My name is Lakisha Griffin from Lafayette, AL. I am 14 years old and a seventh grader at the Alabama School for the Deaf and Blind in Talladega, AL. With me today is Ms. Dot Nelson, who is a house parent at my school.

I am glad to talk with you today regarding the need for the Americans with Disabilities Act. I understand that this proposed law would protect blind and other disabled people from being treated badly because of our handicap. Discrimination is a big word, but I can tell you that it is real, and I hope Congress will do something about it.

I am the youngest of six children. Until 2 years ago, I was educated at home by my two older sisters. Lafayette is a small rural town in Alabama, and my family did not know much about opportunities for blind people like me. All of my friends at home were sighted. Sometimes the other kids would not want to play with me, and sometimes even their parents acted sort of funny toward me.

I am not sure why this happened, except that many people sometimes do not like people who are different.

My life changed a lot in 1986, when I enrolled at the Alabama School for the Deaf and Blind in Talladega. I made many new friends, both blind and sighted, and I have been on both the A and B honor rolls. I also learned braille at the Alabama School, and that has opened up a new world of knowledge for me. I also like math and English.

When I grow up, I want to go to college to become a teacher. I want to teach braille to other blind people, since the knowledge of braille has been so useful to me.



I know that I can become a braille teacher if I study hard. My parents have worked hard in the textile mill, and I know that I must also work hard to get ahead in life. I hope to be the first person in my family to go to college. I am worried, however, that people will treat me differently because I am blind, black, and female. Some people will think that I cannot be a teacher, but I know I can.

I do not need sympathy. I do not need prejudice. I do need a fair chance to get a job and live independently. Discrimination against blind and other disabled people must be eliminated, and the Americans With Disabilities Act will help that happen. People pay attention when it is the law.

Please pass the Americans with Disabilities Act now so that I and other young people can look forward to a fair chance tomorrow.

Thank you. [Applause.]

Senator HARKIN. I think for the benefit of those who are sitting back there in the back, Lakisha went through that whole thing from her memory. That is really brilliant.

Well, you are just all outstanding. What can I say? You are tremendously outstanding, every one of you.

I would recognize, if you want to, Senator Weicker for any questions or comments you might have for the panel.

Senator WEICKER. I have no questions at all. I cannot say anything that will better express to America what needs to be done and what each of our panelists has stated. I am so proud of you. I really am.

Senator HARKIN. Congressman Owens.

Mr. OWENS. I have no questions. I want to just congratulate and thank the witnesses. Your being here will help us a great deal in the passage of this legislation. Thank you very much.

Senator HARKIN. Congressman Jeffords.

Mr. JEFFORDS. I just have one question. One of the most controversial aspects of 94-142 was the mainstreaming aspect. I wondered if you could give us some reflections on the reaction to the mainstreaming and whether it has improved, from your observations, as far as the acceptability in the schools, since the initiation of the 94-142 from your own history? Jade.

Mr. CALEGORY. You mean, like is it easy to get into the school?

Mr. JEFFORDS. How are the young people reacting, perhaps from your observations not only to yourself, but other disabled that might have come into your school since the time you started?

Mr. CALEGORY. How did the young people react to me?

Mr. JEFFORDS. Yes, and others that you have observed? And has it improved over the course of time?

Mr. CALEGORY. In junior high and in my new school, they do not treat me different or anything. They just treat me like I am one of them.

Mr. JEFFORDS. Did you observe any change in the other schools that you were in, over the course of time, or were you still kind of treated different?

Mr. CALEGORY. Any other of my schools, was I treated differently?

Mr. JEFFORDS. Yes.

Mr. CALEGORY. I think so. I was a little bit teased, like I said in my speech, that I was teased because of my disability and just stuff like that, in some of my elementary schools. But the teachers were good about it, and stuff like that. It was just the kids did not understand.

I am with the Easter Seals now and I think what we are trying to do is educate them so they will not tease kids with disabilities, so they will not tease them anymore, so they know what is going on and they can make friends with them.

Mr. JEFFORDS. Thank you.

Senator HARKIN. Thank you. I just have a couple of questions, maybe just to further elaborate on a couple of things, and why this bill is so necessary.

Mary, I am sorry I missed your testimony. However, I have read it. You have really had a rough time. What I would like to ask you is you are now 58 years young?

Ms. LINDEN. Yes, I just turned.

Senator HARKIN. How would your life be different today?

Ms. LINDEN. I think I would be a 30-year veteran of the Chicago school system, or one from the suburbs, because my family, my mother, my father and all my aunts, were teachers. Of course, you follow in your family's profession. By now I would be worried about my retirement.

I think I would have been in one of the teacher's union because I love politics, but I do not know. That is about it.

If the transportation were better, I would right now be too busy to come here because I would be working for my degree at Northeastern, because I want to go up and get my job. And Mr. DeJong needs a fully educated woman, not a half one. That is where I would be right now.

Senator HARKIN. So I guess, Mary, what you are saying is that not only will future generations benefit from this bill, but you will, also?

Ms. LINDEN. Oh, yes, sir. The day the bill is passed, the very day that you gentlemen have fixed it up so they can use it, my attorney will put a lawsuit through the Federal courts to sue the RTA and the CTA for whatever I have to.

Senator HARKIN. I like your attitude.

Ms. LINDEN. I will get my education, I swear. I would intend to sue them, because there is no reason for this. They have a transit authority and it provides provisions for handicapped people in the city of Chicago and the suburbs, but there is no way in the world that we can get into the city of Chicago or out of it.

And would you believe we have to be home at seven o'clock at night? My gosh, the shows do not even start until 8:30. [Applause.]

Senator HARKIN. Mary, I just had a letter here.

Mr. Chairman, I hope you will express my deep regret for missing the hearing this morning. I am particularly sorry not to be able to welcome Mary Linden, the witness from Illinois. I had the opportunity to meet her yesterday, and I know the committee will benefit from her testimony.

The subject of this hearing is important, not just for Americans with disabilities, but to all Americans. I look forward to reading the testimony of all the witnesses. Thank you very much, Senator Paul Simon from Illinois.

He could not be here, but you saw him yesterday, right?



Ms. LINDEN. Yes, we did and I thank him very, very much.

Senator HARKIN. Jade, do you see the day coming when you will get a role that will be advertised as child actor and not as child actor with disability?

Mr. CALEGORY. Right now my mom had my agent, if she got information for a part for someone with blue eyes or someone to play basketball or something, that she would send me out for it. So right now I am going out for any part that comes out, whether it is for someone with blue eyes, or something like that.

