

THE SECRETARY OF HEALTH AND HUMAN SERVICES WASHINGTON, D.C. 20201 .

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The Honorable Thomas S. Foley Speaker of the House of Representatives Washington D.C. 20515

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Dear Mr. Speaker:

As the House of Representatives is preparing to take legislative action on the Americans with Disabilities Act (the Act), I wish to restate my position on the need for anti-discrimination protection for people with AIDS and HIV infection. There is strong evidence that blood-borne infections such as HIV infection are not spread by casual contact, and there is no medical reason for singling out individuals with AIDS or HIV infection for differential treatment under the Act.

While some have proposed that workers who handle food be treated differently under the Act, evidence indicates that bloodborne and sexually-transmitted infections such as HIV are not transmitted during the preparation or serving of food or beverages. Food services workers infected with HIV need not be restricted from work unless they have other infections or illnesses for which any food service worker should be restricted. Since the Act limits coverage for persons who pose a direct threat to others, relaxing the anti-discrimination protection for food service workers is not needed or justified in terms of the protection of the public health.

Further, I would add that any policy based on fears and misconceptions about HIV will only complicate and confuse disease control efforts without adding any protection to the public health. We need to defeat discrimination rather than to submit to it. The Administration is strongly committed to ensuring that all Americans with disabilities, including HIV infection, are protected from discrimination, and believes that the Americans with Disabilities Act should furnish that protection.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Touis W. Jullivan

Louis W. Sullivan, M.D. Secretary

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DRAFT Dole statement ADA conference report

Mr. President, I rise in strong support of the conference report. I have supported the Americans with Disabilities Act from the beginning, because I believe that this legislation is necessary to bring over 40 million disabled Americans into the mainstream of American life. We need to do that not only because it is just and fair for those disabled people, but because it is good for the country -- because all of us can benefit from the talents and abilities of those who also have disabilities.

In this bill, we have not made exceptions for any particular form of disability. We have included the mentally retarded and those with cerebral palsy, even though many people fear and misunderstand those disabilities. We have included the deaf and the blind, even though many people misunderstand those disabilities, and the capabilities of those people. We have also included people with AIDS and other diseases, even though there is a lot of fear and misunderstanding around many diseases.

We have included all these people because that's what this bill is all about -- replacing misunderstanding with understanding. We have not said that you have to employ a person in a job they really cannot do, or in a setting where they will pose a danger to the health or safety of other people. What we have said is that these decisions must be made about individuals, not groups, and must be based on facts, not fears.

That is why I am pleased to see that the conference committee has eliminated the amendment on food handling that was passed by the other body. This amendment was not needed to address legitimate concerns about diseases that can be transmitted through food. But if there was any doubt, the conference report has removed them. The bill already stated guite clearly that there was no requirement to employ a person who would "pose a direct threat to the health or safety of other persons." The conference committee has added language to the bill that such a threat includes any significant risk that a communicable disease could be transmitted on the job. The conference report further specifies that the bill does not override State health laws that are designed to prevent the transmission of diseases through food.

> I have received a letter from the Health Commissioner of my State, and the health officers of 26 other States, urging us to adopt the conference report. This letter assures us that necessary State health laws will remain in place under this bill, and warns that the amendment that was passed by the other body "does a tragic disservice to the public by contributing to the misperception of AIDS as a disease that can be spread by casual contact."

Now, I have also hears, as I am sure many of my colleagues

have, from some small businesses that are concerned that public misperceptions could damage their businesses. These businesses have said to us, "We know that you cannot get AIDS by eating in a restaurant, but John Q. Public does not know that, and if we cannot remove these people from their jobs, we will go out of business."

Well, that sounds like a serious situation, and I will tell you that when this argument was put to me I was concerned about it. I did not think it was fair to ask small businesses to bear the burden of public fears and ignorance about AIDS, or about any other disability. But when you really think about this argument, it begins to fall apart.

When we debated this issue in the Senate a few weeks ago, one of our colleagues told us about a restaurant that he said went out of business because of rumors that an employee had AIDS. Rumors. It wasn't true. No employee of this restaurant had AIDS. But people thought he did. And they would not eat at that restaurant. Well, I read the amendment -- the so-called foodhandling amendment -- and it doesn't look to me like an employer could remove an employee based on a rumor. But they're telling us that they could go out of business because of a rumor.

What does this tell us? I think it shows that discrimination is <u>not</u> the answer when you have this kind of public panic. If panic means we have to discriminate, does it mean we have to discriminate against people who are not disabled, whenever there is a rumor that someone has a disease?

I was told about another case, where a restaurant learned that an employee had AIDS, and they immediately put him on disability leave. But word got out that an employee had AIDS, and people stopped going to the restaurant. And the restaurant went out of business.

Now, I don't know if this is true or not. It may never have happened. Restaurants go out of business every day of the week. But let's say it did. What does this prove? Again, this amendment would be of no help. The employee was not even working in the restaurant any more, and they still went out of business. So, once again, discrimination does not seem to be the answer. Discrimination does not end fear. Education does.

I have done a little bit of historical research, and I discovered something very interesting. In 1964, the National Restaurant Association asked the Congress not to pass the Civil Rights Act that would have outlawed racial segregation in restaurants. We have nothing against black Americans, the Restaurant Association told us in 1964. And if we had our way, we would not segregate our restaurants. But we have to deal with the public, and the public, you see, has a lot of fears and a lot of misperceptions about people of different races. And if we had to integrate our restaurants, our customers would just stop coming, and we would be out of business.

Sound familiar? Well, let's look at what happened. Congress did not listen to the Restaurant Association in 1964. We passed a law that said you have to integrate restaurants, you cannot discriminate based on race. And you know what? I don't know of a single business in America that went out of business as a result. Not because there weren't some fears out there, or some misunderstanding. But because we as a nation successfully educated each other, and learned how better to live together.

But the first step in that educational process was a clear statement from the Congress that discrimination is wrong. Discrimination is unacceptable. We will learn to live together because we have to. That's what Congress did in 1964, and it was the right thing to do. It's the right thing to do today. I urge us to adopt the conference report.

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The Chapman amendment to the Americans with Disabilities Act-allowing employers to deny jobs with food-handling duties to persons with "communicable diseases" -- serves no legitimate purpose and should be defeated.

The <u>Administration opposes</u> this amendment. HHS Secretary Sullivan wrote to Congress that the amendment "is not needed or justified. . . We need to defeat discrimination rather than submit to it."

<u>President Bush</u> has spoken out strongly <u>against discrimination</u> against people with HIV infection: "There is only one way to deal with an individual who is sick. With dignity, compassion, and without discrimination."

The Chapman amendment would send a false a dangerous message that would <u>undermine</u> the efforts of our <u>public health officials</u> to calm unnecessary public fears about AIDS transmission.

The amendment is not needed to deal with <u>food-borne</u> diseases. Under the Americans with Disabilities Act, an employer can deny jobs to persons who "pose a direct threat to the health or safety of other individuals." Thus, someone with a food-borne illness -- such as hepatitis or typhoid -- will not be employed in a food-handling job.

Many <u>communicable</u> diseases, however, are not food-borne. Extensive studies prove that HIV, the virus that causes AIDS, is <u>not transmitted by food</u>, handshakes, coughing, sneezing, or other daily contact. The Centers for Disease Control recommend that persons with HIV infection not be restricted in food-handling duties.

The National Restaurant Association <u>admits</u> that there is no danger of HIV transmission but argues that <u>public misperceptions</u> could cost them business and therefore they need to discriminate.

Public ignorance has never before been considered a valid excuse for discrimination. If it were, it would not stop with this amendment. The public might avoid restaurants where employees with AIDS were in non-food-handling jobs, or where other customers had AIDS, or where someone was falsely rumored to have AIDS, or where an employee or customer had another disability, such as cerebral palsy or deafness.

The amendment is <u>opposed</u> by the American Medical Association, the American Public Health Association, the Catholic Conference and many other religious leaders, the Hotel and Restaurant Employees, the United Food and Commercial Workers, and the Food and Service Trades Department of the AFL-CIO. \bigcirc

AMERICAN PUBLIC HEALTH ASSOCIATION

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

June 11, 1990

The Honorable Edward M. Kennedy Chairman Committee on Labor and Human Resources U.S. Senate Washington, DC 20510

Dear Chairman Kennedy:

The American Public Health Association, with a national and affiliate membership of over 50,000 health professionals, scientists, and community health leaders, opposes the House language which reduces coverage under the Americans with Disabilities Act for individuals with infectious or communicable diseases working in food handling positions. Our opposition to this amendment is based on several reasons:

- Since 1917, APHA has brought together infection control experts from around the world to publish the premier reference book on infectious diseases, "Control of Communicable Diseases in Man." With respect to the transmissibility of HIV via food and food handlers, this text and all other scientific authorities indicates that HIV is not a food-borne illness.
- The House language is unnecessary since the Senate provision in Section 103(b) already deals with the issue of individuals with contagious disease who pose a threat to public health. This provision is similar to provisions in Section 504 of the Rehabilitation Act, the Civil Rights Restoration Act, and the Fair Housing Amendments. The language has served the public well and new language is not needed.
- The House language is vague and undermines the whole purpose of the ADA. The Senate language is more precise and is consistent with public health practice.
- All states codify those illness that are restrictable in specific workplaces. For example, Salmonella, Active TB, and Hepatitis A, among others, are food service restrictable diseases. It is quite common to have regulations listing health care setting, school, and day care restrictable diseases. The determinations as to

which diseases are restrictable in given settings is based on scientific knowledge of the transmission of those diseases. HIV is not transmitted through casual contact and does not grow in food, therefore it is not a food service restrictable disease. The Senate provisions would allow health authorities to continue to protect worksites against contagious diseases which do pose a direct threat to the health or safety of others.

The intent of the House language is mean spirited and perpetuates the harmful and unscientific notion that fear of disease is a reason to discriminate against individuals. Such a policy will do nothing to promote public health or prevent the spread of infectious diseases such as HIV.

Very truly yours,

A. M. Bea

William H. McBeath, MD, MPH Executive Director



Stanley C. Grant, Ph.D., Secretary

State of Kansas Mike Hayden, Governor

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May 29, 1990

The Honorable Bob Dole United States Senate Office of Republican Leader Capitol - Room S-230 Washington, D.C. 20510

Dear Senator Dole:

I concur in the National Commission on AIDS letter to Senators Kennedy and Hatch regarding the problem with excluding food handlers with communicable diseases in the amended House version of the Americans with Disabilities Act. While certain communicable diseases may be reason to at least temporarily exclude food handlers, clearly, there is no evidence that HIV is transmitted by the foodborne route. Not only is the amendment, as it may pertain to HIV, irrational from a public health perspective, it absolutely sends the wrong message to the American people regarding the potential for compromise of food safety having anything to do with HIV.

Several years ago, I spent a day as one of the several consultants to representatives of several major nationally known food companies, names we would all recognize. The message we gave them was clear in terms of the lack of transmission of HIV by the foodborne route. We concentrated on their responsibilities as employers is dispelling myths about AIDS. Nothing has changed about what is known about the transmission of this virus since that time.

I would urge the Senate, in conference, to remove the House amendment excluding food handlers from protections under the Americans with Disabilities Act. If you have any questions, I would be happy to assist at any time.

Sincerely, nelli ande

Charles Konigsberg, M.D., M.P.H. Commissioner, National Commission on AIDS

cc: June Osborn, M.D. David Rogers, M.D. Maureen Byrnes Congressman Jim Slattery Tim Westmoreland Kansas Restaurant Association

Charles Konigsberg, Jr., M.D., M.P.H., Director of Health (913) 296-1343 James Power, P.E., Director of Environment (913) 296-1535 Lorne Phillips, Ph.D., Director of Information Systems (913) 296-1415 Roger Carlson, Ph.D., Director of the Kansas Health and Envirement Advantage (913) 296-1619



NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

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May 24, 1990

The Honorable Edward M. Kennedy The Honorable Orrin G. Hatch Committee on Labor & Human Resources U.S. Senate Washington, DC 20510

Dear Senators Kennedy and Hatch:

We are writing to underscore our support for the Americans with Disabilities Act and to reiterate our concern about any amendment reducing its scope of coverage for persons with HIV infection. As you may recall, the National Commission on AIDS issued a statement to that effect at the outset of its work in September, 1989, a copy of which is attached.

As Secretary of HHS, Dr. Louis Sullivan has stated, "Any policy based on fears and misconceptions about HIV will only complicate and confuse disease control efforts without adding any protection to the public health." The amendment concerning food-handlers narrowly adopted by the House only reinforces unwarranted fear and perpetuates the discrimination that the ADA is designed to end. All evidence indicates that bloodborne and sexually transmitted diseases such as HIV are <u>not</u> transmitted through foodhandling processes. Simply put, this amendment is bad public health policy.

We hope that the conference deliberations can yield a bill that fully protects persons with HIV infection from fear and discrimination, without exception.

Beviel E. Rogers

David E. Rogers, M.D. Vice-Chairman

/enclosure

Sincerely,

June E. Deboin nd

June E. Osborn, M.D. Chairman

5-25-90 2:08 NAT. COM. on AIDS→ This document is from the collections at the Dole Archives, University of Kansas http://dolearchives.ku.edu



NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

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September 6, 1989 For Immediate Release For more information contact Carlton Lee (202) 254-5125

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STATEMENT OF SUPPORT FOR AMERICANS WITH DISABILITIES ACT

We, the Members of the National Commission on Acquired Immune Deficiency Syndrome (AIDS) strongly support passage of the Americans with Disabilities Act, legislation which would implement the key recommendation of the Presidential Commission on the Human Immunodeficiency Virus Epidemic.

People living with AIDS and HIV infection, and those regarded as such, deserve the same discrimination protections as all people with disabilities. Such protections from discrimination are not only necessary to enhance the quality of life for people with AIDS and HIV infection, they are -- as the Presidential Report and the Institute of Medicine have reported -- the linchpin of our nation's efforts to control the HIV epidemic.

Thousands of Americans who should seek voluntary counseling and testing services and many who need lifeprolonging medical treatment will not come forward if they believe that doing so could result in the loss of their job or lack of access to public accommodations. Legislation that is based not only on compassion but sound public health principles is a must if we are to reach and assist these individuals.

We are extremely pleased that the majority of the United States Senate and the White House have made a bipartisan commitment to enact the Americans with Disabilities Act. We oppose any efforts to reduce the scope of coverage of the present bill, particularly with respect to HIV, the specific focus of this commission. The ADA will provide a clear and comprehensive mandate to greatly extend discrimination protections for people with disabilities. We are proud to endorse this landmark legislation. This document is from the collections at the Dole Archives, University of Kansas

National Council on the Handicapped

Suite 814 Washington, DC 20591 202-267-3846

An Independent Federal Agency

July 28, 1988

To:National Council on the HandicappedFrom:Robert L. Burgdorf Jr., Attorney/Research Specialist CCCSubject:Briefing Materials on AIDS

At the May, 1988, quarterly meeting of the Council, I agreed to provide Council members with "in-depth briefing materials" on the issue of AIDS (Minutes of May meeting, p. 17). This memorandum is in response to that commitment. Some of the information provided here will also be included in the detailed Questions and Answers packet on the Americans with Disabilities Act (ADA). There have been some important developments since the May meeting, including the issuance of the report of the President's AIDS Commission (officially, the Presidential Commission on the Human Immunodeficiency Virus Epidemic) which expressly endorses the ADA, the national mailing to all households of the AIDS information packet, and Vice President Bush's endorsement of the need for antidiscrimination protection for people with AIDS. There appears to be developing an increased national consensus in favor of nondiscrimination protection for individuals infected with the AIDS virus.

Basic information about the Human Immunodeficiency Virus (HIV) or AIDS virus, its transmission, and the course of the AIDS disease were presented in the AIDS information packet

- 1 -

mailed to all U.S. households by the Federal Government. More in-depth information is presented in the President's AIDS Commission report. A copy of the Commission's report is enclosed for your information. In the interest of brevity, such general factual information is not reiterated in this memorandum. I. NEED FOR ANTIDISCRIMINATION PROTECTION FOR PEOPLE WITH AIDS

In the early years of our nation's experience with AIDS, initiatives to prohibit discrimination against HIV-infected persons were controversial. Some individuals misunderstood the impact of nondiscrimination laws and mistakenly thought that such laws might force the inclusion of people with AIDS into dangerous situations or into positions where they they could not competently perform necessary duties. Such misunderstandings of the law, coupled with ignorance and misguided fears about the AIDS virus and its transmission, led some to vociferously oppose nondiscrimination protection for those infected by the AIDS virus. Recently, with more information and education (including the nationwide mailing to all households of the AIDS information packet and the issuance of the report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic), a consensus seems to be emerging in favor of antidiscrimination measures to protect HIV-infected people. Proponents of such nondiscrimination protection include the U.S. Surgeon General, C. Everett Koop; the Presidential Commission on the Human Immunodeficiency Virus Epidemic; the Secretary of Health and Human Services; the American Medical Association; the Public Health Service; the Centers for Disease Control; the National Institutes of Health; and Vice President George Bush.

- 3 -

The Presidential Commission concluded that antidiscrimination measures were necessary not only as a matter of justice or equity, but also for pragmatic reasons; without such protection, the Nation's efforts to control the AIDS epidemic could not succeed. The Commission stated:

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 the HIV will be reluctant to come forward for testing, counseling, and care.

Subsequent to the issuance of the Commission's report, Vice

President George Bush was one of many public officials who

endorsed the Commission's call for antidiscrimination protection

for people with HIV infection.

The Commission's formal recommendations called for:

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.

In making this recommendation, the Commission expressly endorsed the Americans with Disabilities Act as proposed by the Council; the report declared:

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.

Nondiscrimination measures have already been developed in regard to the Federal workplace. In 1986, a Task Force of the General Accounting Office, appointed by the Comptroller General, proposed employment policies to assure that HIV-infected employees be treated "fairly and humanely." Following up on that proposal, in March of 1988, the Office of Personnel Management (OPM) issued comprehensive guidelines which outline employment policies for federal workers who are HIV-infected. The OPM guidelines include statements that "HIV-infected employees should be allowed to continue working as long as they are able to maintain acceptable performance and do not pose a safety or health threat to themselves or others in the workplace," and that "agencies are encouraged to consider accommodation of employees' AIDS-related conditions in the same manner as they would other medical conditions which warrant such consideration." Further, the guidelines declare, "there is no

- 5 -

medical basis for employees refusing to work with such fellow employees or agency clients who are HIV-infected."

The foregoing exemplify a growing consensus against discriminatory treatment of persons infected with the AIDS virus and in favor of legal prohibitions of such discrimination. II. AIDS AND THE NATIONAL COUNCIL ON THE HANDICAPPED

In its authorizing statute, the purpose of the Council ("to promote the full integration, independence, and productivity of individuals with handicaps in the community, schools, the workplace and all other aspects of American life") and the Council's enumerated duties are framed with regard to "individuals with handicaps." Individuals with handicaps are the constituency whose interests are statutorily assigned to the Council.

For purposes of Title IV (which establishes the Council) and Title V (which includes Sections 501, 502, 503, 504, etc.) of the Rehabilitation Act, the statute provides the following definition of the phrase "individual with handicaps:"

any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

As will be discussed in detail below, this language has been interpreted as including AIDS-infected persons. Therefore, such persons are among the groups that the Council has been charged with representing. The Council has consistently sought to represent the interests of its broad constituency, and has never attempted to differentiate between subcategories, diagnoses, or causation of those it has been assigned to represent.

- 7 -

Amendments to the definitions section of the Rehabilitation Act make it clear that on those occasions on which Congress considered the question of coverage of AIDS infection, it intended for the Council's charge to include persons with AIDS. The definition quoted above has been amended twice in regard to Sections 503 and 504 as they apply to employment, but not in regard to the definition as it applies to the Council's authority. Congress expressly left the Title IV (NCH) definition unchanged. The 1978 amendment stated that for purposes of Sections 503 and 504 as they relate to employment, the definition would not include persons whose current alcohol or drug abuse prevents them from performing job duties or constitutes a direct threat to others. More pertinent, in 1988, the Harkin-Humphrey amendment incorporated in the Civil Rights Restoration Act added the following language to the definitions section of the Rehabilitation Act:

for the purposes of Sections 503 and 504, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

By making this change to the coverage of Sections 503 and 504, Congress acknowledged that prior to this amendment the definition of individual with handicaps included persons with infections and contagious diseases, and, by not making a similar change to the definition governing the Council, Congress clearly implied that such persons were within the constituency to be served by the Council.

- 8 -

The National Council on the Handicapped has recognized the breadth of its statutory responsibility and has consistently characterized itself as "the only Federal agency with the mandated responsibility to address, analyze, and make recommendations on issues of public policy which affect people with disabilities regardless of age, disability type, perceived employment potential, perceived economic need, specific functional ability, status as a veteran, or other individual circumstances" (Toward Independence, p. iv; On the Threshold of Independence, p. viii). Thus, the Council has viewed itself as serving a very broad constituency without regard to "disability type" or "other individual circumstances." Whenever there has been any suggestion that the Council was not paying adequate attention to a particular constituency group -- e.g., people with hearing impairments, children with disabilities, elderly persons with disabilities, American Indians with disabilities, or other "minorities" within the class of people with disabilities -- the Council has taken strong and effective action to consider and address the interests of these subgroups. Such an inclusive approach would be hard to square with any interpretation that would seek to exclude people with AIDS from the Council's purview.