Senator HARKIN. I am going to see that movie this weekend. It is down in our neighborhood and I am going to go see it. "Mac and Me."

Lakisha, I was very moved by your testimony and by what you have had to overcome and what you are overcoming. I have all the confidence in the world that you are going to be the first person in your family to go to college, and that you will indeed be a braille teacher. We know you are going to do it, do we not? [Applause.]

Is this your first trip to Washington?

Ms. GRIFFIN. Yes, it is.

Senator HARKIN. I want you to know that within the last year, we have prevailed upon the Sergeant of Arms and we now have braille maps of the entire Capitol and indeed of all of the downtown monuments and surrounding area. Have you gotten those yet?

Ms. GRIFFIN. No, I have not.

Senator HARKIN. As soon as you get done here, how about getting a set of those, OK?

Ms. GRIFFIN. OK.

Senator HARKIN. I am sure that you can get taken around the Capitol and make sure that you take in everything that you can while you are here, OK?

Ms. GRIFFIN. OK.

Senator HARKIN. We have those for anyone else here who needs them, we have braille maps now of the entire Capitol and of all the downtown monuments and the mall. If you have any problems getting them, you come see me or see one of my staff. I will make sure you get them.

Dan Piper, like I said, Dan, I use you a lot in my speeches around the country. You are getting to be pretty famous, Dan Piper from Ankeny, IA. I just have to tell you, you are not only a source of pride and joy to your parents, but a unique sense of pride and joy to me and to a lot of people.

The State of Iowa has had an early intervention program—I hope you do not mind if I be a little chauvinistic here—since 1975, I think. Since the mid-1970's anyway. We have got a good support group in Iowa. This is a great example of what can be done with early intervention.

Dan, I know from your mother, and also from your own testimony, that you are going to be 18 pretty soon and you are thinking of moving away. Are you not kind of afraid that might break your mother's heart, moving away from Ankeny?

Mr. PIPER. Oh, no. Just me and my dad is.

Ms. PIPER. I did not know he was taking his father with him.

Senator HARKIN. At least you will invite her to come visit you, right?

Mr. PIPER. Yes, and my girlfriend.

Senator HARKIN. I will not get into that, all right?

I just want you to know I am the father of two young people, and I am not looking forward to the day when they leave home either, so I know how your mother feels.

Dan, your hopes for the future are real hopes, and I know that you can accomplish a lot. Let me ask your mother a question.

Mr. PIPER. All right, go ahead.

Senator HARKIN. Is that OK?

Mr. PIPER. Sure.

Senator HARKIN. Ms. Piper, do you agree with Ms. Parrino, when she says that the Americans With Disabilities Act should be looked at as bringing about cost savings to our Nation, rather than additional costs?

Ms. PIPER. Definitely. In our circumstances, we certainly have spent a lot of time and energy, as I stated, in seeing to it that Dan is appropriately trained to be a tax payer rather than a tax recipient. However, with discrimination, we are looking at a future that may very well hold nothing more than sheltered employment for him, which is certainly an opportunity for some people.

However, he has a desperate need for growth and is capable. Our concern is that he will be sitting at home, on our living room couch, watching television for the rest of his life. That is not acceptable, with all of the money that has been poured into his education. There is no reason he cannot be a tax payer.

Senator HARKIN. And it is not acceptable with—look at him. My gosh, look how good he is. Danny, you can do a lot of things.

Mr. PIPER. That is right.

Senator HARKIN. You sure can. We are going to make sure that you are able to do those things, too. You are a great source of pride.

Is this your first trip to Washington? This is your first time here, is it not?

Mr. PIPER. Yes.

Senator HARKIN. I think so, yes. Make sure you get around and see the monuments and everything like that, OK?

Mr. PIPER. Yes.

Senator HARKIN. You do not mind if I keep using you as an example, do you? You do not mind if I keep talking about you, do you?

Mr. PIPER. Yes.

Senator HARKIN. As long as I say good things, right?

Mr. PIPER. Yes, you got it. [Laughter.]

Senator HARKIN. All of you are just great. Thank you so much. You have made our day and made our year and hopefully we will make this bill get through next year.

Thank you all, and now we will call our second panel. [Applause.]

Our second panel is Judith Heumann, World Institute on Disability at Berkeley, CA; Gregory Hlibok—if I mispronounce that, you tell me—Gregory Hlibok from Gallaudet University; Belinda



Mason, Tobinsport, IN; and W Mitchell from Denver, CO. Please come up.

We welcome you all to the hearing, and some of you for coming a long, long distance. I will just go in the order in which I called you. Judith Heumann. Judy is the mother of the disability rights and independent living movement. She has a masters in public health and she's going to discuss the history of the movements and personal examples of discrimination and the need for the bill.

STATEMENTS OF JUDITH HEUMANN, WORLD INSTITUTE ON DISABILITY, BERKELEY, CA; GREGORY HLIBOK, GALLAUDET UNIVERSITY, WASHINGTON, DC; BELINDA MASON, TOBINSPO, IN; AND W. MITCHELL, DENVER CO

Ms. HEUMANN. Good morning, Senator. I got a little alarmed. I thought you were about to tell me I was a mother. I did not know I had any children.

Senator HARKIN. No, I wondered what that momentary disturbance was. No, the mother of the disability rights and independent living movement.

Ms. HEUMANN. After taking a redeye here, I did not know something had happened.

It is really a privilege to be here with all of you today. My name is Judy Heumann. I am the oldest of three children born to an immigrant family. Like most other Americans, I was born without a disability. When I was 1½ years old, I contracted polio. Becoming disabled changed my family's life and mine forever.

My disability has made me a target for arbitrary and capricious prejudices from any person with whom I come into contact. Over the years, experience has taught us that we must be constantly aware of people's attempts to discriminate against us. We must be prepared at every moment to fight this discrimination.

The average American is not, nor should they have to be, prepared to fight every day of their life for basic civil rights. All too many incidents of discrimination have gone by undefended because of lack of protection under the law.

In the past, disability has been a cause for shame. This forced acceptance of second-class citizenship has stripped us as disabled people of pride and dignity. This is not the way we, as Americans, should have to live our lives.

When I was 5 my mother proudly pushed my wheelchair to our local public school, where I was promptly refused admission because the principal ruled that I was "a fire hazard." I was forced to go onto home instruction, receiving 1 hour of education twice a week for 3½ years. Was this the America of my parents' dreams?

My entrance into mainstream society was blocked by discrimination and segregation. Segregation was not only on an institutional level, but also acted as an obstruction to social integration. As a teenager, I could not travel with my friends on the bus because it was not accessible. At my graduation from high school, the principal attempted to prevent me from accepting an award in a ceremony on stage simply because I was in a wheelchair.

When I was 19, the house mother of my college dormitory refused me admission into the dorm because I was in a wheelchair

and needed assistance. When I was 21 years old, I was denied an elementary school teaching credential because of "paralysis of both lower extremities sequelae of poliomyelitis." At the time I did not know what sequelae meant. I went to the dictionary and looked it up and found out that it was because of. So it was obviously because of my disability that I was discriminated against.

At the age of 25, I was told to leave a plane on my return trip to my job here in the U.S. Senate because I was flying without an attendant. In 1981, an attempt was made to forceably remove me and another disabled friend from an auction house because we were "disgusting to look at." In 1983, a manager at a movie theater attempted to keep my disabled friend and myself out of his theater because we could not transfer out of our wheelchairs.

These are only a few examples of discrimination I have faced in my 40-year life. I successfully fought all of these attempted actions of discrimination through immediate aggressive confrontation or litigation. But this stigma scars for life. Many disabled persons experience discrimination of the same magnitude but not every one of us possesses the intestinal fortitude and has the support of family and friends required to face up to these daily societal barriers.

Sadly, these are not isolated examples true only in the past tense. This is an ongoing social phenomenon which haunts our lives at every minute.

I have been told throughout my life to be understanding of these people's actions. "They do not know any better." Neither I nor any one of the 42 million other people with disabilities can wait for the 200 million nondisabled Americans to become educated to the fact that disability does not negate our entitlement to the same constitutional rights as they have.

Just as other civil rights legislation has made previously sanctioned discrimination illegal, so too will the passage of the Americans With Disabilities Act of 1988 outlaw protectionist, paternalistic, ignorant discrimination against all persons with disabilities.

We, as disabled persons, are here today to ensure for the class of disabled Americans the ordinary daily life that non-disabled Americans too often take for granted: the right to ride a bus or a train; the right to any job for which we are qualified; the right to enter any theater, restaurant or public accommodation; the right to purchase a home or rent an apartment; the right to appropriate communication.

Whether you have HIV infection, cancer, heart disease, back problems, epilepsy, diabetes, polio, muscular dystrophy, cerebral palsy, multiple sclerosis, are deaf or blind, discrimination affects all of us the same. Simply put, we are here today to say that people in our society have been raised with prejudicial attitudes that have resulted in extreme discrimination against the 42 million persons with disabilities in the United States.

Discrimination is intolerable. The U.S. Congress is to be commended for its introduction of the Americans With Disabilities Act. The passage of this monumental legislation will make it clear that our Government will not longer allow the largest minority group in the United States to be denied equal opportunity.



You have all heard our testimony today. But you have also been aware of these stories for many years. As elected Representatives, you must act without delay to end these reprehensible acts of discrimination. To do any less is immoral. [Applause.]

Senator HARKIN. Belinda Mason from Tobinsport, IN. Welcome, Belinda, and please proceed.

Ms. MASON. That is Tobinsport, IN.

Senator HARKIN. What is it?

Ms. MASON. Tobinsport. The 75 citizens of Tobinsport would be awful disappointed if word got out in the U.S. Senate that they were in Tobinsport.

Senator HARKIN. We will correct the record, be assured. Tobinsport lives on.

Ms. MASON. Thank you. I thank you all for having me today and I hope you all are listening good and taking note of all this, because we represent a part of society that is unfortunately often invisible, particularly the disability that I am speaking out, HIV infection is invisible and a hidden disability.

I am just going to read from prepared stuff because I am recovering from a stroke and my brain will not let me remember anything for long enough to really spit it out well unless it is written down and I can read it.

My name is Belinda Mason and I live in Tobinsport, IN. I am 30 years old and I work as a free-lance writer. My husband, who is a college instructor, and I have two small children, a daughter who is 5 and a son almost 2.

Until early last year, my family and I had an average life near one of America's thousands of average small country towns. We juggled our jobs, our daughter, and our credit card payments. Our pleasures were simple and common, a walk in the woods, a new song on the radio, or a cookout with other young families.

But then my life changed dramatically. While delivering our healthy son, I suffered serious complications, including cardiac arrest and a stroke. Because of massive hemorrhaging, I received numerous transfusions of blood products. One unit was later found HIV positive and in March 1987, my own blood first tested positive for antibodies to the HIV virus, the virus that causes AIDS.

I also maintained residual damage from my stroke in the form of partial paralysis on my left side, and a tendency to be stupid when I am tired. That is a joke. [Laughter.] Thank you.

With that diagnosis, I became a person with a "hidden disability," a disability just like epilepsy and diabetes and tens of other disabilities. And just like people with those other hidden disabilities, I became subject to irrational and unjustified discrimination.

The average life I once enjoyed has vanished. And since I have been living with HIV, I have learned a terrible truth about America, that it is not a good place to be different or to be ill, in spite of what we teach in government class.

Shortly before the news of my HIV infection became public, but long after the rumor mill had assured that everyone in town already knew about it, I took my girl to the local public pool. I remember the day very well because we had something to celebrate. I had learned that I was sick enough to qualify for AZT, a drug that

has been found to prolong the lives of people with HIV infection. It was our first breath of hope.

I was still recovering from the stroke, but I could drive again. I could not swim yet, but I slid into the children's pool for a couple of hours and watched my daughter play. I remember thinking that maybe I would live, and that maybe my life would settle back to normal.

I was recognized by most of the adults in the town because I had worked as a reporter and was therefore visible in a place where everyone knew everybody else anyway. This was the other adults at the pool. Later I learned that the town closed the pool for a week. The official story was that a cigarette butt had been found in the filter. I have always thought that it was because I was in the water for a few hours, though, just watching my daughter swim.

There are other incidents like this that I have submitted in my written testimony.

A woman in another part of Kentucky had managed a school cafeteria for a number of years. Her adult son, who was living in California, became ill with AIDS. The woman went to California to bring her son home, so she could care for him. But when she returned, she was abruptly fired from her job.

Apparently, even the perception that you are associated somehow with HIV, whether or not you have it, is grounds for ill treatment. This has to change. We need a law that will protect all people, even those perceived to be infected simply because they are helping those who are ill.