The inclusion of people infected with the AIDS virus in the Council's constituency is also supported by a recognition that there are very large areas of overlap of this group with people having what might be considered more traditional disabilities. For example, people with hemophilia are among those at the

- 9 -

highest risk of infection with the AIDS virus. Likewise, any person whose medical condition necessitated them to obtain blood transfusions during the period when blood supplies were not effectively screened is at risk of AIDS virus infection. Infants who receive the AIDS virus through transmission from their mothers during pregnancy and birth are most likely on a statistical basis to be born in situations of poverty and poor prenatal and medical care, just the situations that are linked to increased risks of birth defects and developmental impairments.

The foregoing provides strong legal and pragmatic reasons for the conclusion that people infected with the AIDS virus are individuals with handicaps within the jurisdiction and responsibility of the National Council on the Handicapped. Given this scope of responsibility, the Council may not "pick and choose" among the members of its constituency; it is responsible for equally representing the interests of all people with disabilities, including those people who are infected by the AIDS virus.

III. AIDS AND THE AMERICANS WITH DISABILITIES ACT

In developing the proposed Americans with Disabilities Act, the Council consciously sought to avoid the quagmire of trying to develop a new definition of physical and mental impairment. The definitions of those terms under Section 504 established in the Rehabilitation Act of 1973 and regulations issued in 1978 were the product of much thought and negotiation, and have been widely accepted since their promulgation. For the most part, these definitions have served well. The Council's various drafts of the ADA consistently adopted verbatim the definitions of physical and mental impairment contained in the Section 504 regulations.

In choosing the Section 504 formulation, the Council was not only acting consistently with its own statutory mandate as discussed above, but was avoiding the highly controversial and risky process of trying to "reinvent the wheel" by formulating a new definition. Creating new language and confronting organizations and individuals representing numerous diverse disabilities with the question whether they are or are not included in this new definition would have been a laborious and divisive prospect. The use of the Section 504 definitional wording avoided controversy and made use of terminology familiar to Congress, administrators, the courts, legal commentators, and people with disabilities and the organizations that represent them. The use of accepted definitional language helped to

- 11 -

engender unity in support of the bill, with the result that over 50 national organizations representing persons with disabilities had endorsed it at the time of its introduction.

In adopting the Section 504 definition of physical or mental impairment, the Council appropriated terminology with an established history of judicial and administrative interpretation. The expectation that the prior interpretation of this definition would guide its interpretation under the ADA was expressly stated by Senator Weicker and other sponsors of the bill during their introductory remarks. One aspect of that interpretation is the inclusion of people infected by the AIDS virus. At the time of the introduction of the bill, the Council, the Congressional sponsors of the bill, and the endorsing disability organizations were all aware of the judicial interpretation of the Section 504 definition to include persons infected with the AIDS virus. The interpretation of the Section 504 definition to include AIDS will be examined in detail in part III of this memorandum.

It is important to underscore that the inclusion of someone as having a condition that meets the definition of a physical or mental impairment is not the end of the inquiry under the ADA. Even though a person qualifies as having a physical or mental impairment, that individual may still be excluded or otherwise treated unequally in certain circumstances. An individual with a physical or mental impairment may be excluded or disadvantaged for some other reason having no connection to the existence of the impairment. And perhaps more significantly, a person may be

- 12 -

treated unequally because of a physical or mental impairment if this is pursuant to the legitimate application of qualifications standards, selection criteria, performance standards, or eligibility criteria, as for example a vision criterion for a job as bus driver. Such standards that disadvantage people with particular disabilities must be both necessary and substantially related to the ability to perform or participate in the essential components of the particular job or activity in question.

Therefore, under the ADA, inquiries regarding unequal treatment of persons with disabilities can be viewed as entailing two different levels. First, is the individual being treated unequally because of a physical or mental impairment, perceived impairment, or record of impairment? This determination is based upon the definition of physical or mental impairment drawn from the Section 504 regulations and upon the facts of the case. Second, is the unequal treatment permitted under the Act? This will depend upon whether there are legitimate standards or criteria justifying the unequal treatment, whether such standards are necessary and can be shown to be sufficiently connected to essential components of the job or activity, and whether such criteria or standards have been properly applied to the particular individual with a disability.

If an employer or service provider could show, in particular circumstances, that a person with a certain disability such as AIDS poses a substantial risk to the health or safety of

- 13 -

co-workers or other participants, it would be permissible to establish qualifications standards or selection criteria that screen out such individuals. The employer or service provider would, however, have to have adequate evidence to establish that such standards or criteria were necessary and that they were substantially related to the essential components of the job or activity. The employer or service provider would also have to demonstrate that the particular individual in question failed to meet the standards or criteria, e.g., that the individual really did endanger the health or safety of others. Mere irrational prejudice or unfounded fears could not justify such an exclusion or unequal treatment.

It is clear that a person who is infected with the AIDS virus qualifies as a person with a physical or mental impairment, perceived impairment, or record of impairment under the ADA. But any impression that the ADA mandates the automatic inclusion in jobs, programs, and activities of people who pose a real, demonstrable threat to others represents a basic and serious misunderstanding of the requirements of the statute. III. AIDS AND THE SECTION 504 DEFINITION

The legal battles about AIDS coverage under Section 504 are still continuing, but the weight of existing legal precedents is strongly in favor of the interpretation that people infected with the AIDS virus are included in the scope of persons protected by the Act. The broad legal framework on this issue was established by the decision of the United States Supreme Court in School Board of Nassau County v. Arline, a case that involved a schoolteacher with an infectious form of tuberculosis. The Supreme Court ruled that a person with a contagious disease is covered under the definition of a handicapped individual in Section 504. The Court stated that a basic purpose of Section 504 is "to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others." The holding that an individual with an infectious disease is a handicapped individual under Section 504 does not mean, however, that such an individual will necessarily prevail on his or her Section 504 claim. The Arline decision indicates that an individual must also demonstrate that he or she is "otherwise qualified" for the position or activity in question. In the context of the Arline case itself, the Supreme Court sent the case back to the lower courts for consideration of this second question.

The lower courts have applied the principles established by the Supreme Court in the <u>Arline</u> decision to the context of AIDS. The recent report of the President's Aids Commission (the

- 15 -

Presidential Commission on the Human Immunodeficiency Virus Epidemic) summarized the results as follows: "the lower courts have consistently held that the range of HIV-related impairments, including asymptomatic HIV infection, are covered under Section 504" (citations omitted). In the case of Local 1812, Am. Fed. of Gov. Emp. v. Dept. of State, a Federal court in the District of Columbia noted the parties' agreement that HIV-infected persons are "physically impaired" and "handicapped" under Section 504, "due to measurable deficiencies in their immune systems even where disease symptoms have not yet developed." On June 30, 1988, a Federal District Court in California applied the principles established by the Supreme Court in Arline to an AIDS case. The court ruled, in the case of Doe v. Centinela Hospital, that a healthy person who had tested positive as carrying the AIDS virus was a handicapped individual under Section 504, stating, "No matter what else Arline may fairly be read to hold, it clearly states that discrimination based solely on fear of contagion is discrimination based on a handicap when the impairment has that effect on others."

Congressional statements have also consistently indicated that persons infected with the AIDS virus are included in the Section 504 definition of individuals with handicaps. This was the viewpoint expressed by both supporters and opponents of the Civil Rights Restoration Act, that was passed into law in March, over the veto of President Reagan. Recognition that AIDS and other contagious diseases or infections are covered by Section

- 16 -

504 prompted the compromise amendment (discussed in part II above) that clarified that in the employment context, such coverage would not extend to situations in which a contagious disease or infection would either pose a direct threat to the health or safety of others or would prevent an individual from performing the duties of a job. Were AIDS and other infectious and contagious diseases not covered under Section 504, then this amendment would make no sense.

The Fair Housing Act Amendments of 1988 bill that has passed the House of Representatives and is currently pending in the Senate also incorporates the definition of individual with handicaps from Section 504. The House Committee Report accompanying the passage of the bill could hardly have made clearer the Congressional understanding that the definition encompasses infection with the AIDS virus: "AIDS and infection with the Human Immunodeficiency Virus (HIV) are covered under this Act" (Report 100-711, p. 22, n. 55). In his statement on the House Floor during the debates on this bill, Congressman Major Owens declared that "The definition of "handicap" presented in section (b)(h) neither expands nor restricts the current interpretation of "individuals with handicaps" as it is used in section 504. All of the physical or mental impairments that constitute handicaps under section 504 will also constitute handicaps under this bill." He went on to state:

It is important to underscore that this definition clearly intends to include persons with AIDS and all who are infected with the HIV virus, whether or not they show symptoms of the disease. Various classifications and terminology have been used, but individuals are included if they have AIDS, AIDS-related-complex, or seropositivity, whether they have symptoms of the disease or are asymptomatic. The definition is intended to reflect a developing consensus in case law and administrative determinations that all who test positive for the AIDS virus have a "handicap" and are within the scope of protection afforded by such laws against discrimination on the basis of handicap.

Numerous other Representatives, both opponents and proponents of the Fair Housing Amendments bill, made similar statements acknowledging that the section 504 definition includes persons who are infected by HIV (See, Congressional Record, June 29, 1988, pp. H 4918-4930).

For all of these reasons, existing legal precedents and Congressional statements strongly indicate that persons with AIDS or infected with the AIDS virus are covered by Section 504 and protected from discrimination on the basis of their handicap.

V. ENCLOSURES

Enclosed for your information is a copy of the report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic. There have been a number of pieces of legislation introduced in Congress that deal in one way or another with AIDS. I am enclosing a copy of a Legislative Summary that describes all such legislation in the current Congress.

This document is from the collections at the Dole Archives, University of Kansas http://dolearchives.ku.edu			
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"Sec. (a) The Secretary of Health and Human Services,

not later than 6 months after enactment of this Act, shall ---

(2) publish the methods by which such diseases are

transmitted; and

(3) widely disseminate such information regarding the list of diseases and their xxxxxxx modes of transmissability to

the general public.

Such list shall be updated annually.

(b) In any case in which the Secretary of Health and Human <u>Heat is</u> <u>Corvices has determined</u>, <u>Missuant to</u> the list developed under (a) the an individual has an infectious or communicable disease that is transmitted to others through the handling of food, which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(c) Nothing in this Act shall be construed to preempt,

modify, or amend any state, county, or local law, ordinance, or

regulation applicable to food kxxxxxxx handling which is designed

to protect the public health from individuals who pose a significant risk x sign which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissability published by the x correct which Secretary of Health and Human Services.

AMENDMENT NO.	Ex Oalendar No	
Purpose:	AMENDMENT NO. 2118	
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IN THE SENATE OF THE	Bill/Res. No. To FORD Motion	
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and ordered () Ordered to INTENDED to be proposed by. Viz: At the End 1 the Follow 2 The Content	the Committee on I to be printed lie on the table and to be printed <u>HATCH</u> UD OF THE INSTRUCTIONS ADD JUG: FEREES ARE INSTRUCTED to FOLLOWING LANGUAGE in the port on 5.933.	

"Sec. (a) The Secretary of Health and Human Services, not later than 6 months after enactment of this Act, shall ---(1) publish as list of infectious and communicable handling diseases which are transmitted through the food supply; (2) publish the methods by which such diseases are

transmitted; and

(3) widely disseminate such information regarding the list of diseases and their xxxxxxx modes of transmissability to the general public.

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Such list shall be updated annually.

(b) In any case in which the Secretary of Health and Human that is Services has determined, included on by fresecretary of Health and Human Services the an individual has an infectious or communicable disease that is transmitted to others through the handling of food, which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(c) Nothing in this Act shall be construed to preempt,

modify, or amend any state, county, or local law, ordinance, or

regulation applicable to food xxxxxxxx handling which isPage34 01991ed

to protect the public health from individuals who pose a significant risk x sign which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissability published by the x correction which Secretary of Health and Human Services. June 27, 1990

TO: Senator Dole

FROM: Mo West

SUBJECT: Chapman Amendment

To follow up on your concern that the Chapman amendment did not receive serious consideration during conference. The Senate conferees voted 9-1 in favor of striking the amendment and the House voted 12-10 in favor of striking the amendment after lengthy discussion and individual statements by conferees on the issue.

The amendment which originated in the House was defeated by both Senate and House votes recorded in conference. The Senate and House versions of the ADA conference report contain a "direct threat" provision to remove any person from a food handling position who would pose a direct threat to the safety and health of others. Even the proponents of the Chapman amendment, including the National Restaurant Association, admit that there is no scientific evidence that AIDS can be transmitted through the handling of food. Should evidence be found that AIDS were transmitted by food -- the "direct threat" provision would apply.

The bill makes clear that anyone who poses a direct threat of disease is not covered and can be refused employment, reassigned or fired. Persons who create an actual danger to the health or safety of others will be removed from the workplace under the ADA, thereby nullifying the Chapman provision. Thus, the thrust of the Chapman amendment is toward persons who do not pose any real threat to safety.

The Chapman amendment affects all food handlers with a disease regardless of whether the disease is transmitted by food. A food handler who has a disease that is not spread by food handling (which includes AIDS -- transmitted only by sexual contact or blood) can be discriminated against, even though they pose no direct risk to others. Moreover, the Chapman amendment does not establish any medical standards -- leaving restaurants owners and restaurant workers to litigate the issue.

During House consideration of the ADA bill, Rep. Chapman decribed the purpose of his amendment as giving employers needed flexibility to deal with employees who are "diagnosed as having an infectious disease such as "AIDS". Rep. Chapman did not seek to claim that his amendment was necessary to protect the public
from infection; he explained "the purpose of the amendment was to protect food handling business from loss of customers who would refuse to patronize any food establishment if an employer were known to have a communicable disease." He noted that "there is a perceived risk from AIDS."

This amendment is based on misperception, fear and prejudice. Restaurant owners argue that public misperceptions could cost them their business because of public health reactions to health rumors. The Chapman amendment purposes to provide flexibility through "alternative employment" to employees, thereby protecting businesses from "economic damage." If the problem is one of misperception and economic loss -- transferring an individual to another job such as maitre'd or dishwasher would still perpetuate the same unfounded fears. If the argument is one of a public health risk -- the "direct threat" provision already in the bill provides the needed protections for employers to execise.

Secretary Louis Sullivan, the Centers for Disease Control as well as major medical and public health organizations back antidiscrimination protections for all people with disabilities, including people with AIDS. The purpose of the ADA is to ensure this and "direct threat" language offers protections for employers in the case of a significant health risk.

Will you vote against recommiting the bill on the Chapman amendment?

Yes No Undecided V



ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS 6728 Old McLean VIIIage Drive, McLean, Virginia 22101 Phone (703) 556-9222

June 11, 1990

Senator Edward Kennedy United States Senate Washington, D.C. 20510

Dear Mr. Chairman:

As the chief health officers in our states we, the undersigned, are writing to urge you to delete the Chapman Amendment from H.R.2273, the Americans With Disabilities Act, during conference. We feel strongly that this amendment, which permits food service industry employers to transfer workers who are infected with the AIDS virus out of jobs that involve food handling, is discriminatory. Such action undermines the fundamental premise of the entire bill.

We concur with the unequivocal statements you have already heard many times from our colleagues in the Department of Health and Human Services and the Centers for Disease Control that the HIV infection cannot be transmitted through food. Inclusion of this amendment does a tragic disservice to the public by contributing to the misperception of AIDS as a disease that can be spread by casual contact. The Public Health Service and public health departments throughout the country have mounted extensive educational efforts to inform the American public about modes of transmission of HIV disease, and to combat inaccurate perceptions of risks posed by HIV positive persons. The appropriate response to public fear is ongoing education, not legitimizing further discrimination in statute. For these reasons, the Chapman amendment is not only unnecessary, but is counterproductive.

We strongly support the Americans with Disabilities Act as it clearly addresses legitimate public health concerns. As currently drafted, Section 103 does not preempt our existing state public health laws with regard to individuals who "pose a direct threat to the health or safety of others." We feel that only with the removal of the Chapman amendment can public health and safety be well served in a truly non-discriminatory fashion.

Again, we strongly urge you to protect the integrity of the Americans with Disabilities Act and the sound public health principles it sets forth by securing its final passage without the Chapman Amendment.

Sincerely,

Robert Bernstein, M.D., Texas State Department of Health Jan Carney, M.D., Vermont State Department of Health Suzanne Dandoy, M.D., Utah State Department of Health Ronald D. Eckoff, M.D., Iowa State Department of Health

- 2 -

Charles Konlgsberg, M.D., M.P.H., Kansas State Department of Health N. Mark Richards, M.D., Pennsylvania State Department of Health Lloyd F. Novick, M.D., M.P.H., New York State Department of Health Bernard J. Turnock, M.D., Illinois State Department of Health Sister Mary Madonna Ashton, Minnesota State Department of Health Raj Wiener, Michigan State Department of Health Adele Wlizack, R.N., M.S., Maryland State Department of Health David Mulligan, Massachusetts State Department of Health M. Joycelyn Elders, M.D., Arkansas State Department of Health Theodore E. Williams, J.D., Arlzona State Department of Health John R. Bagby, Ph.D., Missouri State Department of Health Frederick Adams, D.D.S., M.P.H., Connecticut State Department of Health Donald E. Pizzini, M.E.S., Montana State Department of Health William T. Wallace, M.D., New Hampshire State Department of Health Ronald Fletcher, M.D., Ohio State Department of Health H. Denman Scott, M.D., M.P.H., Rhode Island State Department of Health Thomas Vernon, M.D., Colorado State Department of Health Robert M. Wentz, M.D., North Dakota State Department of Health Morris Green, M.D., Indiana State Department of Health Ronald H. Levine, M.D., North Carolina State Department of Health James W. Alley, M.D., Georgia State Department of Health Charles Mahan, M.D., Florida State Department of Health Kristine Gebbie, R.N., Washington State Department of Health



Mo West

Department of Social Development and World Peace

Office of Domestic Social Development 770 3211 4th Street N.E. Washington, DC 20017-1194 (202)541-3185 FAX (202)541-3322 TELEX 7400424

June 5, 1990

The Honorable Robert Dole, Minority Leader United States Senate Washington, DC 20510

Dear Senator Dole:

The U. S. Catholic Conference, the public policy arm of the nation's Roman Catholic bishops, urges you to oppose Senate approval of the Chapman amendment adopted by the House of Representatives to the Americans with Disabilities Act (ADA). As you know the bishops' conference strongly supported the ADA bill when it was considered by the Senate because of the urgent need to help disabled people, including those suffering from HIV infection, to participate fully in our society.

The Chapman amendment should be resisted by the Senate for two reasons: first, it is unnecessary; and second, such an amendment would set a pernicious precedent that could undermine the principles embodied in the civil rights protections of this nation.

The Chapman amendment is unnecessary because the ADA bill already includes provisions to cover situations in which employees with communicable diseases could pose a health threat to others. Clearly, the ADA would not require restaurants to employ food handlers whose contagious illnesses could be transmitted through preparing or serving food.

The amendment is also dangerous because it would codify the idea that employers may discriminate against disabled people solely on the basis of the ignorance and prejudice of others. Proponents of this amendment have argued that, while there is no evidence that HIV infection can be transmitted through food handling, that food establishments must be free to cater to the fears and misunderstanding of some of their customers. Federal law, especially precedent setting civil rights laws should be based on higher principles and higher goals for our people.

Sincerely,

Sharn M. Dr. Sharon M. Daly



KANSAS PLANNING COUNCIL

MIKE HAYDEN Governor

JAMES BLUME Chairperson

JOHN KELLY Executive Director n DEVELOPMENTAL DISABILITIES SERVICES

Fifth Floor North Docking State Office Building Topeka, Kansas 66612-1570 VOICE-TOD (913) 296-2608

June 18, 1990

The Honorable Norman F. Lent U.S. House of Representatives 2408 Rayburn House Office Building Washington, DC 20510

RE: AMERICANS WITH DISABILITIES ACT

Dear Representative Lent:

I understand that weakening provisions to the ADA bill including the Chapman Amendment may be part of the conference report. I ask for your consideration, as an ADA conferee, to rid the bill of the Chapman Amendment, along with all other weakening provisions.

In my view, the Chapman Amendment would serve only to exacerbate the exact kind of irrational fear and prejudice that the ADA is meant to eradicate.

All persons with disabilities and the community and nation as a whole can only benefit by extending the same privileges and freedoms to persons with disabilities that now only non-disabled individuals enjoy.

I look forward to you continuing your commitment to equality and justice for all.

Thank you for your consideration on this issue.

Sincerely, John F. Kelly **Executive Director**

JFK/1rm

cc: Senator Dole

LETTERS SENT TO:

Representative Augustus F. Hawkins Major R. Owens Matthew G. Martinez John D. Dingell Thomas A. Luken Edward J. Markey Glenn M. Anderson Norman Y. Mineta Robert A. Rose Jack Brooks Don Edwards Robert W. Kastenmeier Jim Chapman Steny H. Hoyer Harris W. Fawell Steve Bartlett Norman F. Lent Bob Whittaker Matthew J. Rinaldo John Paul Hammerschmidt Bob Shuster Hamilton Fish, Jr. James F. Sensenbrenner, Jr.

Senator Edward M. Kennedy Tom Harkin Howard M. Metzenbaum Paul Simon Daniel K. Inouye Ernest F. Hollings Orrin G. Hatch Dave Durenberger James M. Jeffords John C. Danforth



PARALYZED VETERANS OF AMERICA Chartered by the Congress of the United States

June 28, 1990

Members U.S. House of Representatives Washington, D.C. 20515

Dear Member of Congress:

On behalf of the members of Paralyzed Veterans of America, I urge your rejection of any effort to recommit the "Americans with Disabilities Act" and your strong support for acceptance of the report of the conferees. The effort to recommit this long overdue legislation based on the conferees omission of the Chapman Amendment is a disservice to the members of PVA, all veterans disabled in service to the Nation and all citizens with disabilities.