A man passing through a central Kentucky town was stopped for drunk driving. After he told the arresting officers that he had AIDS, the man's car was driven to a parking lot of the jail. Instead of putting the man in jail, the officers locked him inside his car to spend the night. The car was eventually surrounded by sightseers, staring and pointing at the man.

As a board member of the National Association of People with AIDS, I know these and many other stories.

When we look in the mirror that AIDS and HIV holds up to our society, we can see how scared we are of each other, of death and even of life. We can see how little tolerance, let alone compassion, that we often show.

HIV disease is blind to race, age, gender, and sexual orientation. It no longer affects other people. Beyond risk groups, immune deficiency is a disease of individuals, our friends, our sisters, our lovers, and our children. People who are just like us because they are us. And because HIV affects us all, it makes no difference how one gets HIV. The fact is that the discrimination is the same and the protections must be the same.

Living with HIV is particularly stressful for people in America's small towns and rural communities. Until we can be counted on to demonstrate fair and equitable treatment, legislation like this is essential.

There are some things that legislation, by its nature, cannot and will not do. For example, this bill probably will not change anything for Stella McKee, a Kentucky woman whose husband David, a hemophiliac, died just when we were learning about what AIDS



was all about. Stella carried home many bowls of untouched food from church potluck dinners.

And this bill probably would not have helped me when my next door neighbor in Indiana, a registered nurse, carried a petition to every neighbor on the block, demanding that my family and I move. You cannot legislate good manners. But you can legislate recourse for some forms of discrimination. By legislating that protection, perhaps you may also help promote reason and foster more decent treatment. The truth is that sometimes legislation precedes and enhances humanity.

I thank you for having me here today and I urge you to pass the Americans with Disabilities Act as quickly as possible. It will make a real and incredible difference in the lives of millions of people, and just some of those are the ones you see today. Thank you. [Applause.]

Senator HARKIN. Greg Hlibok, a student leader from Gallaudet University, welcome to the subcommittee and please proceed.

Mr. HLIBOK. Thank you very much for giving me the opportunity to testify here today. As she just said, people who have HIV are often invisible because you cannot tell by their race or their appearance. It applies to deaf people as well. You cannot tell if a person is deaf unless you see them signing.

My name is Greg Hlibok. I am president of the student body government at Gallaudet University. Last March's victory in getting a deaf president for Gallaudet sent a message to the world. The focus was on what deaf people can do, and not what they cannot do.

As Dr. King Jordan says, "deaf people can do everything, except hear." How can we prove ourselves that we are capable if we are not given equal opportunities. It is society itself that creates the barriers by not giving us these opportunities.

Very often discrimination appears on a daily basis in our lives. We face that all the time, every day. We have many experiences in being turned down for jobs, denied promotions. For example, my own deaf brother had to hire and pay for an interpreter himself so he could interview for a job.

I have been denied medical treatment because doctors misunderstood us and could not communicate with us. They refuse to hire a qualified interpreter. We have tried contacting police stations very often, but often they do not know how to use TTYs, or they do not have it in our stations.

I remember when I was young and I was going home, and I did not have any money with me. I was going home from school. I tried to contact my parents through public service, but there was no way to do that, no relay service. There were no TTYs around, so I had to walk the 3 miles in the snow to get home. Good thing I did not get pneumonia. Also, in San Diego, CA, there is a deaf woman there who died of a heart attack because her husband tried to reach the police through 911 but could not get through.

We have waited for 124 years to get a deaf president at Gallaudet, but we were still told that we were not ready. Hearing people told us that we were not ready and were unable to communicate and work through Congress and work with the hearing world. In the past we felt that there was nothing that we could do, that we

had to accept this fate, and that those were just false excuses and discrimination. We put up with this for a very long time.

Last March showed that our tolerance and patience has run out. I said last March that we wanted a deaf president and we got one. President King's appointment shows that deaf people are capable of holding a responsible job and leading us. He has already proven his success in the past six months.

Now we want our civil rights. The Americans with Disabilities Act would give us the legal tools to fight discrimination. Legal rights women and minorities have already been brought to bear, and now it is time to remove communication barriers and provide reasonable accommodation.

For example, captions, TTYs, qualified interpreters, note takers, and visual aids, and these type of things would reduce the communication barriers that we face. It is not simply just accommodations, but we would like to participate equally and to be effective in society, not to be ignored.

We do not want sympathy, we want support. Because we can help ourselves if things are accessible for us. All we ask for is that you let us guide our own destinies. We urge that communication barriers be identified and the kinds of situations be specified. For example, there are people who have many different disabilities all over the world, and they are fighting against discrimination of all kinds. We can no longer wait. Civil rights must happen now.

[The prepared statement of Mr. Hlibok follows:]



STATEMENT OF GREG HLIBOK, PRESIDENT OF THE STUDENT BODY GOVERNMENT  
AT GALLAUDET UNIVERSITY, BEFORE THE SENATE SUBCOMMITTEE ON THE  
HANDICAPPED ON THE AMERICANS WITH DISABILITIES ACT OF 1988

My name is Greg Hlibok and I am President of the Student Body Government at Gallaudet University. Our victory at Gallaudet last March resulting in the appointment of our first deaf president sent the world a message. Focus on what deaf people can do - not what we can't do. As Dr. King Jordan said "Deaf People Can Do Anything...Except Hear". How can we prove ourselves that we are capable if we are not being given an equal opportunity. Its society that has created barriers.

Many of us confront discrimination every day. We have experienced the disappointment of being turned down for a job or promotion because we were told the communication barriers were too great. My own deaf brother was told he had to pay for his own interpreter on his job. We have been denied medical treatment at hospitals because the staff could not understand us and refused to provide qualified interpreters. We have tried to call the police for help using our telecommunications devices for the deaf, but the police hang up on us, because they had no TDDs. I remember when I was fifteen I left school without money to take the bus home. I had no way to call my parents or the police. I had to walk the 3 miles home in the snow. In one case in San Diego, a deaf woman died of a heart attack because the police did not respond when her husband called 911. We have waited for 124 years to have a deaf President chosen at Gallaudet. But we were told we were not ready, and that we could not work with Congress and the hearing world. In the past we felt there

was nothing we could do but accept these false excuses and discrimination and keep patiently plodding on. But, as we showed vividly last March, our patience has run out. I said last March, "we want a deaf president who can show the world a deaf person can lead a major university. We want one now". And we got it! President King's appointment shows that deaf people are capable of holding responsible jobs and of leadership. King Jordan has shown for 6 months that he is successful.