To delay and possibly even thwart ultimate passage of this much needed legislation due to an amendment that is predicated on ignorance and bias and fosters continued discrimination would be unconscionable. For over forty years the men and women of Paralyzed Veterans of America have worked toward the goal of eliminating attitudinal and physical barriers in all aspects of American life. To see this goal, which is now on the verge of becoming a reality, denied because of prejudice and misunderstanding is to ignore the sacrifices which veterans have made for all Americans.

Again, on behalf of the members of Paralyzed Veterans of America, I urge the defeat of any effort to have the "Americans with Disabilities Act" recommitted and that you strongly work to ensure that this needed legislation is enacted into law.

Sincerely,

Douglas K. Vollmer Associate Executive Director for Government Relations

801 Eighteenth Street, N.W., Washington, D.C. 20006 (202) USA-1300 Fax: (202) 785-4452 Page 43 of 191



ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS 6728 Old McLean Village Drive, McLean, Virginia 22101 Phone (703) 556-9222

July 6, 1990

The Honorable Edward Kennedy United States Senate Washington, D.C. 20510

Dear Mr. Chairman:

As the chief health officers in our states we, the undersigned, applaud you for deleting the Chapman Amendment from the Americans With Disabilities Act during conference. We feel strongly that this amendment, which permits food service industry employers to transfer workers who are infected with the AIDS virus out of jobs that involve food handling, is discriminatory. Such action undermines the fundamental premise of the entire bill.

We concur with the unequivocal statements you have already heard many times from our colleagues in the Department of Health and Human Services and the Centers for Disease Control that the HIV infection cannot be transmitted through food. Inclusion of this amendment does a tragic disservice to the public by contributing to the misperception of AIDS as a disease that can be spread by casual contact. The Public Health Service and public health departments throughout the country have mounted extensive educational efforts to inform the American public about modes of transmission of HIV disease, and to combat inaccurate perceptions of risks posed by HIV positive persons. The appropriate response to public fear is ongoing education, not legitimizing further discrimination in statute. For these reasons, the Chapman amendment is not only unnecessary, but is counterproductive.

We strongly support the Americans with Disabilities Act as it clearly addresses legitimate public health concerns. As currently drafted, Section 103 does not preempt our existing state public health laws with regard to individuals who "pose a direct threat to the health or safety of others." We feel that only with the removal of the Chapman amendment can public health and safety be well served in a truly non-discriminatory fashion.

Again, we strongly urge you to protect the integrity of the Americans with Disabilities Act and the sound public health principles it sets forth by securing its final passage without the Chapman Amendment.

Sincerely,

Robert Bernstein, M.D., Texas State Department of Health Jan Carney, M.D., Vermont State Department of Health Suzanne Dandoy, M.D., Utah State Department of Health Ronald D. Eckoff, M.D., Iowa State Department of Health -2-

Charles Konigsberg, M.D., M.P.H., Kansas State Department of Health N. Mark Richards, M.D., Pennsylvania State Department of Health Lloyd F. Novick, M.D., M.P.H., New York State Department of Health Bernard J. Turnock, M.D., Illinois State Department of Health Sister Mary Madonna Ashton, Minnesota State Department of Health Raj Wiener, Michigan State Department of Health Adele Wilzack, R.N., M.S., Maryland State Department of Health David Mulligan, Massachusetts State Department of Health M. Joycelyn Elders, M.D., Arkansas State Department of Health Theodore E. Williams, J.D., Arizona State Department of Health John R. Bagby, Ph.D., Missouri State Department of Health Frederick G. Adams, D.D.S., M.P.H., Connecticut Department of Health Services Donald E. Pizzini, M.E.S., Montana State Department of Health William T. Wallace, M.D., New Hampshire State Department of Health Ronald Fletcher, M.D., Ohio State Department of Health H. Denman Scott, M.D., M.P.H., Rhode Island State Department of Health Thomas Vernon, M.D., Colorado State Department of Health Robert M. Wentz, M.D., North Dakota State Department of Health Morris Green, M.D., Indiana State Department of Health Ronald H. Levine, M.D., North Carolina State Department of Health James W. Alley, M.D., Georgia State Department of Health Charles Mahan, M.D., Florida State Department of Health Kristine Gebble, R.N., Washington State Department of Health Joel Nitzkin, M.D., Louisiana State Department of Health George Reynolds, M.D., Nevada State Department of Health C. Hernandez, M.D., M.P.H., Kentucky State Department of Health Lani Graham, M.D., M.P.H., Maine State Department of Health Georges C. Benjamin, M.D., District of Columbia Department of Health Lester N. Wright, M.D., M.P.H., Delaware State Department of Health Kathrine Kelley, D.P.H., Alaska State Department of Health Frances J. Dunston, M.D., M.P.H., New Jersey State Department of Health J.W. Luna, Tennessee State Department of Health Charles A. Anderson, Ed.D., South Dakota State Department of Health Taunja Willis Miller, West Virginia State Department of Health Kenneth W. Kizer, M.D., M.P.H., California State Department of Health Alton B. Cobb, M.D., M.P.H., Mississippi State Department of Health R. Larry Meuli, M.D., Wyoming State Division of Health and Medical Services Michael D. Jarrett, M.H.A., South Carolina Department of Health John C. Lewin, M.D., Hawaii State Department of Health C. Earl Fox, M.D., M.P.H., Alabama State Department of Health

Consortium for Citizens with Disabilities

TO: Senate Staffers Handling the Americans with Disabilities Act

FROM: Civil Rights Task Force

DATE: May 30, 1990

The attached materials relate to the proposed Motion to Instruct on the Chapman Amendment which Senator Helms plans to offer next week. The intent and purpose of the Americans with Disabilities Act (ADA) have always been to prohibit entities from making any kind of decision based on ignorance or irrational fears.

Both the Senate and House versions of the ADA contain a provision to remove any person from a food handling position who would pose a direct threat to the health or safety of others. Even the proponents of the Chapman amendment, including the National Restaurant Association, admit (see attached material) that there is no scientific evidence that AIDS can be transmitted through the handling of food.

If you have any questions regarding this issue please contact:

Liz Savage - Epilepsy Foundation of America - 459-3700

Pat Wright - Disability Rights Education & Defense Fund - 328-5185

Tom Sheridan - AIDS Action Council - 293-2886

Thank you.

motion to instruct - allegod His lang.

VOTE NO

To excluding certain food handlers from the ADA

Food handlers who do pose a risk to others are already excluded from the ADA.

- -- The bill makes clear that anyone who poses a direct threat of disease is <u>not covered</u> and can be refused employment, reassigned or fired.
- -- A food handler with hepatitis or typhoid fever could be fired under the bill. No amendment is needed. This is in the bill.
- -- The Chapman amendment <u>expands</u> allowable discrimination to include people who do <u>not</u> pose a risk to others.

The Chapman amendment does not establish any medical standards, leaving owners of businesses and food handlers to <u>litigate</u> the issue.

The amendment flies in the face of statements made by all public health officials.

This Amendment Is Opposed By:

Secretary of HHS, Dr. Sullivan Director of CDC, Dr. Roper Office of Personnel Management National Commission on AIDS American Medical Association American Nurses Association American Public Health Association National Council of Churches American Jewish Committee American Baptist Churches Leadership Conference on Civil Rights AFL-CIO, AFSCME, UFCW and many others

"I call on the Congress to get on with the job of passing a law -- as embodied in the Americans with Disabilities Act -- that prohibits discrimination against those with HIV and AIDS. <u>We won't</u> tolerate discrimination."

> President Bush March 29, 1990

Protect the integrity of the ADA. Move forward and not backward.

VOTE NO

On Food Handlers and the ADA

This amendment is wrong because it eliminates coverage only for food handlers who pose no risk to customers or fellow employees.

Food handlers who do pose a risk to others are already excluded from the ADA.

--The bill makes clear that anyone who poses a threat of disease is not covered and can be refused employment, can be reassigned, or fired.

--Thus, a food handler with hepatitis or typhoid fever could be fired under the bill. No amendment is needed. This is in the bill.

But the Chapman amendment expands allowable discrimination to include people who do not represent a risk.

--The amendment affects <u>all</u> food handlers with a disease, regardless of whether the disease is transmitted by food.

--Thus, a food handler who has a disease that is <u>not</u> spread by food handling can be discriminated against, even though they pose no risk to others. This would include such people with such diseases as:

-- Lyme Disease (spread by ticks),

-AIDS (spread by sexual contact or blood),

 Toxic Shock Syndrome (the organism for which is communicable, although it does not result in disease without many other conditions), or even
-cervical cancer (which is associated with a virus spread by sexual contact).

Moreover, the Chapman amendment does not establish any medical standards-leaving restaurant owners and restaurant workers to litigate the issue.

-The words "communicable disease" and "of public health significance" are not defined.

-Without standards, each restaurant owner and each restaurant worker will have to decide what discrimination is allowed. (For example, it is not at all clear that AIDS is "of public health significance" in a food-handling establishment, since it is not transmitted by food.) The Chapman amendment to the Americans with Disabilities Act-allowing employers to deny jobs with food-handling duties to persons with "communicable diseases" -- serves no legitimate purpose and should be defeated.

The amendment is not needed to deal with <u>food-borne</u> diseases. The Americans with Disabilities Act does not cover persons who "pose a direct threat to the health or safety of other individuals." This is sufficient to ensure that a person with a food-borne or air-borne illness -- such as hepatitis or tuberculosis -- will not be employed in a food-handling job.

Many <u>communicable</u> diseases, however, are not food-borne or airborne. There is no need or justification to exclude people with these diseases from food-handling jobs, but the Chapman amendment would allow this discrimination.

HIV, the virus that causes AIDS, is not food-borne or air-borne. Extensive studies prove that it is <u>not transmitted by food</u>, handshakes, coughing, sneezing, or other daily contact. The Centers for Disease Control recommend that persons with HIV infection not be restricted in food-handling duties.

Employers in the food industry recognize that there is no danger of HIV transmission but argue that <u>public misperceptions</u> could cost them business and therefore they need to discriminate.

Public ignorance has never before been considered a valid excuse for discrimination. What if the public would not patronize a racially integrated restaurant?

<u>President Bush</u> has spoken out strongly <u>against discrimination</u> against people with HIV infection. On March 29, 1990, he said that "There is only one way to deal with an individual who is sick. With dignity, compassion . . . and without discrimination."

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.

As President Bush 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."



THE SECRETARY OF HEALTH AND HUMAN SERVICES WASHINGTON, D.C. 20201

The Honorable Thomas S. Foley Speaker of the House of Representatives Washington D.C. 20515

Dear Mr. Speaker:

As the House of Representatives is preparing to take legislative action on the Americans with Disabilities Act (the Act), I wish to restate my position on the need for anti-discrimination protection for people with AIDS and HIV infection. There is strong evidence that blood-borne infections such as HIV infection are not spread by casual contact, and there is no medical reason for singling out individuals with AIDS or HIV infection for differential treatment under the Act.

While some have proposed that workers who handle food be treated differently under the Act, evidence indicates that bloodborne and sexually-transmitted infections such as HIV are not transmitted during the preparation or serving of food or beverages. Food services workers infected with HIV need not be restricted from work unless they have other infections or illnesses for which any food service worker should be restricted. Since the Act limits coverage for persons who pose a direct threat to others, relaxing the anti-discrimination protection for food service workers is not needed or justified in terms of the protection of the public health.

Further, I would add that any policy based on fears and misconceptions about HIV will only complicate and confuse disease control efforts without adding any protection to the public health. We need to defeat discrimination rather than to submit to it. The Administration is strongly committed to ensuring that all Americans with disabilities, including HIV infection, are protected from discrimination, and believes that the Americans with Disabilities Act should furnish that protection.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Jours W. Jullivan

Louis W. Sullivan, M.D. Secretary

DEPARTMENT OF HEALTH Source And Antion Source Antiperior Source An

Centers for Disease Control Atlanta, Georgia 30333

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 Ronorable Henry A. Wattalerchives.ku.edu

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 <u>Morbidity and Mortality Weekly Report</u> (<u>MMWR</u>) 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.

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

Enclosure

This document is from the collections at the Dole Archives, University of Kansas NATIONAL COMMISSION ON Activity of Munice Deficiency Syndrome



1730 K Street, N.W., Suite 815 Washington, D.C. 20006 (202) 254-5125 [FAX] 254-3060

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EXECUTIVE DIRECTOR

Maureen Byrnes

The Honorable Edward M. Kennedy The Honorable Orrin G. Hatch Committee on Labor & Human Resources U.S. Senate Washington, DC 20510

Dear Senators Kennedy and Hatch:

We are writing to underscore our support for the Americans with Disabilities Act and to reiterate our concern about any amendment reducing its scope of coverage for persons with HIV infection. As you may recall, the National Commission on AIDS issued a statement to that effect at the outset of its work in September, 1989, a copy of which is attached.

As Secretary of HHS, Dr. Louis Sullivan has stated, "Any policy based on fears and misconceptions about HIV will only complicate and confuse disease control efforts without adding any protection to the public health." The amendment concerning food-handlers narrowly adopted by the House only reinforces unwarranted fear and perpetuates the discrimination that the ADA is designed to end. All evidence indicates that bloodborne and sexually transmitted diseases such as HIV are <u>not</u> transmitted through foodhandling processes. Simply put, this amendment is bad public health policy.

We hope that the conference deliberations can yield a bill that fully protects persons with HIV infection from fear and discrimination, without exception.

17 mil E. Ryen

David E. Rogers, M.D. Vice-Chairman

/enclosure

Sincerely,

June E. Deborn And

June E. Osborn, M.D. Chairman

May 24, 1990



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 24, 1990

The Honorable Edward M. Kennedy Chairman Committee on Labor and Human Resources United States Senate Washington, DC 20510

> RE: The Americans with Disabilities Act

Dear Mr. Chairman:

You have requested the American Medical Association's views on the House amended version of the Americans with Disabilities Act (ADA) with regard to the provision involving food handlers. As we understand the provision, 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, 11 m

James S. Todd, MD

JST/ptb

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

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Mark J. Pelavin Washington Representative American Jewish Congress

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

Sally Timmel Director, Washington Office Church Women United

Dr. Kay Dowhower Director, Lutheran Office for Governmental Affairs Evangelical Lutheran Church in America

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Delton Franz 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

Rev. Elenora Giddings Ivory Director, Washington Office Presbyterian Church (USA)

Jane Hull Harvey 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



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

VIA FAX

May 24, 1990

The Honorable Edward M. Kennedy Chairman, Senate Labor and Human Resources Committee United States Senate Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the 1.3 million members of the United Food and Commercial Workers International Union, I strongly urge you to reject the Chapman "food handler" amendment included in the House-passed version of the Americans With Disabilities Act during Conference deliberations by the House and Senate. This amendment, which was accepted by the House on May 17, 1990 by just 12 votes, would reinforce the very kind of irrational discrimination that the ADA is designed to eliminate; and it should be rejected.

The UFCW and its local unions have collective bargaining agreements with employers throughout the food industry, including retail sales, meat packing, poultry, fish processing, and other food processing. The vast majority of our members work in the food industry; therefore, this amendment strikes at the heart of our members' economic concerns.

While the Chapman amendment purports to provide alternate employment to employees to protect them from "economic damage," it is so badly overdrawn that a meat packer with Lyme disease could be barred for life from handling food. Significantly, the amendment does not specify that such "infectious or communicable diseases" be food or airborne. Moreover, when cast against the "undue hardship" standard already in the bill, this amendment could result in a termination of employment if the employer simply declares that reassignment to a non-food handling job is "an action requiring significant difficulty or expense" as provided in the bill.

Also, most employers in the industry have a small number of jobs that do not involve food handling. In any event, many employees who work in such positions will not be qualified for alternate work.

Even if no employees suffer 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.

William H. Wynn International President -

Jerry Manapace International Socratary-Treasurer

Public Affairs Department Diroct Line (202) 488-1560

United Food & Commercial Workers International Union, AFL-CIO & CLC 1775 K Street, N.W. Washington, D.C. 20006 Washington, D.C. 20000 (202) 466-1562 (202) 223-3111 FAX (202) 466-1562 Page 57 of 191

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The Honorable Edward M. Kennedy

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May 24, 1990

- 2 -

According to U.S. Department of Health and Human Services Secretary, Louis W. Sullivan, M.D., "Food services workers infected with HIV need not be restricted from work unless they have other infections or illnesses for which any food service worker should be restricted. Since the Act limits coverage for persons who pose a direct threat to others, relaxing the antidiscrimination protection for food service workers is not needed or justified in terms of the protection of the public health."

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...."

Therefore, we strongly urge you to oppose discrimination and AIDS hysteria by rejecting the Chapman "food handler" amendment during the Americans with Disabilities Act Conference deliberations.

Sincerely, Villie I. Bak

International Vice President Director, Public Affairs Department



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

1625 L Street, N.W., Washington, D.C. 20036 Telephone (202) 429-1000 Telex 89-2376 Facsimile (202) 429-1293 TDD (202) 659-0446

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The Honorable Edward M. Kennedy, Chairman Committee on Labor and Human Resources United States Senate 315 Russell Senate Office Building Washington, D.C. 20510

Dear Mr. Chairman:

The American Federation of State, County and Municipal Employees (AFSCME) urges you to oppose in conference an amendment which was added to H.R. 2273, the Americans with Disabilities Act, which would allow employers to deny jobs with food-handling duties to persons with "communicable diseases."

May 24, 1990

This provision in the House bill 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 airborne disease will not be employed in a food-handling job.

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

Si ńcere Klepher Jerr

Director of/Legislation

in the public service

JDK:log

Gary Moore

Henry Nicholas Philadelphia, Pa



Norman L. Heard International Vice President Director, Manufacturing and Processing Division

May 24, 1990

Senator Edward M. Kennedy Chairman, Senate Labor & Human Resources Committee U.S. Senate Washington, D. C. 20510

Dear Senator Kennedy:

baselit.

I am writing to you on behalf of unionized workers in the food manufacturing industry who may be affected by the "food handler" (Chapman) amendment to the Americans with Disabilities Act. Our union, the UFCW, is the largest union in the food manufacturing industry. We represent several hundred thousand workers employed there.

As you know, this amendment supposedly protects employment opportunity for food handlers by providing that employers -"shall make reasonable accommodation that would offer an alternative employment opportunity for which the employee is qualified." Practically speaking, I can tell you that there are very few "alternative" jobs in food manufacturing. Those jobs that do not directly involve food handling are maintenance (mechanical) jobs and sanitation jobs. Almost all food handlers would not be qualified to transfer into maintenance/mechanical jobs. Those are jobs which require special skills and training. As you know most food plants must also meet health and sanitation standards. There are special sanitation crews who do this work. It involves cleaning the production areas including each machine used in the production process. An employer who considers an employee to be a risk as a food handler, would certainly not assign that person to work . cleaning equipment.

In short, there are few "alternative" jobs for workers who may be considered a risk under this amendment. In my opinion, this amendment does not add to the public health and safety protections that are now enforced through local, state and federal agencies. It may, however, adversely affect the employment opportunities of food workers. For these reasons, I would respectfully request that you oppose this amendment.

Sincerely yours,

formen T Aleano

Norman L. Heard International Vice President Director, Manufacturing and Processing Division



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Phillip L. Immesote International Vice President Director, Packinghouse Division

VIA FAX

May 24, 1990

not less to de

The Honorable Edward M. Kennedy United States Senate Chairman, Senate Labor and Human Resources Committee 428 Dirksen Senate Office Building Washington, D.C. 20510

Dear Senator Kennedy:

I would like to take this opportunity, as Director of the Packinghouse Division for the 1.3-million-member United Food and Commercial Workers International Union, to comment upon the language relative to food handlers that is currently in the House-passed version of the Americans With Disabilities Act.

It should be understood that little, if any, "reasonable accommodation" (as provided for in the House-backed bill) is likely to be made for employees working in food packing and processing. In this regard, it bears noting that there are two maintenance and clerical. The former is a highly skilled area that is subject to placement by seniority. Insofar as clerical positions are concerned, most packinghouse workers would lack the Also, the high incidence of cumulative trauma disorder (such as means, as a matter of practice, that any "light-duty" jobs (such as clerical) are already being filled by employees with this clerical) are virtually non existent for the average plant

Therefore, I would urge you to oppose inclusion of the "food handler" language in the final version of the Americans With Disabilities Act.

Sincerely, Soul? ge 61 of 191

International Vice President

This document is from the collections at the Dole Archives, University of Kansas http://dolearchives.ku.edu Ronald Reagan 'We Owe It to Ryan'

We owe it to Ryan to make sure that the fear and ignorance that chased him from his home and his school will be eliminated. We owe it to Ryan to open our hearts and our minds to those with AIDS. We owe it to Ryan to be compassionate, caring and tolerant toward those with AIDS, their families and friends. It's the disease that's frightening, not the people who have it.

Ryan would probably be embarrassed by all the fuss we are making over him. He did not want to be anyone special. He just wanted to go to school, play with his friends and grow up like every other kid in the neighborhood.



THE BOSTON GLOBE • FRIDAY, MAY 25, 1990

The Boston Globe

Founded 1872

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Dismantling the barriers

Easing the way for disabled people to work, get where they want to go and be protected from discrimination on the job is a major social advance. The strong support of Congress for legislation that sweeps away most of the impediments that had blocked their way is a tremendous boon for the nation's 43 million disabled individuals.

The only flaw in the Americans with Disabilities Act is an unnecessary ban restricting anyone infected with the AIDS virus from working as a food handler. This restriction should be deleted during conference negotiations, since Health and Human Services secretary Louis W. Sullivan has reaffirmed that AIDS is not spread that way.

The act truly is landmark legislation. It extends full civil rights to the disabled, including persons with AIDS, and alcoholics or drug abusers who have undergone treatment.

It compares with the 1964 Civil Rights Act that outlawed discrimination based on sex, religion, color, race or national origin in public accommodations, private employment and government services. Though the 1973 Rehabilitation Act barred companies and agencies that receive federal funds from discriminating against people with disabilities, the new act extends protections across public and private jobs, irrespective of federal funds.

The bill is sensible, giving employers two years to make reasonable adjustments for disabled workers – unless such changes are an undue hardship. Buses, trains and subway cars would have to be accessible to wheelchairs. Telephone companies would have to accommodate hearing- or speechimpaired callers within three years.

Structural impediments have not only kept qualified people out of the workplace but also have shut them out of many mainstream activities. Dismantling these barriers opens the way to self-reliance as well as mobility and job security.

Enabling millions of disabled people to work will more than repay the cost of making such accommodations. The benefits are overriding.

Basic This document is from the collections at the outer connect sconteract AIDS through cashttp://dolearchives.ku.edu ual, social contact.

- You cannot catch AIDS through touching people.
- You cannot catch AIDS through sharing bathroom facilities.
- You cannot catch AIDS through breathing air in which people have sneezed or coughed.
- You cannot catch AIDS through sharing food, beverages, or eating utensils.

AIDS is not an airborne, waterborne or foodborne disease. It cannot be transmitted through the air, water or food. The only medically documented manner in which AIDS can be contracted is by sexual contact, by shared needles (usually associated with drug addiction), by infusion of contaminated blood, or through the placenta from mother to fetus.

This means that, in regard to AIDS, foodservice operations are safe places in which to work and dine.

In regard to the general workplace, these fears are unfounded. They are particularly unfounded in regard to foodservice operations. AIDS is not passed through the daily routines that occur in restaurants. You cannot catch the disease by working with someone who has AIDS or by eating food prepared by someone who has AIDS.

Nor is anyone at risk from eating food prepared by a person who may have AIDS. The AIDS virus is not transmitted through food or drink.^{Page 64 of 191}

For Foodservice Employees

Facts

about

AIDS

Prepared as a member service for foodservice employees by the National Restaurant Association



1200 Seventeenth Street, N.W. Washington, DC 20036 202/331-5900

From National Restaurant Association White Paper on AIDS

"For the past 11 years, the National Restaurant Association has promoted a program to encourage the industry to look at the benefit of employing persons with disabilities. The program, on the one hand, aims to provide employers with willing and qualified workers to fill plentiful jobs in this era of relatively low unemployment rates. The program, on the other hand, gives a fair chance to people with physical or mental disabilities to fill jobs they are qualified for and to find in work a basis for greater independence and an incentive to sense their human dignity."

"Though it was determined early that AIDS is found in body fluids, there has been no evidence that it is spread by casual contact such as a handshake, a kiss, or that it is spread through air, food or water (emphasis theirs)."

"Workers, including those in the foodservice industry, should not be restricted from work or the use of facilities and equipment solely on the basis of a diagnosis of an AIDS infection." "Panic is driven by fear which, when unwarranted, usually stems from a lack of knowledge. At present, the public is receiving a steady flow of reliable information about AIDS from responsible sources . . . These circumstances can generate irrational fears, which can lead to panic unless people are reminded of the facts. Put simply, the facts are:

"AIDS cannot be spread in the air, in food or beverages or in casual contacts such as shaking hands and kissing."

"Because AIDS is not a foodborne disease or passed through casual contact, CDC has not recommended any special practices be adopted by foodhandlers. Instead CDC recommends that normal hygiene practises should be followed as usual."

"The facts about AIDS presented here are based on the best judgment of the medical experts -- people who have been studying this illness since it was identified. Such informed opinion has to take precedence over contrary views put forth by the ignorant or fearful." "Today I call on the House of Representatives to get on with the job of passing a law -- as embodied in the Americans with Disabilities Act -- that prohibits discrimination against those with HIV and AIDS. We're in a fight against a disease -- not a fight against people. And we won't tolerate discrimination."

> -- President George Bush, March 29, 1990

"We owe it to Ryan (White) to be compassionate, caring and tolerant toward those with AIDS, their families and friends. It's the disease that's frightening, not the people who have it."

> -- Ronald Reagan, April 11, 1990

"All epidemiologic and laboratory evidence indicates that bloodborne and sexuallytransmitted 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."

> -- Dr. William Roper, Director, Centers for Disease Control



LINDA L.S. SCHULTE, Council Member (Home) 490-6007

CITY COUNCIL OF LAUREL

350 MUNICIPAL SQUARE LAUREL, MARYLAND 20707-4181 725-5300 792-9047 953-9694 FAX (301) 792-2108

July 6, 1990

The Honorable Bob Dole United States Senate Washington, D.C. 20510 Dear Colleague:

On behalf of those thousands of Laurel citizens with disabilities, I urge you to move ahead with the Americans with Disabilities Act and bring them into the guaranteed protection of human rights now available to all others in this country.

It is important to vote now for final passage of the ADA Conference Report and to deny any procedural actions (motion to recommit, point of order, filibuster etc.) aimed at stalling, weakening or killing the ADA.

This will will ensure the rights of this--our country's largest minority group--and bring us to the level of protection of all other minorities in the country.

I urge your continued support.

Sincer nda L. Schulte S. Council Member, Ward II

cc: Joseph R. Robison, Mayor Stephen P. Turney, Council President Richard L. Grace, City Administrator

LLSS:kar

LEL RF-CRF



The President's Committee on Employment of People With Disabilities

BULLETIN:

Vol 2, No. 4

April 1990

The Civil Rights March of 1990

On March 12, hundreds of people from across the United States joined a march for the Americans with Disabilities Act that would give America's 43 million people with disabilities rights that other minorities have had for years.

Beginning at the White House and ending at the United States Capitol, the demonstrators marched the 19 city blocks chanting "Access is our Civil Right" and other slogans in favor of ADA's immediate passage with no weakening amendments. The procession moved slowly in the 89-degree heat as individuals with disabilities and advocates made their way along the streets of the Nation's Capital.

Aside from many demonstrators in wheelchairs, banners, handmade signs and colorful tee-shirts made the procession a media extravaganza, as representatives of national, local and many independent news services from around the country covered the event. Camera crews kept focus on the demonstration well after arrival at the Capitol, where a brief ceremony was held.

Mike Auberger, an ADAPT organizer and leader of the march, introduced Justin Dart, Chairman of the Task Force on the Rights and Empowerment of Americans with Disabilities and Chairman of the President's Committee on Employment of People with Disabilities. He gave a rousing address, followed by remarks from Evan Kemp, Chairman of the Equal Employment Opportunity Commission, Congressman Major Owens (D-NY), who

March, cont. page 7



Tips and Trends

Soviets Seek Advice on Employment of People with Disabilities

A recent cablegram to Chairman Justin Dart confirmed that an official delegation of Soviet officials who are interested in rehabilitation and employment will be coming to the President's Committee's 1990 Annual Meeting, May 2-4 in Washington.

The announcement was made in Moscow by the State Commissioner for Labor, in response to an invitation extended by Chairman Dart and carried to the Soviet Deputy Foreign Minister by Assistant Secretary of State for Human Rights and Humanitarian Affairs, Ambassador **Richard Schifter**.

This development is one of several agreements resulting from the meeting between President **George Bush** and President **Mikhail Gorbachev** in Malta, at which time the United States agreed to cooperate with the Soviet Union in efforts to improve the quality of Soviet life from a humanitarian point of view.

An interagency task force, working with the State Department, has been planning various ways to bring about closer contact between rehabilitation personnel in the two countries, particularly with respect to exporting knowledge of American low technology to Russia to assist in the manufacture of aids, equipment and devices to make work and living more accessible to its people with disabilities.

The State Department decided that the Annual Meeting of the President's Committee, with its Exhibition of over 100 display booths featuring products and programs, its 40 workshops, plus several plenary sessions, would afford the Soviet delegation an opportunity to learn and observe how Americans with disabilities are faring in this country. In addition to the many professionals the foreign visitors will encounter, the Annual Meeting provides a way for them to mingle and converse with several hundred persons with disabilities who will be attending from throughout the United States.

Vol. 2 No. 4

The cablegram from Moscow states that..."it is with deep gratitude that we accept your invitation to participate in the annual meeting of the President's Committee on Employment of People with Disabilities and are intending to send a delegation."

The Annual Meeting of the President's Committee, a national training conference on employment of people with disabilities, is open to all who wish to register. There is no registration fee.

Kansas Dual Party Relay Begins in May

Kansas Relay Service, Inc.(KRSI), a nonprofit organizationinTopeka, KS, awarded Southwestern Bell a five-year contract to provide telephone service to speech or hearing impaired persons in Kansas.

The relay system will be used to complete calls originating and billed in Kansas, to include outgoing interstate calls. Out-of-state callers will not be able to use the service to call telephone customers in Kansas.

Customers will access the relay center using a standard TDD. Users type their phone request, which is received on a terminal at the Kansas Relay Center in Lawrence, KS. The relay attendant then places an outgoing call to the requested party and acts as a relay for the two parties by communicating their conversation by voice and TDD. The system will work in reverse, and a hearing person can contact a person with a hearing impairment.

"There is a great need for this service in Kansas", said Mary Manning, General Manager of Customer Relations for SW Bell's Kansas Division. "There are approximately 184,000 hearing impaired and 35,000 speech impaired residents in the state", she added.

Five supervisors and up to 45 attendants will staff the Relay Center in Lawrence, and will receive special training to handle the calls.

Law Internships Offered

The Community Health Law Project (CHLP) is now seeking applicants for the **Ann Klein** Internships for 1990. Applicants may be students in schools of law, public administration, social work or other graduate and professional schools

and programs.

Interns will be supervised by experienced attorneys and advocates at CHLP, which is a unique public interest legal and advocacy organization that serves people with disabilities. CHLP has served more than 20,000 New Jersey residents since 1977, and its clients include people of all ages who have developmental, mental or physical disabilities.

Interns may work directly with individual clients under CHLP supervision, and will participate in special legal and advocacy cases and activities of state and national significance.

The CHLP program provides unique opportunities to learn about the law and about policies, programs and issues in such areas as health care, insurance, housing, human services, employment and education.

The internships are named for Ann Internships, cont, page 8 **Tips and Trends**

ADA Activists Arrested at Capitol

During the week of March 12-17, members of ADAPT (American Disabled for Accessible Public Transit) expressed their views to members of Congress and captured national media attention. On March 13, about 150 activists demonstrated in the Capitol Rotunda.

Speaker of the House Thomas S. Foley (D-WA) addressed the group from the balcony, as did House Minority Leader Robert H. Michel (R-IL) and Congressman Steny H. Hoyer (D-MD). After the Congressmen spoke to the activists, they began chanting "Access Is a Civil Right", and "The People United will Never be Defeated!"

Demonstrating inside the Capitol Building is against the law, and when the gathering was asked to disperse by U.S. Capitol Police, over 100 people continued chanting. They were subsequently arrested by the Capitol Police, many dressed in riot uniforms. The arrests took in excess of two hours, and the police used acetylene torches to sever the chains that people in wheelchairs used to link themselves together.

Those arrested were charged with demonstrating in the Capitol and unlawful entry. All were later released on their own recognizance. **Wade Blank**, a founder and organizer of the disability rights activist group, commented: "We're taking the strategies of the '60s that helped get rights for black and brown people and women, and using them for people with disabilities."

Correction

The article appearing in the February issue (2.2) on the Social Security Disability Insurance Program was a t reprint of a press release from the Social Security Administra-1 tion. It was unintentionally attributed to Jean Mahoney, our staff liaison to the Social Security Administration.

Rochlin to Retire in November

Executive Director of the President's Committee on Employment of People with Disabilities, Jay Rochlin, announced his intent to retire effective November 1. The announcement was made during a staff meeting on April 11. Chairman Justin Dart read a letter he wrote applauding Rochlin's efforts as Executive Director of the President's Committee, a post he has held since November 1986. Excerpts from that letter appear below:

"During his five years with the Committee, Jay Rochlin has made truly outstanding contributions. He has led the Committee from the brink of extinction to be one of the nation's most credible disabilityrelated agencies....He has, as an individual, been deeply involved with the disability rights movement....".

Vol. 2 No. 4



ADAPT's Ten Best/Worst Transit Systems - 1989

American Disabled for Accessible Public Transit (ADAPT) released their 1989 list of the ten best transit systems in the country and the ten transit systems that provide the worst accessibility for people with disabilities.

Ten Most Accessible:

New York City Transit Authority (bus only)

Southern California Rapid Transit District (Los Angeles)

Municipality of Metropolitan Seattle

San Francisco Municipal Railway

Alemeda-Contra Costa County Transit District (Oakland, CA)

Regional Transportation District (Denver, CO)

Santa Clara County Transportation Agency (San Jose, CA)

Capitol Metropolitan Transit Authority (Austin, TX)

Tri-County Metropolitan Transportation District (Portland, OR)

Cambria County Transit Authority (Johnstown, PA)

Ten Least Accessible:

Metropolitan Transit Commission (Minneapolis, MN)

Detroit Department of Transportation

Port Authority of Allegheny County (Pittsburgh, PA)

Mass Transit Administration of Maryland (Baltimore, MD)

Indianapolis Public Transportation Corporation

City and County of Honolulu Department of Transportation Services

Regional Transit Authority (New Orleans, LA)

Sorta/Queen City Metro (Cincinnati, OH)

Madison Metro Transit Authority (Madison, WI)

Charlotte Transit System (Charlotte, NC) **Tips and Trends**

ADA Mark Ups

House Energy and Commerce Committee

On March 13, 1990, the full Committee on Energy and Commerce of the U.S. House of Representatives, held their mark-up of the Americans with Disabilities Act. The mark-up version was introduced jointly by Rep. John Dingell (D-MI), Committee Chairman, and Rep. Norman Lent (R-NY) and was approved by a vote of 40 to 3.

The major provisions that were approved by the Energy and Commerce Committee are cited below.

Amtrak

Within five years, 50% of the following accessibility requirements must be available, and within 10 years, 100% of the following requirements must be fulfilled:

*With specified exceptions, all new cars purchased or leased by Amtrak must be fully accessible to individuals with disabilities, including individuals who use wheelchairs.

* New single-level passenger coaches need not meet wheelchair accessibility requirements, but after 10 years Amtrak must have available on its trains a number of spaces to park and secure wheelchairs (for passengers wishing to sit in their wheelchairs) and a number of spaces to fold and store wheelchairs (for passengers wishing to transfer to a coach seat). The number of each type of these spaces must equal the number of single level passenger coaches in the train. These spaces may be located in either the coaches or in food service cars, with a maximum of two of each type in any one car.

* The accessibility requirements applicable to dining cars and the availability of food service will differ depending on the age and type of equipment. In all cases,

4

Amtrak will be required to provide equivalent food service in the most integrated setting practicable.

Commuter Rail Transportation

* Within 5 years all commuter rail system authorities must have at least one accessible car per train.

* All new cars purchased by commuter rail system authorities must be accessible to individuals with disabilities, including individuals who use wheelchairs. For commuter rail purposes, accessibility does not require an accessible restroom if no restroom is provided on the car for any passenger, nor does it require space to store and fold a wheelchair.

Private Rail Transportation

* Provides an exception for historical and antiquated rail cars and stations served exclusively by such cars to the extent that compliance with accessibility requirements would significantly alter the historic or antiquated character of such cars or stations.

Rail Stations

* All new stations used in Amtrak or commuter rail systems must be accessible to individuals with disabilities, including individuals who use wheelchairs.

* Amtrak must make existing stations within its system accessible (within 20 years), and commuter system authorities must make key stations within their systems accessible (within 3 years) A waiver of up to 20 years may be granted by the Secretary of Transportation to commuter authorities for certain extraordinarily expensive structural changes.

* Improves current law by clearly allocating the responsibility for making stations accessible among Amtrak, commuter authorities, other public owners, and private owners.

General

* Provides a "safe harbor" provision for design of stations and rail cars during the period when new regulations, guidelines, and standards for accessibility are being developed by federal agencies, so that covered entitites can begin alterations without waiting for publication of the regulations.

Telecommunications

* The Federal Communications Commission (FCC) will ensure that interstate and intrastate relay services are available, to the extent possible and in the most efficient manner, to persons with hearing and/or speech-impairments.

* Common carriers must provide telecommunications relay services — individually, through designees, through a competitively selected vendor, or in concert with other carriers within 3 years

* Provides for FCC certification of state programs to make such relay services available on an intrastate basis.

* Any television public service announcement produced or funded in whole or part by any Federal agency or instrumentality must include closed captioning.

AMENDMENTS

Five amendments were introduced by other members of the committee. Rep. **Howard C. Nielson** (R-UT) introduced an amendment which would allow persons with disabilities to use motorized wheelchairs or mechanical devices in wilderness areas. The

Energy and Commerce continued page 6
Tips and Trends

Vol. 2 No. 4

The standard could allow access

to over-the-road buses via a board-

pressed their opposition for safety

believe that procedure will provide

By votes of 24-14, two amend-

ments offered by Representative

allowed the Secretary of Transpor-

requirement for wheelchair lifts on

buses in communities with 200,000

people or less if they provide an

adequate paratransit system. The

entities, not primarily engaged in

transportation but which operate

buses or shuttles, such as for their

At the conclusion of the session,

would introduce other amendments

conducted by the full Public Works

Representative Shuster and Ham-

merschmidt announced that they

to the bill at the mark-up session

Transportation Committee sched-

employees, from some of the

requirements.

uled for April 3..

other would have exempted private

Shuster lost. One would have

tation to grant waivers to the

ing chair and ramp. However,

advocates for the Act have ex-

reasons and because they don't

for a valid study of services to

people with disabilities.

House Surface Transportation Subcommittee Mark Up

The Surface Transportation Subcommittee of the House Committee on Public Works and Transportation met on March 6 to mark up those sections of Titles II and III of the Americans with Disabilities Act which deal with transportation.

Following a supportive opening statement by Subcommittee Chairman Norman Y. Mineta (D-CA), Representatives Glenn Anderson (D-CA), Bud Shuster (R-PA), John Hammerschmidt (R-ARK), Bob Clement (D-TN), Ron Packard (R-CA) and Sherwood Boehlert (R-NY) made opening remarks. They stated a need for the bill but expressed some concerns about it. However, Representative Boehlert also expressed appreciation to people with disabilities for the work they are doing on behalf of their civil rights.

The Subcommittee took up and approved a substitute for the House version of the Americans with Disabilities Act and referred it to the full Committee on Public Works and Transportation with one amendment. The amendment was introduced by Representative Dennis Hastert (R-IL) to permit

The mission of the State Relations

Committee is to provide a formal

structure to enable State Governors'

commuter rail systems to have one car per train rather than to make all cars accessible. However, additional accessible cars would have be added to a train as they became necessary. This substitute amendment differs from the Energy and Commerce Committee provision, which provides that all new cars must be accessible.

The substitute measure is similar to the Senate version of ADA in most of the transportation areas, requiring new buses, rail vehicles and other vehicles operating on routes to be accessible to people with disabilities. Exceptions are for school buses and vehicles operating on a system of the National Register of Historic Places. Also, key train stations would be given 30 years to meet accessibility requirements if two-thirds of the rail stations are accessible in 20 years.

The substitute bill also requires:

* Paratransit services to submit an annual plan of service to the Department of Transportation;

* The Secretary of Transportation to establish a standard for over-theroad buses within a year after enactment of the bill.

State Relations Standing Committee

mittee;

3. to develop and recommend strategies to address these concerns and issues; and,

4. to foster coordination and cooperation among states and the President's Committee in order to enhance the mutual achievement of employment-related goals.

Projects developed and carried out by the Committee include the State Profile Manual, the Orientation Manual for New Chairs and Executives, the creation of the Governor's Council and informational letters to Governors, the conducting of the bid procedure for annual meetings, and the development of a manual on the establishment and maintenance of local committees.

The States Relations Standing Committee is comprised of the members of the States Executive Committee of the National Association of Governor's Committees on People with Disabilities. The National Association of Governor's Committees on People with Disabilities is the national organization of all Governors' Committees. Its membership is made up of the Chairs and Executive Directors, or

States, continued page 7

Committees or State liaison organizations to bring issues and concerns to the attention of the President's Committee. Further, the Committee assists states in matters concerning employment, plans, program issues, legislation, research and publications. The Committee's projects aim to meet the following

1. to identify employment related concerns and issues of the states;

2. to transmit these issues and concerns to the President's Com-

objectives:

5

Tips and Trends

Vol. 2 No. 4

Long-Standing Republican Presidential Aide Appointed to Civil Rights Commission

In a move to "re-invigorate" the embattled Civil Rights Commission, **President George Bush** selected **Arthur A. Fletcher**, former United Nations Deputy and Aide to three Presidents, to chair the Commission on February 23. By nominating Fletcher, President Bush intends to show that he wants to restore the commission as "an effective institution", according to White House Press Secretary Marlin Fitzwater.