Now we want our civil rights. The Americans with Disabilities Act will give us the legal tools to fight discrimination, the legal rights woman and minorities already have. This bill would require removal of communication barriers and "reasonable accommodation to assure effective communication." The kinds of accommodations listed in the Act such as captioning, TDDs, qualified interpreters and note takers, and visual aids like flashing alarms would greatly reduce communication barriers. With simple accommodations, we can participate equally. We can be effective. We will not be excluded or ignored. We don't need any pity, we need your support. Because we can help ourselves only if things are accessible for us! I would urge that the Communication Barriers Section identify the kinds of situations where specific accommodations are required. Our example last March has inspired deaf people and all disabled people everywhere to fight against discrimination of any kind. We will no longer wait. We want our civil rights now.



Senator HARKIN. Thank you very much. I am going to take the opportunity to introduce to you first about whom Greg spoke, who has really showed us that there are no barriers that deaf people cannot overcome. The new president of Gallaudet University, Dr. King Jordan. Stand up, will you please. [Applause.]

Thank you very much. Next, W Mitchell from Denver, CO. Mr. Mitchell, welcome to the subcommittee and again, please proceed as you so desire.

Mr. MITCHELL. Thank you very much, Mr. Chairman. Good morning, Congressman. It is a pleasure being in front of you today. I am W Mitchell. I am the former mayor of Crested Butte, CO, a very beautiful town high in the mountains of Colorado. Do not get confused with Mount Crested Butte. That is the town that Bo Calloway owns. No, we are Crested Butte. We have a lot of Democrats in Crested Butte.

It is a little town that is nestled in the mountains of Colorado, about 9,000 feet above sea level. We are kind of at the end of a paved road, surrounded by all these 14,000 foot mountains. One of the things that is often said in Crested Butte is that you cannot get there from here.

It is very tough to get to other places in Colorado. Aspen is just 30 miles across the mountains, and yet it is about a 250 mile drive to get around all those mountains. You cannot get there from here. That's the challenge for millions of disabled Americans today—they can't get there from here.

In 1984, I ran for Congress. I was the Democratic nominee for the Third Congressional District in Colorado and I had to adopt a campaign that said "Oh yes, he can." In a lot of people's minds, a man who has been burned and who is in a wheelchair may not be able to represent them very well.

In fact, one of the charges that was first leveled at me was yes, Mitchell is a nice guy and perhaps speaks well, but what is he going to do to get to vote? How is he going to get to vote for our issues? How is he going to get to the floor of the House of Representatives in time? He will not even make the votes to stand up for our issues.

Well, having been back to Washington a number of times, I explained to those good people that most freshmen Congressmen wind up in the Cannon House Office Building. Between the Cannon House Office Building and the House of Representatives is a tunnel. The tunnel is mostly downhill going toward the House. I explained to them that the only Member of Congress that was going to beat me to vote for their interests was one on a skateboard. [Laughter.]

I did not get the most votes that year, my opponent did, a very worthy fellow. Fortunately, he was retired in the next election and now we have a good Democrat back there again.

Senator HARKIN. This is a nonpartisan hearing.

Mr. MITCHELL. Very nonpartisan, Senator. And if Senator Weicker and some of the other Republicans were still here, I would be singing a different tune, you can be sure of it.

I talk today to groups all over the country. I speak about the fact that it is not what happens to you, it is what you do in life. It is not the circumstances of birth or the accidents or injuries or ill-

nesses that we contract in life, it is what we do with the equipment that is given us, with the opportunities that are given us.

But unfortunately, I am one of the lucky ones. Fortunately for me, and fortunately for so many others, I had role models when I was growing up, of other people in wheelchairs. I knew you could become successful and be in a wheelchair. I had education and training before I was burned in 1971 and, as a result of an insurance settlement, was able to start a very successful business. So that when I was paralyzed, in 1975, I had wealth and I had income and I had opportunities already available to me.

But what about all of those who were not blessed with the good fortune that I have had in my life? What happens to all of those who do not have the luxury of a vehicle or an airplane or a business or means of support? What happens to those who, like the young man in Phoenix, AZ, who I visited recently, who was paralyzed on the day of his graduation from high school. But having no insurance and no money, is now in a nursing home instead of a spinal cord injury rehab hospital? What happens to him? Where does he get his education? Where does he get the tools and equipment that he will need to make himself a taxpayer, as we heard earlier, and not a tax receiver for the rest of his life?

What about all of those who, because of the absence of transportation or the absence of communication facilities, cannot even find the employer to present themselves as a qualified candidate for a job? How do they function in our society?

So I come today, Mr. Chairman, to speak for the Americans With Disabilities Act legislation. I cannot speak more eloquently than the witnesses who have proceeded me. All of them are more qualified, more capable of stating the case that all of us need to hear today.

But I would like to say to you that, while the 1970's were very much the age of the me-too-ism, of I've got mine, of all of the conflicts in this country, and while the 1980's are very much an era of great change in our society, with new technologies and new opportunities, the 1990's will be the era of creativity.

We must be creative as a society, creative in taking full use of all of our citizens and their great capabilities. As you and the Congressman have seen today, we have been presented with probably more talent than you were faced with in almost any other hearing that you may preside over. How are we going to use that talent and how are we going to realize that talent?

Mr. Chairman, I will remind you today, in my closing remark, the quote of Albert Schweitzer, who said to all humanity, "We do not live in a world all alone. Our brothers are here, too."

Please carry to your colleagues in the Senate and your colleagues in the House the message that we do not want a handout. We do not want a free ride. We just want to act normal in an amazing situation. Thank you, sir. [Applause.]

[The prepared statement of Mr. Mitchell follows:]



Senator HARKIN. That was very eloquent. What the heck, if you cannot get into the House, how about a run for the Senate? We could sure use you here, I will tell you that. Major would like to have you in the House, too.

Again, thank you all. I just have a couple of questions that I want to ask for record purposes, and to further get some thoughts from you on this.

Judith, I just wanted to ask you, do you, and if you do, why do you believe that we can now pass legislation like the ADA act, when previous attempts to expand antidiscrimination protections to cover the private sector have been unsuccessful?

Ms. HEUMANN. I personally think that the Gallaudet experience and the 1977 demonstrations in relationship to 504 and the subsequent Development of Independent Living centers and community-based organizations around the United States, and the real true emergency of a rights movement are going to compel the United States to recognize its responsibility.