"By selecting someone to serve as chair with some credentials in civil rights", said Althea Simmons,

Energy and Commerce,

from page 4 motion was dropped when it was agreed that this was not under the jurisdiction of this committee.

Four amendments were introduced by Rep. William Dannemeyer (R-CA); all four were overwhelmingly defeated by the committee. The amendments were:

1. Change the wording of the definition of a handicap to eliminate the wording 'regarded as having an impairment'.

2. Eliminate the reference to anticipatory discrimination.

3. Exclude individuals with contagious or sexually transmitted diseases.

4. Add a phrase to indicate that nothing in the ADA shall prohibit the railroad company to require a physician's certificate stating the prospective disabled employee's job does not pose a danger or risk to the health and safety of others.

Rep. **Henry Waxman** (D-CA) spoke vigorously against each amendment along with others.

Supporters of the ADA say that passage out of the Energy and Commerce Committee was a triumph for people with disabilities. director of the Washington bureau of the NAACP, "it proves that the President has some sensitivity with reference to the Commission."

But the conservative composure of the Civil Rights Commission concerns some in the civil rights community. "Regardless of the Fletcher appointment", said Ralph Neas, Executive Director of the Leadership Conference on Civil Rights, "there are too many rightwingers on the Commission."

Fletcher served as Assistant Secretary of Labor under President Richard Nixon, a Deputy Presiden-

Publications

The Office of Special Advisor to the President for Consumer Affairs released its Consumer's Resource Handbook, 1990 edition, in early February. The Handbook provides names, addresses, and telephone numbers for federal, state and local consumer officials. Included are contacts in the corporate community, Better Business Bureaus, Trade Associations, and government agencies. Voice and TDD numbers are cited for State Vocational and Rehabilitation Agencies and state agencies on aging. In the guide's introduction, President George Bush makes this remark: "Indeed, the marketplace skills of individual consumers play an important role in ensuring that every American citizen has his or her share of our Nation's prosperity."

Some topics included in the Handbook are health issues, health fraud, home improvements, teleshopping, vacation certificates, tial Assistant for Urban Affairs for President Gerald Ford, and as an advisor to President Ronald Reagan.

Established in 1957 to evaluate Federal laws and the effectiveness of government equal opportunity programs, the commission has no enforcement authority. The President fills half of the eight-member panel, and Congress selects the remaining four.

Fitzwater also said that the President will fill another vacancy on the commission soon.

Job Fair

A Job Fair at the Annual Meeting is scheduled for Wednesday, May 2, at the Blackburn Center at Howard University from 1 - 3 pm.

It is sponsored by the Epilepsy Foundation for the National Capital Area, and open to all candidates without a fee.

Transportation service will be provided from the Annual Meeting site at the Washington Hilton Hotel following the Opening Session.

For more information, call the Epilepsy Foundation for the National Capital Area at (202) 638-5229.

travel clubs, warranties, auto repair and credit cards. Single copies are free by writing to the Consumer Information Center, Pueblo, CO, 81009. Questions should be directed to Juanita Yates, 202/634-4297.

Tips and Trends

March, from page 1

marched in the rally, Representative **Patricia Schroeder** (D-CO), **Dr. I. King Jordan**, President of Gallaudet University, **Jim Brady**, former Press Secretary and Special Assistant to President Ronald Reagan, and **Bob Silverstein**, Staff Director of the Senate Subcommitte on Disability Policy.

Following the formal ceremony, activists in wheelchairs crawled up four flights of stairs to the Capitol building in a dramatic display of commitment to their cause. Each carried with them a copy of the "Disabled People's Bill of Rights", a document generated by American Disabled for Accessible Public Transit (ADAPT).



Ceremony Assembly at Captiol



After the March



Crawling the Capitol Steps

States, from page 5

their designees, of the state Governors' Committees. The purpose of this organization is to promote equal access to employment, programs and services on behalf of persons with disabilities and to advocate for the inclusion of all citizens with disabilities into the mainstream of life. The National Association of Governor's Committees conducts the annual Media Advertising Award, presented to the outstanding television advertisement that effectively includes persons with disabilities. The National Association of Governor's Committees conducts an Annual Training conference in conjunction with the President's Committee's Annual Meeting.

The State Relations Committee is chaired by Francine Lee, Executive Director of the Commission on Persons with Disabilities for the state of Hawaii and staffed by Faith Kirk, an employment advisor for the President's Committee.

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7

Tips and Trends

April

25-26

Second Annual Seminar on Law and Disability, New Jersey Law Center, New Brunswick, NJ. Contact Carl Moore, 201/672-5012 (v), and 201/678-7513 (TDD).

May

2-4

Annual Meeting of the President's Committee on Employment of People with Disabilities, Washington Hilton Hotel. Contact, the President's Committee, 202/ 653-5044.

Internships, from page 2 Klein, who was a distinguished advocate in her professional, voluntary and public roles. She was a social worker, President of the New Jersey League of Women Voters, a member of the New Jersey Legislature, and the first woman to be Commissioner of the New Jersey Department of Human Services.

The internships are made possible through private contributions from individuals, corporations, and foundations.

8

The President's Committee on Employment of People with Disabilities Washington, DC 20036-3470

Upcoming Events

12-15

Independent Living Conference, Hyatt Bethesda Hotel, Bethesda, MD. Contact 913/864-4095.

20-25

Fifth International Conference of Rehabilitation International, Dublin, Ireland. Contact Conference Secretariat, National Rehabilitation Board, 24/25 Clyde Road, Dublin 4, Ireland.

22-25

Second International Conference on Student Development and the Hearing Impaired, Washington, DC. Contact Beth Benedict, 202/ 651-5247.

June

7-10

Rehabilitation opf the Brain Injured Adult and Child, Williamsburg, VA. Contact Kathy Martin, 804/786-7290.

11-17

"Preparing for Tomorrow": Community Service Organization Training, Gallaudet University, Washington, DC. Contact Jackie Kinner, 202/651-5351.

July

18-22

National Alliance for the Mentally III Annual Convention, Chicago, II. Contact NAMI, 703/524-7600.

Tips and Trends

A complimentary publication of the President's Committee on Emploment of People with Disabilities

Chairman: Justin Dart, Jr. Executive Director: Jay Rochlin Chief of Publications: Dick Dietl Editor: Hardy Stone

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of the HANDICAPPED

The independent biweekly news service on legislation, programs and funding for special education

Vol. 16, No. 14 July 4, 1990

Transition Major Issue In Upcoming EHA Conference

Programs that help disabled students make the transition from school to work and independent living likely will be the biggest issue conferees face when they meet on House and Senate bills to reauthorize discretionary special education programs.

EHA

Reauthorization

With a conference slated to convene after the July 4 recess, Congress tab in its affort to

is heading into the home stretch in its effort to reauthorize the Education of the Handicapped Act's (EHA) discretionary programs.

Both the House and Senate reauthorization bills would fund demonstration programs on transition for disabled students.

But the House bill also would require all schools to spell out transition services in each disabled student's individualized education program (IEP) by age 16 (EOH, June 20).

No Skills

Transition services are "by far the most important issue" in the conference, said Paul Marchand, governmental affairs director for the Association for Retarded Citizens.

Disabled students "are coming out of high school with diplomas and no work skills at all," said Justine Maloney, a member of the Learning Disabilities Association of America's executive committee.

In addition to transition services, conferees will decide the fate of a House proposal that would fund demonstration projects in which

In This Issue

Congress Ready For Final Votes On Rights Bill for Disabled Page 2
House Bill May Signal Brighter Future For Special Education Funding Page 3
Developmental Disabilities Bill Would Give College Programs More Page 4
Senate Okays Williams For OCR Post Page 4
N.Y. Group Trains Disabled Youths For Mainstream Jobs Page 5
Research Briefs Page 7
Acceptance Low For Hispanic Learning Disabled Page 8
Special Education Funding Alert Page 8

ombudsmen would resolve special education disputes.

The demonstrations would supplement the standard hearing process schools and parents currently follow. While that process was designed to protect disabled students' interests, Maloney said it often leads to extended legal battles.

"It's a no-win situation for everybody," said Maloney, adding that the ombudsmen project (more) Page 2

Transition Major Issue In Upcoming EHA Conference (Cont.)

could show schools and parents a new way to resolve special education disputes.

Martha Ziegler, director of the Technical Assistance for Parents Programs (TAPP), said her group would like to see some ombudsmen demonstration programs, but it opposes the House plan to base some demonstrations in schools.

In another provision, conferees will have to reconcile different proposals regarding students with attention deficit disorder (ADD).

Different Categories

Under the House bill, ADD students would be considered for special education under the category of "health impairments."

While the Senate bill does not address the issue, a Senate Labor and Human Resources Committee report says ADD students should receive services under EHA's learning disability category, as is currently done.

Under the current system, ADD students who are not learning disabled may be shut out of special education, contends one parent group, Children with Attention Deficit Disorder.

But the National Association of State Directors of Special Education and the Council for Exceptional Children say the existing categories provide for sufficient service to ADD students.

While lobbyists hope to retain sections from both bills, the House took longer to develop its reauthorization plan and its version has more general acceptance.

"The House, in certain instances, did take matters that were already in the Senate bill and developed them further," said Joe Ballard, director of governmental relations for the Council for Exceptional Children. ###

Congress Ready For Final Votes On Rights Bill For Disabled

With the last sticking point removed, Congress is expected to vote soon after the July 4 recess on the final version of a bill that would force employers to accommodate employees with disabilities.

The Senate could vote as early as July 10 on S. 933, the Americans With Disabilities Act, which would require employers to accommodate disabled workers.

Last week, House-Senate conferees eliminated a controversial House amendment that would have allowed employers to transfer food service workers--including school cafeteria employees-with AIDS or other contagious diseases out of food handling jobs (EOH, June 6).

Health and civil rights groups opposed the amendment, arguing that AIDS is not spread through contact with food.

While the food service industry endorsed the

proposal, the National Association of College and University Food Services is not concerned that conferees killed it, said Clark DeHaven, the group's executive director.

Supporters of the food service amendment acknowledged that it addressed fears about AIDS, but DeHaven said that on college campuses people are well-informed that AIDS is not spread by casual contact.

President Bush has signalled his support for the bill. ###

Update: "To Assure the Free Appropriate Public Education of All Handicapped Children:' The Twelfth Annual Report To Congress on the Implementation of the Education of the Handicapped Act" will not be available until late August from the Clearinghouse on Disability Information, Education Department, 330 C. St. SW, Washington, D.C. 20202-2524 (EOH, April 11).



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House Bill Offers Hope For Special Education Funding Hike

Tucked into the House's new comprehensive education bill, H.R. 5115, is a policy statement that offers a ray of hope for increased special education funding.

Although the \$1 billion bipartisan bill introduced approved by the House Education and Labor Committee last week would not provide the dollars, a passage in the bill may signal a new mood in Congress to increase the federal share of special education costs.

The bill states that "It is the policy of the United States ... to fulfill, by the year 2000, the commitment made by the United States in 1975 to provide 40 percent of the costs of educating children with disabilities, with at least 25 percent of such costs being provided by 1995."

Unfulfilled Promise

Although P.L. 94-142, the Education for All Handicapped Children Act, promised that the federal government would pay up to 40 percent of the average per-pupil expenditures for special education by 1982, the actual amount never has exceeded 12 percent and currently stands at 7 percent.

This year, lobbyists are pushing for a \$1.2 billion increase in special education funding, which would increase the federal share to 15 percent (EOH, March 28).

While the language in H.R. 5115 would not provide more funding, it offers a glimmer of hope for such a hike, advocates say.

Democrats and Republicans are showing "a growing commitment to get us closer to that 40 percent mark," said Joe Ballard, director of government relations for the Council for Exceptional Children.

"We would support any mechanism that would shake P.L. 94-142's funding out of the decadelong doldrums of the 7 to 10 percent range," added Paul Marchand, governmental affairs director for the Association for Retarded Citizens.

A hike to 40 percent would be ideal, but "we'll

take what we can get," added Justine Maloney, a member of the Learning Disabilities Association of America's executive committee.

But Marchand said it's important for Congress not to ignore special education funding beyond the basic state grants in Part B of EHA.

Other Needy Programs

States are deciding year by year whether to remain with the early intervention program for children from birth through age 2 based on federal funding, he said, and at the current funding level, "many states will not bite."

Most states are scheduled to fully implement their early intervention systems next year, if they stay with the program.

In addition, Congress would need to add about \$100 million to its preschool funding to give states \$1,000 per child, the maximum authorized by P.L. 99-457, the 1986 Education of the Handicapped Act amendments.

Literacy Program Includes Disabled While the congressional appropriations panels decide just how much to give special education, another part of H.R. 5115 also could channel money to people with disabilities.

The bill would establish a National Institute for Literacy that would conduct research and demonstration projects on a variety of topics, including the needs of adults with learning disabilities.

Maloney said such research could help point out the ties between illiteracy and disabilities.

If an adult has gone through school and not "cracked the literacy code," she said, "it's got to be more than just not paying attention and lousy teachers."

In addition, H.R. 5115 would provide student loan deferral and forgiveness for future teachers, which could help head off the shortage of special education teachers.

The bill is expected to reach the House floor July 12 or 13. ###

Developmental Disabilities Bill Gives More To University Programs

A Senate panel passed a bill last week that would reauthorize personnel training and advocacy funds for developmentally disabled students.

The Senate Labor and Human Resources Committee passed S. 2753, a bipartisan bill that would reauthorize through 1994 a variety of state grants, university-affiliated programs and advocacy efforts under the Developmental Disabilities Assistance and Bill of Rights Act.

For fiscal 1991, S. 2753 would authorize \$18.4 million for university-affiliated programs, currently funded at almost \$13.2 million, a staff member from the Senate Disability Policy Subcommittee said.

The programs provide support and training for developmentally disabled people and the professionals and volunteers who work with them, with the goal of increasing their independence and productivity.

Protection and advocacy groups, currently receiving almost \$20.5 million in federal funds, would be authorized for \$27 million in 1991 under the Senate bill.

State grants, which could be used both to develop comprehensive service plans and implement those plans, would be authorized at \$81.3 million in fiscal 1991, a significant hike from the current \$62 million appropriation.

The Bush administration is proposing level funding for the developmental disabilities programs. Sen. Dave Durenberger, R-Minn., introduced that bill, S. 2704, earlier this month, but it is expected to bow to the new bipartisan bill.

The law was last reauthorized in 1987 (EOH, Nov. 11, 1987). ###

Senate Confirms Williams To Head Office For Civil Rights

The Senate on Friday approved Michael Williams to head the Education Department's Office for Civil Rights.

By voice vote, the Senate confirmed Williams as assistant secretary two days after the Senate Labor and Human Resources Committee endorsed him for the job.

The Treasury Department's current deputy assistant secretary for law enforcement, Williams will bring to OCR a law enforcement background in both Washington, D.C., and his native Texas (EOH, April 11).

However, Williams is stepping into a firestorm building for the past decade between the civil rights community and OCR, which is charged with enforcing civil rights laws--including the 1973 Rehabilitation Act--in schools and colleges that receive federal funds.

OCR's critics have praised Williams' background, but they warn that incomplete investigations and slow complaint follow-ups have become standard operating procedure at OCR. In an interview Friday, Williams said he does not anticipate making large-scale changes in OCR's operations, but he said he will not hesitate if changes are warranted.

"I think it would be a fair assertion that any office can be improved," Williams said. "I think it would be unfair to say that the place is a can of worms. It's my assessment that that office has done a fair job in protecting the rights of parents and students."

Senator Expecting Change Williams assumes his new post under pressure from a leading lawmaker. At a May hearing on his nomination, Sen. Paul Simon, D-Ill., told Williams he will try to abolish OCR if the agency does not make significant progress in the next few months (EOH, June 6).

The senator told Williams he wants a report on his desk sometime early next year detailing the changes Williams plans to make. If he does not like what he sees, Simon said, he will introduce legislation to abolish the office. ###

New York Group Helps Train Disabled Youths For Mainstream Jobs

School programs under the wing of a New York City business council are helping disabled young people land mainstream jobs.

With Labor Department funds, six community groups run the programs, which this year are helping some 200 disabled 16- to 24-year-olds at five high schools move from school to work.

Innovations

The students, variously disabled, "used to be

earmarked for no employment whatsoever, but they are now being integrated into the mainstream work place," said Danny Gartland, assistant director of operations for the New York City private industry council (PIC).

When the program began in 1984 with roughly the same number of students and about half its current funding, job placement rates were about 5 percent and retention rates also were abysmally low.

But in 1985, the PIC devised a central strategy resulting in a single source of funding, one chain of command and consistent program standards. Most of the project's funding-about \$730,000 last year--comes from the Job Training Partnership Act (JTPA).

Now, job placement rates are 52 percent and retention rates 46 percent for all the PIC's participants in programs for the disabled.

Young Adult Institute

One of the community groups the PIC subcontracted with operates one of the nation's most innovative JTPA-funded school-to-work programs for disabled youths.

The Young Adult Institute (YAI) program works with public schools on an "open-entry, open-exit" system in three-month cycles yearround. This year, the program is serving 68 disabled students ages 16 to 21 at a cost of \$7,000 to \$8,000 per student.

YAI holds classes in the schools five days a week; half the day is spent on job skills training and the other half on "employability behavior skills." The employability skills, developed from a survey of more than 700 employers in the area, include punctuality, proper dress, correct social behavior on the job, teamwork, taking criticism well and asking for help.

Students like the program so much they cut their other school classes but show up on the days they have YAI courses, said Michael Kramer, YAI's director of employment initiatives. "We give them something that's real-that has a definite outcome--something that's meaningful for them."

Hands-On Experience

For 10 days, students can sample work they might be doing. For example, they may work in the school cafeteria in preparation for a food-service job.

Most of the jobs the students eventually land are as housekeepers, porters and other entrylevel service and retail jobs. However, the less handicapped students usually receive more highly skilled jobs, such as clerical and office positions in financial institutions, where they earn up to \$20,000 a year.

The placement rate for all YAI students is about 63 percent, Kramer said. Once placed, the students are "shadowed" by job coaches for a month or more.

YAI also operates a one-day workshop for business people "to sensitize them and help break down barriers" in hiring the disabled, Kramer said. "The receptivity of the business sector has changed. We see that as one of our major roles, effecting social change as well as finding jobs for these students."

A National Model

In its effort to find competitive employment for the disabled, YAI provides a model for other school-to-work programs.

In March, the Education Department, in its annual report to Congress on the implementation of the Education of the Handicapped Act, urged educators to improve work opportunities for the disabled, saying that more than half the students are unemployed a year after they leave school (EOH, March 28).

For more information, contact Bo Young, Resources Development, New York City Private Industry Council, 19 Rector St., New York, N.Y. 10006; (212)742-1000. ###

Senate Panel Okays \$22 Billion Head Start Reauthorization Plan

A Senate panel passed a bill last week that would double Head Start funding next year and fund programs to ease children's' transition to elementary school.

The Senate Labor and Human Resources Committee unanimously passed H.R. 4151, which would authorize \$22 billion to continue the Head Start program for five years.

The bill would gradually increase authorization for Head Start to \$7.6 billion in fiscal 1994, enough for the program to serve the estimated 2.5 million eligible children, with 10 percent of the seats reserved for preschoolers with disabilities.

In May, the House passed its version of H.R. 4151, which would authorize slightly less--\$20.3 billion--over five years to expand Head Start (EOH, April 11).

The Senate panel accepted House language in H.R. 4151 on several non-Head Start programs, but it substituted its own Head Start reauthorization plan, originally contained in S. 2229.

In addition to reauthorizing Head Start, the Senate's version of H.R. 4151 would continue the Follow Through program for five years and create a new Head Start Transition Project to help low-income children adjust to elementary school.

The new program, proposed by panel Chairman Edward Kennedy, D-Mass., would fund demonstration programs that would extend Head Start's nutrition, health and other services into the early elementary grades.

"All too often, schools have not addressed the noneducational needs of students and their families," Kennedy said. "This transition is essential to their success in school."

The transition program mirrors existing Follow Through demonstration projects. Kennedy offered the new program because of language in both House and Senate Head Start bills that would change Follow Through, tying it to the Chapter 1 program for disadvantaged students.

The bill would provide \$20 million each fiscal year for the transition project, which would award grants to schools and Head Start agencies. The bill aims to fund at least one demonstration project in each state.

"The transition projects, we feel, are an important model to extend the Head Start principles to elementary school," said Patty Cole, staff assistant for the Senate Children, Family, Drugs and Alcoholism Subcommittee.

For Follow Through, the bill would hike funding authorization from \$7.2 million this year to \$20 million in fiscal 1991, and then \$10 million more each year through 1994.

A committee aide said the Senate may consider H.R. 4151 soon after its July 4 recess. Staffers expect an easy conference if the Senate passes its bill. ###

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July 4, 1990 = Education of the Handicapped

Research Briefs

♦ Adapt Classrooms To Suit Many Learning Styles: It's relatively easy to define learning styles and not too hard to survey students to find out how they learn best. What may be difficult is adapting the individual classroom to accommodate each style.

One middle school special education teacher transformed her resource room into a learningstyles center by giving each student an inventory to determine his or her preferred style, then making the appropriate changes in the way she taught and in the room.

Her instructional changes included offering all lessons in visual and auditory form for different learners, using index cards for practice and review for tactile learners, and posting questions and materials around the room for kinesthetic learners, who need to travel while they think.

Using creativity instead of money, she:

Used the computer as a divider between desks to create study nooks. Headphones at one study nook hooked up to a recorder for those who need music to study; the other nook has headphones with no music for those who need silence.

Set up an informal corner, using a chair that flips out into a small bed, for groups to study on.

Arranged rows of desks in a semicircle near the board for conventional instruction, a style some students prefer.

Set up a round table for student group work and teacher/student conferences.

Lowered the thermostat, because most students expressed a preference for a cool room. Students who like it warmer wear warmer clothes.

Compiled individualized resources in an expanding file. The materials include puzzle cards to help visual learners and sandpaper so tactile learners can practice spelling and math by drawing on the paper with their fingers. Students add to the file as they learn about their own needs.

The result: The learning-styles center has become a place in which students feel they have choices and a sense of power over how they learn.

For more information, see "Implementing Learning Styles Theory In An L.D. Resource Room," <u>Middle School Journal</u>, Vol. 21, No. 5, May 1990, 4807 Evanswood Dr., Columbus, Ohio 43229, (614)848-8211. ###

Cooperative Learning Wins Some,

Loses Some: Before you jump on the cooperative learning bandwagon, you may want to think about whether to include students with disabilities.

A recent review of the research suggests that cooperative learning is a mixed bag for special education students. Such activities do seem to help interactions between disabled and nondisabled students, but they are no guarantee of academic improvement for disabled students.

Some studies reported that special education students didn't suffer from working in small groups, but they didn't outperform those working individually. Other studies reported significant increases in disabled students' achievement after teachers brought cooperative learning tactics into class.

The varied task structures and methods of prize-giving in these studies made a difference in achievement, making it difficult to find factors leading to success.

The review did conclude, however, that in cases in which students rely solely on each other for practice, feedback and instruction, they need a high-ability student in their group to facilitate learning.

For more information, see "Cooperative Learning: Does It Improve The Academic Achievement Of Students With Handicaps?" <u>Exceptional Children</u>, Vol. 56, No. 5, February 1990, 1920 Association Dr., Reston, Va. 22091, (703)620-3660. ### Improving the low social status of Hispanic students who are learning disabled (LD) would help them become part of the regular classroom, a researcher says.

Hispanic LD students are much less likely to be popular and twice as likely to be rejected than their peers, researcher Herbert Ochoa found in a study of 800 regular and 60 Hispanic LD fourth- and fifth-graders.

"We should not say that all LD students are not accepted, but the majority are not," said Ochoa, a professor at the University of Texas-Pan American in Edinburg. "Like Anglo LD pupils, Hispanic LD pupils tend to have lower acceptance as a group."

Target Social Skills

Ochoa, who conducted the study for his doctoral dissertation at Texas A&M University in College Station, said the study means schools should address both academic and social skills when they integrate LD students.

The children in Ochoa's study labelled their peers as belonging to one of six status groups

in the classroom and at play: popular, controversial, average, neglected, rejected and other.

At play, only 5 percent of the Hispanic LD students were popular, compared with 18 percent of their peers. For work, the popularity of nondisabled students stood at 19 percent, while only one LD student was popular.

At work and play, 16 percent of the nondisabled students were "rejected" by their peers, but 30 percent of the LD students fell into that category for play and 32 percent for work.

Overall, the students rated 58 percent of their nondisabled classmates either popular or average. But only 42 percent of the Hispanic LD students received one of those ratings for play, 47 percent for work.

Ochoa hopes to conduct further research to determine why a few LD students are popular.

For more information, contact Herbert Ochoa, University of Texas-Pan American, College of Education, Department of School Services, University Drive, Edinburg, Texas 78539, (512) 381-3466. ###

Special Education Funding Alert

◆ Technology-Related Assistance: The Education Department will fund demonstration and innovation projects to extend technology-related assistance to disabled people.

Model delivery projects include two demonstrations of the use of peers with disabilities; two models to provide technology-related assistance for employment; and two model projects using technology to gain access to direct support services.

Research and development projects include one to adapt mainstream technology to meet specialized needs of people with disabilities and another to develop devices to enhance their transportation.

Loan projects include demonstrations of the viability of loans for the lease or purchase of technology-related assistance for work-related purposes, loans for adults, children or elderly individuals with disabilities, and methods to assess people with disabilities as candidates for loans.

Deadline: Aug. 6.

Amount: \$1.5 million, including \$750,000 for six model delivery projects averaging \$125,000; \$300,000 for two research and development projects averaging \$150,000 and \$450,000 for three loan demonstrations averaging \$150,000.

Eligibility: Nonprofit and for-profit entities.

Contact: For applications, contact Peer Review Unit, National Institute on Disability and Rehabilitation Research, Education Department, 400 Maryland Ave. SW, Washington, D.C. 20202, (202)732-1207.

For program information, contact Carol Cohen, Room 3420, same address, (202)732-5066. ###



Project ACTION Moving Toward Demonstration Projects

Project ACTION (Accessible Community Transportation in our Nation) has its roots in collaborative efforts undertaken between the public transportation community and organizations representing persons with disabilities.

During the past several years, Easter Seals staff met regularly with Congressional staff and representatives of the Paralyzed Veterans of America and the American Public Transit Association to discuss issues affecting mass transportation services for persons with disabilities.

One product of these discussions was the development of a proposal to create and demonstrate a cooperative model for accessible public transportation involving national and local disability and transit interests.

Background

In the FY 1988 Department of Transportation appropriations legislation, Congress called for Project ACTION, indicating that it should be "designed, implemented, and evaluated for national dissemination by the National Easter Seal Society.

"The Society would receive demonstration funds and contract with appropriate consultants and other entities, including transit systems and disability organizations as needed to conduct demonstrations and related project activities."

Project ACTION will yield a

cooperative model program of techniques to:

identify people with disabilities in the community and their transportation needs;

develop outreach and marketing strategies;

develop training programs for transit providers;

develop training programs for transit users with disabilities;

apply technology to eliminate barriers to transportation accessibility.

The timing is right for this enterprise. The conflict which has characterized the relationship between many transit authorities and persons with disabilities should now be resolved.

This theme will help usher in new policies and technologies to ensure greater mobility for

Also in This Issue:

disabled Americans.

Efforts to assist in the improvement of public transit services for persons with disabilities are welcome at any time. Assuring access to transportation is critical to promoting maximum independence and achieving meaningful community integration for (please turn to page 8)

DOT Issues Proposed Regs Implementing Section 504

On March 26, 1990, Department of Transportation (DOT) Secretary Samuel Skinner announced proposed regulations that will implement section 504 of the Rehabilitation Act of 1973. These are the fifth set of regulations that the Department has published on this issue in the past 15 years.

Secretary Skinner, stating his strong "support of policies that

would substantially improve access to mass transit services for handicapped persons" proposed in these new regulations that all new buses be accessible to people with disabilities and would require supplemental paratransit service comparable to the service for the general public for persons who could not use the accessible fixed-route transit service. The (please turn to page 11)

Project ACTION Conducts Second Steering Committee Meeting

On February 23, 1990, Project ACTION held its second steering committee meeting.

More than 40 interested individuals attended the meeting including representatives from 15 of the 17 steering committee organizations.

Brian W. Clymer, administrator of the Urban Mass Transportation Administration (UMTA), kicked off the meeting with his announcement that UMTA would soon approve an additional \$650,000 for the project bringing the total federal commitment to \$3 million. Project ACTION represents a significant portion of UMTA's research budget.

The steering committee members were treated to an excellent overview of our research results by Jim Flemming, a consultant with Project ACTION.

The findings of our reconnaissance survey of 112 transit systems throughout the United States highlighted the presentation.

Roger Slagle, a professional staff member of the Surface Transportation Subcommittee for the U.S. House of Representatives gave the audience an informative progress update on the transit



provisions of the Americans with Disabilities Act.

One of the most useful results of the day-long meeting was lengthy discussions by steering committee members that will help us prioritize the areas of Project ACTION for funding.

A subcommittee was also formed to review the proposals that are submitted in response to our request for proposals.

Members of this review subcommittee will apply our criteria to each proposal before recommending funding decisions.

Project ACTION (Accessible Community Transportation in Our Nation) is administered by the National Easter Seal Society under a cooperative agreement with the Urban Mass Transportation Administration of the U.S. Department of Transportation.

W.

James E. Williams, Jr., President

David Capozzi, Vice President Project ACTION

Lawrence J. Gorski & Associates Inc. Editorial Consultants, Design, and Production

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UMTA Administrator Brian W. Clymer told Project ACTION steering committee members that his agency was about to approve an additional \$650,000 for the project, bringing the total federal commitment to \$3 million.

Project ACTION Steering Committee

Massachusetts Bay **Transportation Authority** National Association of Protection and Advocacy Systems American Public Transit Association **Community Transportation** Association of America Cambria County Transit Authority International Taxicab Association **U.S.** Conference of Mayors Association of Retarded Citizens National Association of the Deaf American Bus Association National Easter Seal Society United Cerebral Palsy Association Lift-U Paralyzed Veterans of America U.S. Department of Transportation American Foundation for the Blind American Association of Retired Persons

Project ACTION Update

DOT Unveils National "Strategies for Action"

In March, Secretary of Transportation Samuel K. Skinner unveiled his "Statement of National Transportation Policy—Strategies for Action." In addition to many major policy initiatives, the strategy addresses several aspects of disability-related policy which are summarized below.

The transportation infrastructure is vital to the nation's economy, and it must serve the needs of all Americans, including the young, old, minorities, disadvantaged, disabled, and people living in urban and rural communities.

An improved quality of life requires increased mobility and access; this is especially true for the transportation disadvantaged and those who are elderly and disabled. All Americans have the right to enjoy the benefits of transportation, and we must assure that transportation services and facilities accommodate their needs. This includes working with private carriers and public transportation agencies in preparing plans or standards for assuring that their vehicles are accessible to passengers in a timely and cost effective manner.

Many citizens would like vehicles of all kinds—buses, automobiles, aircraft, and railcars—to be made more accessible for the millions of Americans who have some physical or mental disability. Disabled citizens cite a lack of appropriate transportation as the chief barrier to getting jobs and being fully productive members of their communities.

There is wide support for federal legislation guaranteeing the rights of people with disabilities. At the local level, where direct responsibilities for transit accessibility lie, there are positive examples of successful efforts to serve disabled and elderly travelers, such as those of the Seattle Metro Transit System.

The benefits of transportation

must be available to all Americans, including economically and socially disadvantaged, minority, young and old, and people with disabilities. Many individuals are not able to take advantage of America's opportunities because they do not have access to transportation services.

More than 40 million Americans are disabled, and many have special transportation needs; many cannot drive, or live in areas where they are not now accommodated by public transportation. The transportation system can be a key to breaking their isolation.

"All Americans have the right to enjoy the benefits of transportation, and we must assure that transportation services and facilities accommodate their needs."

Improvements in design of automobiles and other vehicles, clear road signing, and specialized transportation services can all help better accommodate elderly and disabled citizens. Sidewalks, curb cuts, automatic electric doors, ramps, and level access platforms at stations and other buildings permit improved access and mobility for disabled and elderly Americans.

Buses accessible to the disabled can provide access to individuals who would otherwise not be able to travel. Over 35 percent of public transit buses are now equipped with wheelchair lifts, and many buses and other public transportation vehicles and facilities have low or level entries to accommodate disabled persons. Much more must be done. The Department of Transportation has the responsibility for enforcing access and mobility requirements in the transportation sector, and will move aggressively to carry out that responsibility.

It is federal transportation policy to do the following: Promote greater access by working with transportation providers and representatives of disabled individuals and other transportation disadvantaged citizens to identify transportation facilities where access improvements are necessary, and assist in developing effective designs and implementation schedules for meeting those needs;

Assist public transportation agencies in preparing plans and standards for acquiring vehicles accessible to disabled passengers, to meet requirements in a timely and cost-effective manner;

Develop criteria and review procedures for enforcing conformance with federal accessibility requirements.

To better assist transportation providers in extending the access and mobility of Americans, the Department proposes to develop criteria and review procedures for enforcing conformance with federal accessibility requirements for air carriers and federally assisted mass transportation operators.

To ensure that all Americans have access to necessary transportation service, the DOT will work with transportation providers to increase access and mobility to the disabled.

For copies of the complete document, contact:

Office of the Assistant Secretary for Public Affairs Office of the Secretary of Transportation 400 Seventh Street, S.W. Room 10414 Washington, DC 20590 (202) 366-5567

House Committees Take Action on the ADA

The Americans with Disabilities Act (ADA) was hailed by the House Public Works Committee as a means to get people with disabilities through this country's obstacle course of inaccessible transportation. The committee passed the ADA on April 3 by a vote of 45-5.

Following a subcommittee mark up in March, the April 3 action was the third in a series of committee mark ups. It is anticipated that President Bush will sign the sweeping legislation into law this year.

The Public Works Committee considered nine amendments to the subcommittee bill. Three technical amendments were offered by Congressman Norman Mineta (D-CA) and were accepted by the committee. These amendments specify that:

private contractors that provide fixed-route transit are required to buy accessible vehicles;

■ private entities that are in the principal business of providing transportation and that operate vehicles with seating capacities of less than eight passengers must have at least one accessible vehicle in their fleet;

■ intercity over-the-road transportation providers must still comply with general nondiscrimination principles during the period when interim accessibility regulations are in place;

■ people with physical or mental impairments, including visual impairments, are eligible for paratransit services if they are unable to board or disembark a fixed-route vehicle;

people whose disability prevents them from getting to or from the bus stop are also eligible for paratransit services;

additional paratransit services can be provided voluntarily.

Six other amendments were also considered but none were adopted by the Public Works Committee. These amendments "Our challenge is to [ensure that] the American mainstream includes all of our disabled citizens."

> --President George Bush in his State of the Union Message to Congress, January 31, 1990

would have:

■ delayed by 30 months the effective date of ADA compliance;

■ provided local communities with the option of how to provide transit services to persons with disabilities;

prohibited mandatory acceptance of special services;

■ required all rail stations to be made accessible, and removed the exemption for one-car trains and historic vehicles.

 provided \$200 million in funds allocated for access purposes;
 replaced Title II of the bill with the Senate passed version of Title II.

In earlier action, the House Public Works Surface Transportation subcommittee marked up the transit provisions of the ADA on March 6.

Some of the most important changes to the transit provisions specify that:

■ precise definitions of "demandresponse systems," "fixed-route systems," and "public entity" are required;

public entities are prohibited from remanufacturing a vehicle if it is not accessible, or from purchasing an inaccessible, remanufactured vehicle;

■ historic vehicles that are remanufactured are exempt from having to be accessible if making the vehicle accessible would significantly alter its historic character; ■ response time for paratransit services should be comparable to the extent practicable. All other service criteria that are considered in comparing fixed-route to paratransit services must be comparable;

■ people eligible for paratransit services are defined as persons who cannot board, ride, or disembark a vehicle without the assistance of another person (The definition allows for one companion to travel with the person);

■ the service area of paratransit is defined as that which is encompassed by the public entity's fixed-route system. Paratransit service is required to be provided in the service area of each public entity operating a fixed-route system (other than portions of the service area that solely provides commuter bus and commuter rail services);

paratransit services must be developed through a public participation process. The process will result in a plan that will be submitted to the DOT;

coordination of paratransit services is encouraged, and duplication of service provided by another operator is not required;

■ key stations for rapid, commuter, and light rail systems will be defined by the DOT;

■ key stations must be made accessible within three years except that extraordinarily expensive changes can be made within 30 years except that two thirds of key stations must be made accessible within 20 years;

■ historic trains are exempt from having to be accessible if making them accessible would significantly alter their historic character;

■ commuter rail operators do not have to purchase new accessible vehicles if they can show that they have at least one accessible car per train;

■ Intercity bus operators must (continued on the next page)

ADA Would Guarantee Civil Rights of All Americans with Disabilities

Persons with disabilities are our nation's largest and fastest growing minority. According to the Congressional Research Service, there are 43 million persons with one or more disabilities in the United States. One out of every five Americans have some type of disabling condition.

People with disabilities have all manner of disabling conditions mobility impairments, blindness and vision impairments, deafness and hearing impairments, speech and language impairments, and mental and learning disabilities.

Why the ADA is Needed

People with disabilities are often unreasonably excluded from significant opportunities for social participation, including access to public and private facilities, education, employment, housing, transportation, communications, health services, recreation, and access to public services.

According to national polls by Louis Harris and others, people with disabilities, as a group, occupy an inferior status in our society, and are severely disad-

(from page 4)

provide interim service to people with disabilities before the DOT issues final regulations on this subject which will become effective in seven years for small providers of intercity service and six years for large operators. However, during the interim period, intercity operators are not required to make structural changes in over-the-road buses and boarding assistance devices will not have to be purchased.

These changes to the legislation do not alter the requirement that all new fixed-route vehicles must be accessible and that paratransit be provided to supplement that service. vantaged socially, vocationally, economically, and educationally.

The unemployment rate among people with disabilities is 67 percent. For persons with disabilities who are members of racial minorities, the rate of unemployment is 82 percent.

But persons with disabilities are not protected under the Civil Rights Acts of 1964 and 1968. And the Rehabilitation Act of 1973 (commonly referred to as "Section 504") only applies to entities receiving federal financial assistance.

Identical bills to create "The Americans with Disabilities Act of 1989" were introduced in the U.S. Senate and House of Representatives on May 9, 1989. S. 933 was approved by the Senate on September 7, 1989, by a vote of 76-8. In the House, H.R. 2273 has been approved by the Education and Labor, Energy and Commerce, Public Works and Transportation, and Judiciary committees.

The ADA was a key recommendation of the National Council on the Handicapped in its 1986 report, *Toward Independence*. Its purpose is to:

• provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities;

provide enforceable standards addressing discrimination against individuals with disabilities; and,
ensure that the federal government plays a central role in enforcing these standards on behalf of individuals with disabilities.

The term "disability" is defined as a physical or mental impairment that substantially limits one or more of a person's major life activities, a record of such impairment, or being regarded as having such an impairment. This is the same definition used in sections 503 and 504 of the Rehabilitation Act and the Fair Housing Amendments Act.

Key Provisions

Among its key provisions, the ADA:

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

"ADA will be a landmark first civil rights law for people with disabilities by any major nation."

—Justin Dart, Jr., Chairman President's Committee on Employment of People with Disabilities

■ covers employers engaged in commerce who have 15 or more employees; public accommodations; transportation companies; those engaged in communications; and state and local governments.

■ 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 qualification and performance standards.

■ calls for the Architectural and Transportation Barriers Compliance Board to issue minimum guidelines for accessibility of buildings, facilities, vehicles, and rolling stock.

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.

Reconnaissance Survey of Transit Systems Completed

Project ACTION recently completed a reconnaissance survey of 112 selected transit systems around the country. The purpose of the survey was to identify general patterns and trends with respect to the provision of accessible transit services for people with disabilities.

The survey was designed to elicit information on the types of accessible services provided in the community and the extent to which fixed-route bus services are accessible to wheelchair users.

The survey questions were developed to find out whether transit systems have an official policy to purchase fixed-route buses with lifts and whether they have projected target dates for making fixed-route bus fleets fully accessible.

Other questions were developed to obtain data on the following:

- annual and average weekday ridership for people with disabilities including wheelchair users;
- the annual cost of maintaining lifts for fixed-route bus service;
- the annual budget for all paratransit services;
- the percentage of each system's total operating bus budget devoted to lift maintenance and paratransit services respectively;
- the system's fare policy for people with disabilities using fixed-route bus and paratransit services;
- marketing techniques and tools;
- and information on major unmet needs, problems, innovations, and accomplishments in providing accessible services.

Four types of transit agencies were contacted:

 Sixty-two systems with a high percentage of accessible fixedroute buses;

- Twenty systems with low percentages of active fleets with lifts or ramps;
- 3. Transit systems serving the ten largest cities by population in the United States and 11 systems serving other major cities;
- 4. Twenty-eight rural transit agencies.

The following is a summary of the major findings.



Systems with a high percentage of accessible fixed-route buses. ■ Forty-seven of 62 systems have

adopted a policy to purchase fixed-route buses with lifts.

- Of these 47 systems, 27 have established target dates for achieving full fixed-route accessibility.
- Fifty-five systems indicate that 50 percent or more of their fleets are equipped with lifts or ramps. Thirteen of these systems have equipped all of their fixed-route buses with lifts.

Annual lift usage figures for systems having both accessible fixed-route and paratransit report that paratransit continues to play a substantial role in carrying wheelchair users.

- The City of Seattle reported 139,000 lift uses over a 12month period and leads all systems in terms of annual lift usage.
- Data on annual lift usage and total disability ridership for systems with accesssible fixed-

The most frequently reported problems were the unreliability of accessible fixed-route lifts, and the cost and time involved in maintaining the lifts.

route and paratransit services suggest that a high percentage of total disability ridership for paratransit is composed of wheelchair users.

- Annual lift usage figures for systems having both accessible fixed-route and paratransit report that paratransit continues to play a substantial role in carrying wheelchair users. Of the 14 systems providing such data, 11 report annual lift usage figures for paratransit far in excess of figures for accessible fixed-route services.
- One additional system reported paratransit annual lift usage figures only slightly higher than those for accessible fixed-route services.
- Two systems, Denver Regional Transit District, and Riverside Transit Agency, reported annual lift usage figures for accessible fixed-route services higher than those for paratransit services.
- Twenty-seven systems reported that a 50 percent discount fare is in effect all the time.
- Four systems reported that the 50 percent discount fare is limited to off-peak hours.
- The most frequently reported problems were the unreliability of accessible fixed-route lifts, and the cost and time involved in maintaining the lifts.
- The second most frequently reported problem dealt with the difficulties encountered by

transit systems in securing passengers who use power wheelchairs or the threewheeler Amigo on accessible fixed-route buses.