It was mentioned by one of the speakers that disability has touched every person's life. I think that what is important for us to recognize is that when we go and work with various organizations who potentially are opponents to this form of legislation, that we need to make them recognize that the discrimination that affects us is also very directly affecting their family and very likely to affect them personally.

I think that all of you have seen that in the last 20 years there has been a monumental change throughout the United States and throughout the world. Disabled people are no longer going to allow ourselves to be discriminated against. The meetings that Justin Dart is holding around the United States, I think are quite compelling. States where you never found a lot of disabled people coming out, speaking on behalf of themselves, are having 200, 300, and 400 people coming out to meetings when there is no accessible transportation, little accessibility in their homes, lack of attendant services. People are still somehow getting out to talk about why we believe it is time for us to have our rights.

That is why I think this bill is going to pass.

Senator HARKIN. Mr. Mitchell, do you have any observations on that question? About the time being right, right now, to pass this one? You have been involved, obviously, in politics, which I was not aware of before. Would you agree with Judith that there has been enough changes, there is enough of a force, enough of a movement out there, that we have made enough minor steps that we can finally take a major step here?

Mr. MITCHELL. Senator, I absolutely agree. Going back to the different eras I talked about, we lived in the 1950's. The 1950's were a very secure era in this country. We really were able to function on a very small part of our potential in the 1950's and still dominate the world. We were number one. We drove American cars. We led the world in every single way and we were secure in every single way, using a very small part of our potential because we had such an overabundance of resources, whether it was natural or human resources, that no one could compete with us anywhere in the world.

Today we are not allowed that luxury. Today we have to use all of America's resources to be great. The resource that exists—and I hear the various numbers of 36 million or 42 million—but a giant portion of our population that is untapped today is the resource that is going to make the difference between America falling into a second position and no longer the leader of the world, and staying number one. We have to use every single ounce of energy that we have.

Again, just look at the people you have seen this morning and they are representative, not spectacularly better than the people that they are speaking for.

Senator HARKIN. Judy, you mentioned Justin Dart. I thought I saw him earlier. Justin Dart, a great leader in this effort, was former Commissioner of the Rehabilitation Services Administration, now chairing a task force.

Ms. HEUMANN. He was here, he had to leave, Mr. Chairman.

Senator HARKIN. He may have had to leave. Tell him we said hello. I just wanted to recognize him here in the audience.

Greg, it goes without saying that not only were a lot of us watching last spring, but I think the world indeed was watching. In fact, I must tell you a story.

I just recently returned from a trip to Europe in August. I had an occasion to meet a small group of deaf individuals who were in Europe at that time. This took place in Portugal. They were with some Portugese who were deaf. It was just happenstance that I ran into them.

The first thing, when they found out who I was and where I was from, the first thing they wanted to talk about was what happened at Gallaudet University. These are people in Europe that knew of this, so it had a world-wide impact.

I just cannot tell you how proud we are of you and the student body, of Dr. Jordan, and what has transpired there.

As you know, my brother is deaf, and so I have, perhaps of all the disabilities, I am more cognizant of that than I am of perhaps others. I am aware of how deaf people have been discriminated against and how, in terms of accommodations and things.

I saw my brother last weekend, and I was staying in a hotel room and I noticed a little red light on. I wondered what that little red light was after I turned the lights out. It was to show that the smoke alarm was activated. But then I got to thinking, if I were deaf and the smoke alarm went off, I would never know it. I mean, I could tell it worked, but I could never know if it ever went off. Just another one of those things in accommodations where a small change would really help.

Let me just ask you a question about the bill, and about reasonable accommodations. How important, to ensuring equal opportunity for deaf people, is the provision of reasonable accommodations which are in the bill, reasonable accommodations? Have you had any experiences that you could relate to us?

Mr. HLIBOK. Sure. I have already given some examples about public services, how they should provide accommodations for deaf people. At Gallaudet University, that is a very good example, because they have all these accommodations for deaf people. For example, flashing lights in the rooms. There is a switch that you



could flash a light. So if a visitor comes, you flash a light from the outside of the door instead of knocking. It is very important for us.

We need accessibility in order to reach out to all of the people right now. There is a wall, a barrier, between us, between the deaf and hearing worlds. We are trying to break down that wall. So far, we have been doing it little by little. Once we completely destroy that wall, that barrier, then I think that we will be able to contribute a lot more.

There are 6,000 deaf Federal employees who contribute to the Federal Government, and there are many more hearing impaired people who could contribute to the private sector, if they are given the opportunity through Government tax revenues. They would be able to use the accommodations and be contributing members.

Senator HARKIN. Thank you. Where are you from?

Mr. HLIBOK. New York City.

Senator HARKIN. Thank you.

Belinda, you face many challenges as a person infected with HIV. How do you perceive the importance of this anti-discrimination legislation?

Ms. MASON. I think, like everybody else has already said, when you have a disability, you just have to overcome so much junk every day of your life, that having extra junk in your way is no good. I do not want to sound like a whiner about it, but it looks like to me that it would not be unreasonable to think that I could go to the cement pond with my daughter and swim and not have to have the whole community penalized for it and have to be made such an example of.

There are so many ways that we separate ourselves from each other, and as Admiral Watkins testified, people living with HIV have to overcome barriers every day that are imposed, that we have no control over, because we cannot make the research move any faster.

It is sad, but it is true, that people in agencies in the private sector, will not always do the right thing just because it is the right thing. Sometimes we have to make them. There is a lot of people in my area of the country living with HIV who face a lot more discriminatory acts than I have. One of those most important ones is jobs. People have lost their jobs.

It is enough that you got this lousy disease. It is like Congressman Coelho said, you come home from an office and you are still the same, but the whole world just shifts around you. You are not like a Kentucky basketball fan anymore. You are not a writer. You are not anything else. You turn into a person with a disease, a person with a disability. Whatever else that there was about you is just ignored.

If there are laws that make people treat you normally, then maybe they will. Maybe they will. I hope they will.

Ms. HEUMANN. Senator, I think that the law at least will give us protection. I do not think the law is going to change people overnight. But the laws, in fact, give us as disabled people the rights, and we then know that we can go out and speak to other disabled people and tell them that if these things happen to them, they should no longer turn around and leave, but there is an action that they can take.

I think actions and filing complaints and lawsuits begin to teach people right from wrong, which they have not learned in the past. I think 504 and 94-142 and many of these other pieces of legislation have begun to teach America that we are more like them. They still might not want to marry us or be with us, but they know that they cannot keep us out any longer. Most importantly, we will not let them. [Applause.]