Systems with low percentages of active fleets with lifts or ramps. Four, or 20 percent, have

adopted a policy to purchase accessible fixed-route buses with lifts. Of these four systems, three have established target dates for achieving fullyaccessible fixed-route service.

- Nineteen of the 20 systems report few or no lifts on their fixed-route bus fleets.
- All 20 systems rely heavily on paratransit services for transporting persons with disabilities.

Many systems reported that the demand for paratransit services either exceeds or matches capacity.

- Many systems reported that the demand for paratransit services either exceeds or matches capacity.
- Seven have opted to charge 50 percent discount fares all the time.



Systems serving the ten largest cities by population in the United States and systems serving

other major cities.

- Fifteen systems, or 75 percent, have adopted a policy to purchase fixed-route buses with lifts. Of these, only seven have established a target date for achieving full fixed-route accessibility.
- Of the 15 systems with 100

Data on annual lift usage and total disability ridership for systems with accessible fixedroute and paratransit services suggest that a high percentage of total disability ridership for paratransit is composed of wheelchair users.

percent lift purchase policies, six have equipped 50 percent or more of their fleets with lifts.

- Data on annual lift usage and total disability ridership for systems with accessible fixedroute and paratransit services suggest that a high percentage of total disability ridership for paratransit is composed of wheelchair users.
- Similarly, data on systems having both accessible fixedroute and paratransit services further suggest that paratransit continues to play an important role in carrying wheelchair users.
- Eight, or 42 percent, provide 50 percent discount fares all the time.
- The most frequently reported problems were that: lifts are unreliable, and maintenance is costly and time consuming; bus stops are not accessible; there are insufficient funds to meet paratransit expenses; and demand exceeds paratransit capacity.



Rural transit agencies.

■ Nine of the 28 rural transit agencies have established a policy to

- buy fixed-route buses with lifts.
 Three systems have established target dates for achieving full fixed-route accessibility.
- Nine have equipped 50 percent or more of their fixed-route fleets with lifts, but one reports that none of its lifts are working because of heavy snow conditions.
- Paratransit service plays a

significant role for rural transit systems. Many paratransit services are open to the general public. The share of total annual operating bus budgets devoted to paratransit service approximates, on the average, 25 percent.

- Where outreach and marketing programs exist, they typically include such activities as advertising, presentations to local disability organizations, and demonstration training on the use of lifts.
- Twelve, or 50 percent, reported a policy of charging regular fares.
- Eight systems, or 33 percent of the systems providing data, reported a policy to charge 50 percent discount fares all the time.

Paratransit service plays a significant role for rural transit systems. Many paratransit services are open to the general public.

- The most frequently reported problem was that the demand for paratransit services exceeds the capacity to provide such services.
- Systems also reported that there were insufficient funds to cover the costs of providing paratransit services.

Copies of the complete survey results are available for a nominal fee from the Project ACTION Office.

Demonstration Projects (from page 1)

persons with disabilities.

The demand for accessible public transit services for persons with disabilities is growing and will continue to grow in the future. Also, needs are changing over time. Developments such as deinstitutionalization, independent living, mainstreaming, gains in employment, education, and community integration of persons with disabilities are all working to increase the overall demand for this service.

Demographic changes in the American population and ongoing activities in society promise to further emphasize the need for accessible mass transportation. A diversified collection of tools will be required to meet this growth in demand.

Easter Seals believes that progress in transit for persons with disabilities is most effective at the local level. New solutions for providing this needed service will be found within individual communities. National organizations, federal and private, can help, but they help best when they plant the impetus for innovation at the local level.

It is especially important that innovations at the community level be accelerated because new, more cooperative policies will help Easter Seals believes that progress in transit for persons with disabilities is most effective at the local level. New solutions for providing this needed service will be found within individual communities.

usher in more effective services across the country, and policy innovations inevitably lead the way for more effective research and technological developments.

Steering Committee

The steering committee is the policy review and oversight arm of Project ACTION. The steering committee is national in perspective, broadly representative, and deeply involved in all aspects of the project. It participates in the review of products that are developed and will approve the design and implementation of the demonstration programs. (See page 2 for a list of the organizations on the Project ACTION steering committee.)

Resource Council

There were many national and local organizations and institutions that desired to serve on the steering committee, but because of costs, logistics, and the need for the decision making process to flow smoothly, membership had to be limited. In order to ensure that the project was not denied

Highlights of Project ACTION

Creation of a steering committee to oversee the general policy of the program, and a resource council, to assist the steering committee.

Development of a request for proposals (RFP) to demonstrate cooperative tools, techniques, and strategies for transit authorities and persons with disabilities to work together to improve access to public transportation. ■ Implementation of demonstration programs in communities which will use cooperation as the foundation for policy and technology initiatives.

■ Presentation of a national public education program composed of materials, brochures, and public service announcements as well as dissemination of summary documents based on the project experiences. the useful input of any organization or group which can contribute to it, we organized a resource council.

The resource council members are part of the information stream, regularly receiving materials and having discussions with project staff on relevant experiences and efforts. All members of the resource council will receive the Project ACTION newsletter and a request for proposals.

Requests for Proposals

The heart of Project ACTION is a demonstration of new policy initiatives and technologies that can significantly advance and improve the status of public transportation for persons with disabilities and how the process of cooperation can help bring them about. The first step in that direction will be the development of a request for proposals document (RFP).

Critical Needs Assessment

The initial step in the process of developing the RFP has been a review of the major needs which must be met to remove barriers to accessibility in the transit and disability communities. This has been completed and includes:

- a review of recent literature;
- interviews with steering committee members and other leading experts;
- a questionnaire to the resource council;
- a reconnaissance survey of transit systems.

A critical needs assessment emerged from this effort in which the unfulfilled goals in this field were organized by type, priority, potential for accomplishment and other relevant factors.

Innovation Analysis

With the critical needs assessment as a foundation, we then proceeded to develop an innovation analysis. This represents an intensive review of what has actually worked in real life experience in communities across the country. The focus was on:

- why they have succeeded;
- which elements could be replicated in other communities;
- where have innovations been attempted but fallen short of expectations and why.

The innovation analysis, when compared to the critical needs assessment provided the basis for construction of the RFP.

Solicitation of Proposals

Following the two levels of analysis outlined above, a RFP has been developed that is the basis for the design, solicitation, and acceptance of demonstration programs. Project ACTION will solicit proposals from interested organizations to be a demonstration community.



Members of Project ACTION's steering committee reviewed plans for demonstration projects at their meeting in Washington, D.C. on February 23, 1990.

campaign to familiarize the general public and interested parties with the importance of access to public transit for people with disabilities.

Public service announcements,

At the end of the project, the Communications Department of Easter Seals will undertake a national public education campaign to familiarize the general public and interested parties with the importance of access for people with disabilities to public transit.

Selection of communities as demonstration sites will be a collaborative effort with guidance given by the steering committee. A "host organization" will be sought to be the prime sponsor of projects in each community. Based on design factors and criteria, the project staff will evaluate proposals that are submitted and make funding decisions. (See page 11 for the RFP announcement.)

Public Education and Publications

At the end of the project, the Communications Department of Easter Seals will undertake a national public education brochures, and other forms of media will be used to sensitize the public and policy makers to the importance of the goals of the project.

Meetings

Meetings will be the second major outlet for products resulting from the demonstration programs and overall project experiences. At the conclusion of the demonstrations, we will sponsor a meeting on "Innovation and Cooperation in Transportation of Persons with Disabilities."

The meeting will share the experience of the demonstrations

with a wide audience composed of providers, users, and interested third parties, and will help generate broad public understanding that cooperation and innovation in this field is possible.

Successful Demonstrations

The demonstrations undertaken as part of the project will be critical because they will stand as the specific evidence of workable programs at the local level.

Although the demonstration activities will be in specific sites, their greatest value lies in the fact that they will generate national useful data and techniques which can be replicated at any level.

Great care will be taken to ensure that a representative sampling of communities and situations are chosen for the sites to ensure long-term relevance.

Aside from demonstrations and the products that result from them, it is the strong hope of Easter Seals that among Project ACTION's best results will be the permanent improvement of relationships between the public transportation community and organizations representing people with disabilities at both the national and local levels.

Accessible Mass Transit News Briefs

Austin, Texas. The Capital Metro Board of Directors recommended disregarding a policy restricting three- and fourwheeled carts, used by some people with mobility impairments, from boarding Capital Metro buses. Although the policy will not change, these riders now will be allowed to ride the buses. Marietta, Georgia. the Cobb Transit System, which began operation this summer, is the first in the country to be 100 percent accessible from the start of operations.

■ Vancouver, Washington. Twenty C-Tran buses on general routes will be equipped with wheelchair lifts. The transit system's board is acting in compliance with an order by Clark County Superior Court. The ruling applied to all new buses. However, the C-Tran board's decision affects only the 20 buses

it has on order now. New Castle, Indiana. The New Castle on Wheels Transit System recently participated in the Passenger Assistance Technique training course which is prepared

Pittsburgh Marks Purchase of First Lift-Equipped Buses

The Port Authority of Allegheny County has approved the purchase of 120 new buses equipped with wheelchair lifts. These buses, manufactured by Bus Industries of America, Inc. at a total contract price of approximately \$24.20 million, will become the first wheelchair liftequipped buses in PAT's history.

"More and more individuals who use wheelchairs have expressed the need and importance of being able to use PAT's fixed-route bus service.

"If we are to accommodate these needs and meet the goals of public transit, which include providing freedom of mobility, then the time for wheelchair lift-

and supplied by the Transportation Management Associates of Fort Worth, Texas. Drivers were taught the basic characteristics of major functional losses and how properly to assist passengers with disabilities.

Worcester, Boston Join Forces on Wheelchair Restraints

The Worcester Regional Transit Authority (WRTA) and the Massachusetts Bay Transportation Authority (MBTA) have joined forces to provide persons with disabilities in the Worcester area with the latest technology to secure wheelchairs on the WRTA buses.

The Universal Belt Restraint System, which allows all types of wheelchairs to be secured properly, was designed by an MBTA engineer and is being installed by workers at the MBTA repair shop in Everett.

WRTA, which has buses similar to MBTA, saw the speciallydesigned restraints as the perfect solution for accommodating all types of wheelchairs on the 19 lift-equipped buses in its fleet.

WRTA approached MBTA to install the restraints since the MBTA had the know-how and the production facility for making the modifications and for installing them.

"This is a perfect example of how two transit agencies can work together to improve accessibility to public transportation for people with disabilities, and save taxpayers' money in the process," said MBTA General Manager Thomas P. Glynn.

The Universal Belt Restraint System uses two belts to secure wheelchair passengers, one to lock the chair, and the other for the passenger. equipped buses in Allegheny County has come," said PAT Executive Director William W. Millar.

According to Millar, the buses would be used to complement PAT's Access Program, the door-to-door advance reservation service for the elderly and persons with disabilities in Allegheny County that is sponsored by PAT and provided by independent carriers.

The per-vehicle bid price from Bus Industries of America was \$201,726 including \$13,766 for the cost of the wheelchair lift. The buses will seat approximately 44 passengers and accommodate two wheelchairs.

Toledo, Ohio. The Toledo Area **Regional Transit Authority** (TARTA) recently kicked off its training program aimed at reaching potential accessible line service riders. The program, which informs wheelchair users of TARTA's new accessible line service, is offering home bus demonstrations. TARTA personnel will take a lift-equipped bus to individual homes and explain how to use the lift, how to read the bus schedules, and answer any questions on the accessible line service.

■ Chicago, Illinois. The Chicago Transit Authority plans to begin operating the first of 761 buses with wheelchair lifts in September, 1990, and have lift vehicles on every bus route within two years.

Detroit, Michigan. The Detroit Department of Transportation offers scheduled wheelchair accessible service on all bus routes on Saturdays and Sundays. All bus routes will feature daily scheduled wheelchair accessible service by September.

Project ACTION Announces Request for Proposals

Project ACTION seeks qualified and responsible vendors to respond to RFP No. NESS 90-1. Approximately \$1.8 million in grant funds is available. Multiple grants will be available in various funding level ranges. Projects will be expected to last for 12 months. This work task, which is 100 percent financed with UMTA funds, seeks national and local organizations representing public transit operators, the transit industry, and persons with disabilities to demonstrate cooperative approaches to promote access to

DOT Regs (from page 1)

rules do not require that wheelchair lifts be retrofited onto existing buses.

The proposed regulation was issued in response to a law suit brought by the Americans Disabled for Accessible Public Transportation, the Eastern Paralyzed Veterans Association, and other disability organizations.

Groups representing people with disabilities praised the announcement and a spokesman for the American Public Transit Association said that bus companies are prepared for it. The proposed rules—expected to become final later this year after a 60-day period for public comment—would match many of the requirements of the ADA pending in Congress. The proposed regulations require that:

all new vehicles used for fixedroute service must be accessible. Limited waivers are provided if lift equipment is not available. remanufactured vehicles used for fixed-route service must also be accessible.

companies must make good faith efforts to buy used buses that are accessible.

■ systems that provide transit service to the general public on a demand-response basis are not required to buy only accessible vehicles if they can show that their system when "viewed in its entity" is accessible. Communities with populations under 50,000 would also be covered by this provision.

 supplemental paratransit must be provided to persons who are unable to use the fixed-route service. The department proposes three options for determining who is eligible for paratransit services.
 transit authorities are not required to provide supplemental paratransit beyond the point that doing so results in an undue financial burden. The department public transportation services for people with disabilities.

Priority areas of the RFP include, techniques to:

- identify people with disabilities in the community and their transportation needs;
- develop outreach and marketing strategies;
- develop training programs for transit providers;
- develop training programs for transit users with disabilities;
- and apply technology to eliminate barriers to transportation accessibility.

Estimated issuance date of the RFP is May 30, 1990, and responses will be due to be received by Project ACTION 90 days later. Use the form below to request RFP No. NESS 90-1.

proposes four options for determining what constitutes an undue financial burden. For more information, contact:

Mr. Robert C. Ashby Deputy Assistant General Counsel for Regulation and Enforcement Department of Transportation 400 Seventh Street, S.W. Room 10424 Washington, D.C. 20590 (202) 366-9306 TDD: (202) 755-7687

Share in the Good News about Project ACTION!

If you, a friend, or an associate needs the latest information on accessible mass transportation for people with disabilities, we will be pleased to send the **Project ACTION Update**. Simply complete this address and return to:

Project ACTION Update 1001 Connecticut Ave., N.W. Suite 435 Washington, D.C. 20036

	Yes,	I would	like to	o receive	the	Project	ACTION	Update.
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Please send me a request for proposal.

Name			_
Organization			
Address			
City	State	Zip	

News Briefs

■ Atlanta, Georgia. MARTA, which already has a fully accessible rail system, has promised to have all buses equipped with wheelchair lifts by the year 2000. For now, only 20 percent of the buses have lifts.

■ Seattle, Washington. Seattle is a leader in accessible transportation. The metro system there started putting lifts on buses ten years ago and now has them on 75 percent of its 1,000-bus fleet.

Trenton, New Jersey. Mercer is the first county in New Jersey to have complete route service for people with disabilities. All ten routes will be served by buses equipped with wheelchair lifts.

■ Dallas, Texas. Fifteen new 12passenger vans have been added to Dallas Area Rapid Transit's DARTAbout fleet, which provides demand-response dial-a-ride transit service in four suburban areas.

■ San Diego, California. The San Diego County Transit System recently bought a 20-passenger "busette" specifically for use on the Southeast Rural Bus Route serving the communities of Jacumba, Campo, and Tecate. The \$47,000 vehicle features a wheelchair lift for persons with

Peer Training Makes Bay Area Transit More Accessible

Despite numerous architectural and technological improvements in transit systems, inoperable bus lifts, narrow bathroom entrances, poorly located public telephones and bike racks, and bad attitudes still cause problems for people with disabilities.

In the San Francisco Bay Area, the Peer Transit Training Program is teaching people with disabilities how to show others with disabilities the tricks of riding Bay Area Rapid Transit.

Sue Hodges, a disabled person who heads the training program, said that the people her program

disabilities. The San Diego County Department of Public Works recently unveiled 16 new accessible buses for use on its County Transit System Express Bus routes.

■ Cambria County, Pennsylvania. The Cambria County Transit Authority will get money for six new buses from a \$4.2 million federal grant for Pennsylvania announced by U.S. Transportation Secretary Samuel Skinner. Cambria's share of \$349,170 will cover 80 percent of the overall purchase costs for the new buses. is trying to help "are reluctant to try something that is unfamiliar, that makes them feel exposed and vulnerable, particularly if they have to initiate it and have to do it alone."

Sometimes it takes a person with a disability who understands the challenges that a wheelchair user faces to show another person with a disability a safe way to use public transit.

Rodney Stibling, a peer trainer, said, "To use a bus if you've never been on one is scary. It's important to be around someone you feel comfortable with."

■ Salem, Massachusetts. Since August 28, two dozen of the 43 buses throughout Salem and Keizer have been modified to accommodate motorized scooters. Previously, the buses could handle only wheelchairs.

■ Tulsa, Oklaholma. The Metropolitan Tulsa Transit Authority adopted a policy in December, 1989, of buying buses equipped with lifts. Under the policy, the authority bought 16 lift-equipped buses, and plans to buy another eight in 1992.

Project ACTION

1001 Connecticut Ave., N.W. Suite 435 Washington, D.C. 20036 Nonprofit Organization U.S. Postage PAID Chicago, IL Permit No. 6583





GOVERNMENT RELATIONS

Debra DeLee, Director

NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D.C. 20036-3290 • (202) 822-7300 KEITH GEIGER, President ROBERT CHASE, Vice President ROXANNE E, BRADSHAW, Secretary-Treasurer

July 9, 1990

The Honorable Robert Dole United States Senate Washington, D.C. 20510

Dear Senator Dole:

I am writing on behalf of the two million-member National Education Association to urge you to vote for passage of the conference report on S. 933, the Americans with Disabilities Act. NEA also opposes any motions to recommit the conference report or other procedural motions to delay passage.

The ADA is urgently needed to ensure that the 43 million Americans with disabilities will no longer be unfairly discriminated against in employment, public accommodations, transportation, and telecommunications services.

NEA also opposes the House-passed Chapman amendment which was deleted by the conferees. As you know, this amendment would allow employers to discriminate against individuals who work in food handling jobs, even if they are not presenting a health or safety threat to others. NEA members who work in school cafeterias could be adversely affected by this provision.

NEA believes allowing discrimination based on perceptions is unconscionable and runs counter to the basic purpose of the ADA.

We believe the conference bill completely ensures that employers do not have to accommodate those persons -- in any profession -who present a health or safety threat to others. The Chapman amendment is unnecessary and harmful, and we urge you to reject any attempts to reinstate it.

Votes associated with this issue may be included in NEA's Legislative Report Card for the 101st Congress.

Sincerely,

Debra DeLee Director of Government Relations

DD:JP:nm

ANTI-LABOR EFFECTS OF CHAPMAN AMENDMENT

The 1.3 million members of the United Food and Commercial Workers International Union - representing the vast majority of organized workers in the food industry - urge you to oppose the inclusion of the Chapman "food handler" language in the Americans With Disabilities Act. The UFCW believes that you should reject appeals to fear and AIDS hysteria which are behind the efforts to pass this discriminatory language.

The National Restaurant Association, the major proponent of the Chapman amendment, has circulated a letter to Congress citing reasons why you should support the Chapman language. The NRA raises a number of points that should be addressed prior to a final vote on this issue.

THE CHAPMAN FOOD HANDLER AMENDMENT LANGUAGE

"It shall not be a violation of this Act for an employer to refuse to assign or to continue to assign any employee with an infectious or communicable disease of public health significance 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 damage."

THE NRA SAYS:

"The Chapman amendment is a tightly crafted legislative product that will affect relatively few workers."

UFCW RESPONSE:

The Chapman amendment is a loosely drafted piece of legislation that covers nearly 13 million jobs involved in food handling out of a total national employment of nearly 100 million. Industries employing just under 30 percent of all workers would be affected by the Chapman language. (Bureau of Labor Statistics; see attached).

The amendment's scope is not limited to food borne or airborne illnesses. The "infectious or communicable disease(s) of public health significance" which the amendment targets, goes far beyond HIV infections. It would even cover food handlers with Lyme disease, herpes, cervical cancer, or toxic shock syndrome.

William H. Wynn International President Jerry Menapace International Secretary-Treasurer United Food & Commercial Workers International Union, AFL-CIO & CLC 1775 K Street, N.W. Washington, D.C. 20006-1598 (202) 223-3111 FAX (202) 466 986 f 191

UFCW

THE NRA SAYS:

A restaurant owner cannot fire HIV-positive individuals.... Even if there are no other positions currently open, the restaurant owner must make a reasonable accommodation to the HIV-positive employee.

UFCW RESPONSE:

Under the "undue hardship" standard of the ADA, if the reasonable accommodation is "an action requiring significant difficulty or expense" the accommodation need not be made by the employer. This means that the covered employee could be <u>legally</u> fired!