Mr. OWENS. I think that would be a very good note to end on. I want to thank the witness and all of the witnesses that came before. We learned a great deal from you today. I hope that you understand that, just as Senator Kennedy said, we will pass this bill. It will become law. But I hope you will remember also the caution of Congressman Coelho, that it is not going to be easy.

It will not be easy to pass this bill because there are large numbers of Americans who consider themselves decent and reasonable people who, whenever you mention anything that might raise the cost of housing or public transportation, et cetera, begin to react in a mean-spirited way.

Some of these people are in very high places. In fact, one of our categories of great opposition is local administrators, local elected officials. The mayor of the city of New York sometimes conducts crusades against people with disabilities, when it comes to transportation access and housing access. They do it and appeal to the worst in people.

This we have ahead of us, and I hope you understand that. The bill now has 130 sponsors in the House of Representatives. To pass, a bill requires 218 people to vote yes. We have 130 at a point where the opposition has not yet openly manifested itself.

As we move closer toward passage, or toward the debate on the bill, you will have the people who will come forward with all the statistics to prove that it is far too costly. You will have the disabling amendments, amendments attempting to gut the heart of the bill. All those things are going to happen. We will need a great deal of support. I hope you understand that. There are difficult days ahead of us.

My final question to all of you is what can you do? In the spirit of Gallaudet, in terms of people with disabilities and the concerns of people with disabilities, there is a before Gallaudet and an after Gallaudet. After Gallaudet, the spirit has to keep moving on. The momentum is with us.

I want to congratulate Justin Dart, who is the chairman of a task force that, as I mentioned before, has been around the country. He has told me that the spirit of Gallaudet lives on. It is going to escalate as time goes on. We must make sure it escalates. I hope that you will understand.

I have one specific question to the hero of Gallaudet. Gregory Hlibok. What can we expect in terms of leadership from people of your generation, from students? A lot of energy is going to be needed, a lot of continued courage is going to be needed as we push forward for passage of this legislation. Are students prepared to continue to offer leadership? Are there efforts being made to guarantee that people of your generation are fully involved in this effort, understand what the bill is about, and are going forward to help us to mobilize to get its passage?



Mr. HLIBOK. I am sure, yes. One example, that happened last Thursday, was with 200 to 300 students at Gallaudet who took time off of their classes to go to Capitol Hill to pressure the legislature and the Congressmen to pass a bill, H.R. 4992, perhaps you have heard of that yourself?

Mr. OWENS. Yes, I have.

Mr. HLIBOK. I am sure that we are ready, when the time is right.

Mr. OWENS. Thank you very much. I want to again thank all of you and tell you there are difficult days ahead. We will be closely working with you. The energy, the creativity, all that is needed to get passage of this bill, exists among you. That leadership is there and we appreciate it and will be expecting to work in partnership with you. Thank you.

Senator HARKIN. Thank you very much, Congressman Owens. [Applause.]

I see some people want to say something. I am going to have to exercise a little bit of jurisdiction here. I would like to hear from some people just for a few minutes, but I will tell you that we have to cut this off shortly, and I will tell you why.

The buses to Gallaudet for the task force meeting will be departing from Second Street and Constitution at 1 p.m. That is now. Where is Second and Constitution? That is right outside. Traffic will be stopped until the boarding is complete, so I do have to wrap this up. I am sure the bus will be there for a little bit, for those of you, but you are very anxious to say something.

Please identify yourself for the record.

Ms. COOPER. I am Assemblywoman Delores Cooper, Second District Atlantic, representing the State of New Jersey and all of the New Jersey delegation. New Jersey, will you stand up, please?

Senator, on behalf of the New Jersey delegation and all of the professionals, providers, care givers, I have a little gift for you. New Jersey and you, perfect together, because we know that bill is going to pass. Am I right. [Applause.]

Senator HARKIN. Thank you, very much. That is wonderful. And thank you for coming down.

Yes, right here.

Ms. SHAPIRO. I would like to say something. My name is Mary Shapiro. I saw "Mac and Me" and I think you should all see it because it will get more people to understand about people in wheelchairs and understand what they are going through.

Plus, I think the bill should go through because it will make the other people understand about us and all, because I went to a thing in Philadelphia, PA, I got a shirt that says "A real difference." That is a project in every state, about being a nation and about what we have and all that stuff. [Applause.]

Senator HARKIN. Thank you very much.

Two more. This guy over here has been trying to get my attention for a long time.

Mr. ROSENFELD. I am Ed Rosenfeld with the Spinal Cord Injury Network, Metropolitan Washington. I would like to know who is pro and who is on the fence or just not doing anything, and we will get to work on them.

Senator HARKIN. If you did not hear the question, he wanted to know—I did not catch your name.

Mr. ROSENFELD. Ed Rosenfeld.

Senator HARKIN. Ed Rosenfeld from where?

Mr. ROSENFELD. The Spinal Cord Injury Network, Metropolitan Washington.

Senator HARKIN. He wanted to know about who is not on board and who is on the fence and everything. We have a list here. I would hope that it would be made available to you someplace here, maybe going out the door or something, of all the cosponsors of the bill in the House and in the Senate.

We have 25 cosponsors in the Senate and 113 in the House. You can see we are missing 75 in the Senate and about 300 and some in the House. All I can tell you is that we will try to get these lists out to you. You should contact those who are not on the list to have them get on it as a cosponsor.

You may hear, well, it is not going anywhere this year. That is not the point. Get on it this year, you are on it, and we will get it back in the new Congress next year.

But we do have these lists and they are available to you if you just ask Bobby or someone here, we will get you the list of the cosponsors. Who is not on here is who you have to go after.

Senator HARKIN. Yes, the woman in white.

Ms. STOW. I am Florence Stow from Bancroft School in Hanfield, NJ. I think that capabilities should be acknowledged just like we, treated like us, not carried down half ramps, treated just like normal people. They should have respect and should go and live where they want to, and do what we do.

They should have a great deal of respect. Thank you. [Applause.]

Senator HARKIN. Thank you all very much for your eloquence, and for coming. Let me just say this.

This bill is not going anywhere this year. The Congress, the 100th Congress is about to adjourn. But we enter into the 101st Congress next year and the bill will be reintroduced right away.

We have a long road to go. I am not going to sit here or stand here and kid you that somehow this thing is going to get through right away. There are roadblocks and a lot of problems out there.

So what it is going to take is it is going to take persistence. A lot of persistence on my part, a lot of persistence on your part. You are the ones who can make this bill happen. You have to connect up with your friends, your families, the different agencies, organizations that you belong to, and you have got to make this your top priority.

It is going to be a tough battle. I am convinced we can do it. The history of the United States has been a constant evolution of opening more doors, of breaking down barriers, of extending basic human rights to more and more people. Sometimes we do not always live up to those words that we have in the Declaration of Independence and in our Bill of Rights. But we constantly try to live up to them. We said that all men, and I am sure they meant all women, too, if they were here today, were created equal.

And yet, for almost 100 years after, we had slavery. We did not even get the Civil Rights Act until 1964. Women did not have the right to vote until what, 1920, was it not?

But it has been a constant progress towards expanding our concept of basic human rights. But with each one of those hurdles we



had to cross, it took a lot of effort, a lot of time. I am hopeful it will not take that time for this bill. We have laid the groundwork. We have made the initial steps. Now we just need to take that final step of breaking down the final barrier in our country of discrimination.

I guess I am reminded that when I think about how tough it is going to be, and how much work it is going to take, I am reminded of Rosa Parks who got off that bus in Alabama and said she was not going to ride in the back of the bus anymore. She led the bus boycott as some of you remember, at least those of you who are as old as I am. I do not know how long that bus boycott went on, but they all walked to work. They walked to their places of employment and they walked home, some of them 3, 4, 5 miles a day, rather than take the buses.

After it was all over with, they broke the back of the bus company and were entitled to sit anywhere they wanted to on the bus. When it was all over with, someone asked Rosa Parks how she felt. She said well, "it has been a long tough battle, my feet are tired but my soul is at rest."

Let us work hard so that when we finally win this battle, we can all say together, and paraphrase Rosa Parks, our bodies are tired, but our soul is at rest.

Thank you. [Applause.]

[Additional material supplied for the record follows:]

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BEFORE THE  
JOINT HEARING

SENATE SUBCOMMITTEE ON THE HANDICAPPED

HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON SELECT EDUCATION

TESTIMONY OF THE ORGANIZATION FOR USE OF THE TELEPHONE (OUT)

ON SENATE BILL 2345 AND HOUSE BILL 4498

On behalf of The Organization for Use of the Telephone (OUT), I express our appreciation for the opportunity to testify on this landmark legislation. My name is David Saks. I serve as Director of OUT.

OUT is an all-volunteer non-profit national advocacy organization working on behalf of people with impaired hearing. We have focused our efforts primarily on improving telephone reception with hearing aids. Since our members have various degrees of hearing loss, we have a direct interest in the above referenced Joint Hearing. We will confine our testimony to the provisions of S. 2345 and H.R. 4498 which deal with hearing and communication.



People whose hearing impairments are to varying degrees compensated for by the use of hearing aids are the victims of discrimination in many aspects of their lives. Of the issues being addressed by this legislation, discrimination in places of public accommodation and employment are particularly critical to them. Hospital patients who find themselves in rooms with unusable telephones because the phones are not hearing aid-compatible (HAC)--or, depending on severity of hearing loss, not equipped with amplifiers or telecommunications devices for the deaf (TDD). Hotel and motel guests who, although paying for rooms with telephone service, find the same discriminatory lack of usable means of communication. Picture the hapless restaurant patron or airport customer who, upon being paged, is confronted with an unusable telephone while non-impaired passengers all around him enjoy convenient telephone communication.

Since we are especially concerned with the removal of these barriers to telephone communication, we urge the subcommittees to make more specific the provisions which bear on the use of voice telephones. Neither the Telecommunications for the Disabled Act of 1982 (Disabled Act) nor the Hearing Aid Compatibility Act of 1988 (HAC Act) remove pre-existing communication barriers, except for emergency phones and coin-operated payphones. There are an estimated 50,000,000 voice telephones in use in the United States which are not HAC, thus unusable with telecoil-equipped hearing aids. These are not touched by the two laws cited above. (See attachment A)

Many of these non-HAC phones are necessarily in places of

Senator HARKIN. The hearing will be adjourned. We will see you early next year, when we really start moving this.  
[Whereupon, at 1:06 p.m., the subcommittee hearing was adjourned.]Folios 174 to 176 Insert here



public accommodation. We hope and believe that it is the committees' intent to remove as many of these discriminatory barriers as are within their reach. To enhance chances of this coming about, we make the following recommendations:

1. At Section 8(h)(3)(A) TYPES OF REQUIREMENTS--add "hearing aid-compatible telephones." This will assure that places of public accommodation, transportation terminals and facilities, employers and others will provide usable voice telephones to patrons, travelers and employees, thereby rectifying present serious discrimination.

2. At Section 8(h)(3)(C)--Please make stronger the language requiring assistive listening systems, particularly induction loop amplification (ILA). People who need and use telecoil-equipped hearing aids in order to hear in hearing rooms and other facilities where public business is conducted and decided upon, conference rooms, auditoria, theaters, houses of worship, etc. are denied access to these places by the absence of assistive listening systems. ILA is the least expensive of the more desirable systems and the only system which can be used without an external receiver. The listener merely flips the hearing aid switch from M (microphone) to T (telephone) and receives a clear, sharp signal. External ILA receivers are available for people who do not have telecoil-equipped aids. (See attachment B)

3. At Section 8(h)(3)(E)--delete "handsets" at end of paragraph. Amplifiers no longer are confined to handsets: one piece phones have built-in amplifiers, public payphones have case-mounted amplifiers; many phones still use amplifier handsets. The use of "telephone handsets" will limit the applicability of the provision. (See attachment C)

4. We urge you to consider some such word as "effective" or "required" or "necessary" in place of "reasonable" when used in the phrase "reasonable accommodation." "Reasonable" gives to anti-consumer regulatory agencies broad leeway for interpretation. In some cases, you will find your actual intent thwarted by convoluted interpretation which barely stays within the letter of the law. The legislation needs a more specific and stronger word than "reasonable."

In summary, we urge you to make more specific, at least as

specific as other requirements, the provisions designed to eliminate communication barriers which daily face people who use voice telephones with hearing aids.

Respectfully submitted.

Organization for Use of  
the Telephone, Inc.

*David Saks*

David Saks, Director

September 27, 1988

(Note: In the interest of economy, appendix material accompanying this statement was retained in the files of the committee.)