Even the NRA ADMITS that the "undue hardship" standard is indeed THE limiting factor on employee protections under the Chapman amendment. Yet, they obfuscate its impact by arguing that "this clause applies to every disability covered under the ADA..." BUT, by definition, the ADA - absent Chapman - does not consider food handlers who have "infectious or communicable disease(s) of public health significance" as having a disability. And indeed - absent Chapman - the livelihood of these food handlers would not be jeopardized by the "undue hardship" standard. Under Chapman, however, food handlers with "infectious or communicable disease(s) of public health significance" - such as herpes, Lyme disease, or AIDS, etc. - are singled out for discriminatory treatment with no reference to whether they pose a direct threat to public health or safety.

The National Restaurant Association admits that the Chapman language "includes diseases which have not been proven to be transmittable through food - like AIDS." Under the ADA, these food handlers would not be part of the target population of the ADA. A food handler with Lyme disease, for example, does not suffer from discrimination because of architectural, transportation, and communication barriers, etc., as contemplated in the bill.

The Chapman language would jeopardize the jobs of all food handlers no matter what their medical status because it leaves to the whim of an employer to define who is a covered food handler and whether or not a "reasonable accommodation" of alternative employment is or is not an "undue hardship."

THE NRA SAYS:

For some diseases, the Chapman language is redundant; but for others, like AIDS, it is not.

UFCW RESPONSE:

Where there is no direct threat to the public, such as in the case of a food handler with AIDS, the Chapman language is not redundant because it is NOT relevant. According to U.S. Department of Health and Human Services Secretary, Louis W. Sullivan, M.D., "relaxing the anti-discrimination protection for food service workers is not needed or justified in terms of the protection of the public health."

THE NRA SAYS:

"Rejecting this amendment, removing flexibility from the system, and limiting the options of employers will ultimately harm those that the amendment's opponents are seeking to help."

UFCW RESPONSE:

The NRA's support for the Chapman language on the grounds that opposition "will ultimately harm those that the amendment's opponents are seeking to help" is disconcertingly reminiscent of arguments which the NRA used to <u>oppose</u> the public accommodations section of the landmark Civil Rights Act of 1964, and to oppose the Act's creation of the Fair Employment Practices Commission.

At that time, the NRA stated the following in a letter to Representative Andrews of Alabama:

> "The public accommodations feature of the bill and the establishment of a Fair Employment Practices Commission provide no meaningful guarantee of constitutional rights. Instead, by subjecting private business to unnecessary harassment and by enabling the Federal Government to exert more control over individual rights and over private business, the proposals, if enacted, can only result in the elimination of free enterprise and of the rights and freedoms of all citizens." ("Congressional Record," February 5, 1964 page 1996, Vol. 110, part 2, 88th Congress, 2nd session.)

Interestingly, the NRA argues in its recent letter to Congress relative to the Chapman amendment that "parallels to earlier civil rights debates" are not apt, in part, because "a retail establishment with black clerks could stay in business; a restaurant with a chef with AIDS cannot."

- 4 -

Yet, in 1964, the NRA argued that passage of the Civil Rights Act's public accommodations section and its creation of a Fair Employment Practices Commission could "only result in the elimination of free enterprise."

THE NRA SAYS:

Perception is also reality in other areas of public law.... Ethics laws for both federal workers and members of Congress are regularly approved because of the need to avoid even the suggestion of impropriety.

UFCW RESPONSE:

Ethics laws are not regularly enacted to avoid a mere perceptual problem. On the contrary, ethics laws are enacted to deter and penalize behavior which is, in fact, harmful or potentially harmful, to the public interest.

WHAT THE NRA DOES NOT SAY:

The Chapman food handler language will create a litigious atmosphere in the workplace. It presents a complex of problems leading to instability in labor-management relations. These include, but are not limited to the following:

- o How is an infected employee to be identified?
- o What are the employer's obligations with respect to testing "food handling" employees?
- o What are the employer's potential liabilities in the event that the employer is unable to provide the employee with alternative employment? What are the employer's liabilities if he retains a covered employee in the food handling job? What are the employer's liabilities if he retains a covered employee in any other capacity?

The UFCW strongly urges you to oppose the inclusion of the Chapman Food Handler language in the Americans With Disabilities Act.

Attachment

Current Employment Levels and Projections to Year 20

Industry/Occupation	1988 Employment ('000s)	2000 Projectio
dietitians & nutritionists dietetic technicians food store sales & counter clks food preparation & service child care workers private household cooks private household butlers &hsek priv househld child care farm workers & supervisors fishery wkrs mfg bakers butchers & meatcutters other precision fd wkrs food pkg & machine filling oper separatg mchne operators dairy wkrs meat cutting machine operators cooking & roasting machine oper cannery workers meat & fish trimmers grocery store hand packagers	40 17 1549.136 6931 589 16 34 400 2341 77 38 248 31 34.385 6.76 16 4.2 26 78 101 44.714	54 22 1887.5 9459 708 16 35 362 1920 . 97 35 259 28 33.695 5.98 12 4.2 22 72 106 50
food service mgrs	332.686	434

total from above

12955.081 15622.37

Source: U.S. Bureau of Labor Statistics Occupational Projections and Training Data," 1988 ed Bulletin 2301

This document is from the collections at the Dole Archives, University of Kansas

America, and he made a terrific impression. Within the last 2 weeks he has visited five Western States, speaking at universities, to big crowds of enthusiastic people, and the only thing he has talked about has been this pending civil rights bfl.

I have not seen anything in the Washington papers about my Governor's trip to the west coast, so that makes me think his trip was a success. I have read AP stories from the States of Washington, Oregon, California, Arizona, and Colorado, and uniformly those stories describing each of the speeches that he made in which he discussed at length the pending civil rights bill reported that the enthusiasm was terrific. In the last 2 weeks, I have had letters from many people out on the west coast asking me to send them a copy of the civil rights bill.

The Governor had said if they wrote an Alabama Congressman, he would send them a copy of that bill I think, Mr. Chairman and members of the committee, that the opposition to this bill is widespread. I am sure you members of the committee received a letter, as I did, from the American Motor Hotel Association; the headquarters of this organisation is in Kansas City, Mo. The letter was dated November 5, 1963. I would like to read, with the permission of the chairman and members of the committee, this letter, to refresh your recollection.

NOVEMBER 5. 1968.

DEAL CONVERSION ANDERWS: The American Motor Hotel Association, the trade organization of the motel industry of America, believes that title II of the President's proposed Civil Rights Act of 1983 is a violation of amendments 10 and 14 of the Constitution and should be defeated as a matter of protecting the personal constitutional rights of all Americans.

Title II represents an unwarranted extension of the commerce clause. Since the Cons has no power to legislate in a matter which is purely intrastate, such legislation would violate amendment 10 of the Constitution, which provides that the powers not delegated to the Federal Government by the Constitution are reserved to the States or to the people. We believe that Congress has no power to so legislate under the 14th amand. ment, since the 14th amendment has been interpreted as clearly applying to State ac-The actions of an individual proprietor tion in his decision to serve or not to serve, are not State actions, but the exercise of a private business decision by the individual operator. (Civil Rights Case 1883, with citation.)

The American Motor Hotel Association is opposed to this legislation, which puts more power into the hands of the Government, enabling it to exercise more control over individual rights and private businesses.

Signed by S. Cooper Dawson, Jr., chairman, governmental affairs, of the American Motor Hotel Association.

So, I can say to you. Mr. Chairman and members of the committee, that the members of the American Motor Hotel Association, which is composed of thousands upon thousands of people in America, are unalterably opposed to this pending civil rights bill.

I received a letter dated November 1, 1963, from the National Restaurant Association of America, whose headquarters are here in Washington, D.C.:

DHAR CONGRESSIAN ANDREWS: On Beptember 33, 1963, the board of directors of the National Action of the strength of the secadopted a strong policy of opposition to title II, the public accommodations section of HE. 7152, amended, and to title VII, the section which establishes a Pair Employment Practices Commission.

These proposals provide an unprecedented and undesirable extension of Federal control over private business. The National Hestausant Association has no desire to impede or restrain the rights of any citizen. On the contrary, it is the association's firm belief that the realization of these rights will come only through voluntary cooperation on the local level. Indeed, through a policy of emoturying voluntary integration, the National Restaurant Association has rapidly achieved widespread success in this area.

The public accommodations feature of the bill and the establishment of a Fair Employment Practices Commission provide no meaningful guarantee of constitutional rights. Instead, by subjecting private business to unnecessary harassment and by enabling the Federal Government to exert more control over individual rights and over private business, the proposals, if enacted, can only result in the elimination of free enterprise and of the rights and freedoms of all citizens.

For these reasons, the National Restaurant Association is opposed to the public accommodations and the Fair Employment Practices Commission provisions of the bill H.R. 7853 as amended.

Signed by Ira H. Nunn, Washington counsel of the National Restaurant Association.

Mr. Chairman, this public accommodations section would put any legitimate operator of any legitimate business at the mercy of any small group who might seek to destroy his business by driving away his regularly established customers, his regularly established clientele which he may have built up over a long number of years, simply because those who would form the group demonstrating might desire to put this man out of business and then when they had succeeded in their intention and their purpose of driving away his regular customers, then they would desert him like rats who desert a sinking ship. His business would be destroyed, it would be gone, and he might never be able to rebuild it in the manner in which he had operated it for the convenience of the public which he had previously served.

I see no necessity for any portion of the contents of title II.

Now, Mr. Chairman, these two sections, the so-called public accommodations and the FEPC sections, will, in my opinion, destroy our system of free enterprise in America. The average businessman has a hard enough time trying to build up goodwill and make a living for himself and his employees and pay his taxes without additional Government interference. We might as well have socialism or even communism in this country. if we pass a bill which permits any government, whether Federal, State, or local, the power to go into a man's business and tell him whom he can employ, whom he can fire, whom he can promote. It is bad enough for the Pederal Government to tell him now how much he can pay him or what he has to pay him.

I am sure if this bill becomes law with these two obnoxious sections in it, that there will be many businesses that will close. I do not think this bill is anything on earth except a political bill sponsored by the leadership of both parties with only one thing in mind, and that is to get the vote of a minority group in this country.

We are treading on dangerous ground when we talk about a public accommodations section of a civil rights bill which would give to the Federal Government with its strong arm and its might and power to enforce the provision—the power to step into a man's business when, under no stretch of the imagination, the business could be considered to be in interstate commerce. How on earth could a motel or hotel owned by one man or by a family, located in a spot certain in a State, with no opportunity to cross a State line be said to be engaged in interstate commerce?

Mr. ROGERS of Texas. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS of Alabama. I yield to the gentleman from Texas.

Mr. ROGERS of Texas. When the gentleman speaks of the might of the Federal Government, he is talking about lawyers and officials paid with money taken from the pockets of the taxpayers of this country, used to go down to prey upon those fittle businessmen, who then have to hire a lawyer to defend themselves.

Mr. ANDREWS of Alabama. I am also talking about the Army, and the Navy, and the Air Porce. They have been used by the Pederal Government to enforce so-called civil rights.

Mr. DORN. The paratroopers.

Mr. ANDREWS of Alabama. Thank God they have not used the atomic bomb, but they could, and might.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas [Mr. Rogars].

The question was taken; and on a division (demanded by Mr. Rosses of Texas) there were—ares 63, noes 144.

So the amendment was rejected.

Mr. PICELE. Mr. Chairman, I offer two amendments and ask unamimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. PERKLE: Amend title II. section 205(a), page 67, line 14 by striking out those words starting with the word "without" through line 16, and subsituring the following after the word "aame": "If the aggrieved party shall have first exhausted all administrative and other remedies that may be provided by inw, and provided further that the Attorney General shall not institute any proceedings in less than 30 days where there exists a Human Rights Commission, or similar commission, legally established by an incorporated city, county, or State, or a political subdivision, which Human Rights Commission shall first have the opportunity to decide the complaint."

Amend title II, section 201(b) (1) by adding after the word "fountain", line 10, page 43, the following: "provided such setabliahments have more than five employees or derive a substantial portion of such business, from interstate commerce." S 10778

CONGRESSIONAL RECORD - SENATE

The Senator from Kansas. AMENDMENT NO. 719

2

(Purpose: To provide a plan to provide entities with technical assistance)

Mr. DOLE. Mr. President, I send an amendment on behalf of myself and Senator DOMENICI and Senator GRASS-LEY to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows: The Senator from Kansas [Mr. DoLE], for himself, Mr. DOMENICI and Mr. GRASSLEY, proposes an amendment numbered 719.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 95, strike lines 4 through 14 and insert the following new subsections:

(a) PLAN FOR ABSISTANCE .-

(1) IN GENERAL .- Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chairman of the Equal Employment Opportunity Commission, the Secretary of Transportation, the National Council on Disability, the Chairperson of the Architectural and Transportation Barriers Compliance Board, and the Chairman of Federal Communications Commission, shall develop a plan to assist entitles covered under this Act, along with other executive agencies and commissions, in understanding the responsibility of such entities, agencies, and commissions under this Act.

(2) PUBLICATION OF FLAN .- The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.).

(b) AGENCY AND PUBLIC ASSISTANCE .- The Attorney General is authorized to obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of Feeple with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION .-

(1) AUTHORITY TO CONTRACT .- Each department or agency that has responsibility for implementing this Act may render technical assistance to individuals and institutions that have rights or responsibilities under this Act.

(2) IMPLEMENTATION OF TITLES.

(A) TITLE I .- The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for resist ance, as described in subsection (a), for title

(B) TITLE II.-

(i) IN GENERAL .- Except as provided for in clause (ii), the Attorney General shall unplement such plan for assistance for title 11.

(ii) Excertion .- The Secretary of Transportation shall implement such plan for assistance for section 203.

(C) TITLE III .- The Attorney General. In coordination with the Secretary of Transportation and the Chairperson of the Architectural Transportation Barriers Compliance Board, shall implement such pian for assistance for title III.

(D) TITLE IV .- The Chairman of the Pederal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

September 7, 1989

(d) GRANTS AND CONTRACTS.-

(1) IN GENERAL -Each department and agency having responsibility for implementing this Act may make grants or enter into contracts with individuals, profit institutions, and nonprofit institutions, including educational institutions and groups or associations representing individuals who have rights or duties under this Act, to effectuate the purposes of this Act.

(2) DISSEMINATION OF INFORMATION .- Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) FAILURE TO RECEIVE ASSISTANCE .- An employer, public accommodation, or other entity covered under this Act shall not be excused from meeting the requirements of this Act because of any failure to receive technical assistance under this section.

Mr. DOLE. Mr. President, let me explain this amendment. It has been cleared on both sides. It is a technical assistance amendment.

It is important that both the employers and businesses and the handicapped fully understand this legislation, once it is passed, if it is to be implemented. So that is precisely what the amendment does. It will enable the responsible Federal agencies to establish a strong Governmentwide technical assistance program. Such a program will help to educate the public about the requirements of this bill.

Entities in the private sector need to be aware of what accommodations are both necessary and cost effective, as well as what is the best suited for particular disabled individuals.

Since many of these accommodations will be made in areas which traditionally have not been covered under the Rehabilitation Act-that is, other than universities or Federal contractors in excess of \$2,500-a longstanding expertise can be applied in implementing the ADA in these new areas.

The same standards exist in the ADA that have existed for over a decade in the Rehabilitation Act. For example, reasonable accommodations which do not provide an undue burden and are limited by business necessity and safety are principles which can be defined by a decade of experience.

Technical assistance is instrumental in providing these definitions to the private sector. A thorough understanding of these principles will greatly hasten the implementation and practice of this important piece of legislation.

Given the comprehensive nature of the ADA, I believe it is our obligation to see that people with dischillities understand their new rights under the bill and that employers and businesses understand the nature of their new obligations.

The PRESIDING OFFICER. Is there further debate?

The Senator from New Mexico.

Mr. DOMENICI, Mr. President, unless the distinguished minority

Page 104 of 191

the ADA? That is, can we assure employers that they will not face litigation under the ADA by current users of illegal drugs and alcohol? Mr. HARKIN. Let me state it as

clearly as I can. Users of illegal drugs, including those addicted to illegal drugs, are not protected by the ADA, regardless of whether the employee or applicant is otherwise qualified and the employee is meeting performance standards.

The technical amendment with respect to lilegal drugs and alcohol was made to remove any question about the meaning of the statutory language. Although many of us believe that the language of the bill, as rcported, was clear, others criticized the bill as being too vague with.rcspect to the issue of the use of illegal drugs.

The new language assures employers that they need not worry about having to defend actions brought by casual drug users, who are not covered under the act. The act does protect drug addicts who are not current users. And we all agree that people who use controlled substances under medical supervision, are unaffected by this provision of the act.

With respect to drug testing, the ADA explicitly states that nothing in the act prohibits or restricts either drug testing or employment decisions taken on the basis of such drug tests. Therefore, an applicant who is tested and not hired because of a positive test result for illegal drugs, or an employee who is tested and is fired because of a positive test result for illegal drugs, does not have a cause of action under the ADA. If an employer performed a test which actually measured the current use of illegal drugs and the test was positive for the use illegal drugs, the applicant or employee has no protection under the ADA. It is not a question of the employer having a defense in an action by the applicant or employee. The employer needs no such defense because the applicant or the employee has no cause of action.

So, I think we can assure the Senator and employers, without hestitation, that employers will not face litigation under the ADA on the part of current users of illegal drugs and alcohol either for testing or for taking disciplinary action against such individuals based on such testing.

Mr. ARMSTRONG. Mr. President, I have not had a chance to see the amendment. This is a matter of interest to me. Do we have a copy of the amendment?

Mr. HARKIN. It is at the desk. We tried to clear this with both sides. I thought it had been cleared.

Mr. President, in the meantime, I ask unanimous consent that we can move ahead in the interest of time to accommodate the distinguished minority leader. I move to set aside the amendment.

The PRESIDING OFFICER. Without objection, the amendment will be set aside.

WE, THE UNDERSIGNED RESIDENTS OF THE TIMBERS, 2021 N. OLD MANOR, WICHITA, KANSAS 67208, WOULD LIKE THE ADA FOR THE 4th OF JULY!!!

de, the undersigned, demand the Benate adopt the conferrence committee report on the ADA.

Sylv

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This document is from the collections at the Dole Archives, University of Kansas http://dolearchives.ku.edu 2 haltity all -S. Br thi a ~ Senate adopt the conferrence committee the undersigned the е. Hemand eport on the ADA. Julie Chist 5 - -

THE TIMBERS

(CEREBRAL PALSY RESEARCH FOUNDATION OF KANSAS, INC.)

PH: 688-1888

2021 N. OLD MANOR WICHITA, KS 67208 CONTACT: Judy Cotton, Director of Admissions

SERVICES AVAILABLE: Maintains a non-medical independent living center which provides one- and two-bedroom accessible apartments for the physically disabled and elderly.

ELIGIBILITY REOUIREMENTS: 18 years of age and older, medically stable; normal intelligence; emotionally stable; not in need of supervision; possess potential for communication; possess bowel and bladder control; and physically disabled or elderly.

FEE SCALE: 30% of total gross income for rent and electricity. Difference is paid by the Department of Housing and Urban Development. This is a "Section 8, Rent Subsidy Project".

APPLICATION PROCEDURE: By phone.

HOURS OF OPERATION: 8:30 a.m. to 5:00 p.m., Monday through Friday.

BARRIER-FREE ACCESS: Ramp; ground floor; handicapped-accessible.

TRANSPORTAION: Yes, but there is a charge.

PARKING: Free.

SOURCE OF FUNDING: Federal government, Department of Housing and Urban Development.

Mauren -

This info on the Timbers is from OUR COMMUNITY RESOURCE Directory - FYI

TIMBERS TXTCRD JW5/14/86

DEPARTMENT OF HUMAN RESOURCES COMMISSION ON DISABILITY CONCERNS 1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877 913-296-1722 (Voice) •913-296-5044 (TDD) • 561-1722 (KANS-A-N)

Mike Hayden, Governor

VSAS

June 7, 1990

Ray D. Siehndel, Secretary

ADA ALERT: CONFERENCE COMMITTEE CONTACTS NEEDED NOW The Senate appointments to the conference committee are: Ted Kennedy, Tom Harkin, Howard Metzenbaum, Paul Simon, Orrin Hatch, Dave Durenberger, James Jeffords, Earnest Hollings, Daniel Inouye, John C. Danforth.

The House appointees are: Democrats - Hoyer, Hawkins, Major Owens, Martinez, Dingell, Markey, Thomas Luken, Anderson, Roe, Mineta, Brooks, Don Edwards, Kastenmeier, Chapman. Republicans -Bartlett, Fawell, Lent, <u>Whittaker</u>, Hammerschmidt, Shuster, Fish, Sensenbrenner.

The conference committee can make changes to the ADA for further consideration by both chambers. Please contact as many as possible immediately! They are expected to report on June 12.

This is our final opportunity to delete weakening provisions such as the Chapman amendment which allows employers to bar people with communicable diseases from food-handling jobs. Although medical research has shown that AIDS cannot be transmitted through food-handling, facts were not a consideration
page 2

when the amendment was adopted, only unfounded fear. This amendment is particularly threatening because the ADA definition of disability includes people who are "regarded as having a physical or mental impairment".

Therefore, employers will be allowed to legally discriminate against anyone whom they <u>regard</u> as having such a communicable disease, regardless of the validity of their assumption. For example, it may allow an employer to deny a food-handling job to a person who has had polio if the employer <u>regards</u> that person as having a communicable disease.

As some of us remember, the Department of Justice under Reagan attempted a similar, but ill-fated strategy in proposing a rule that concerned communicable diseases. Lastly, the ADA has other safeguards against people with disabilities being in jobs if they present a direct threat to the health and safety of themselves or others. These safeguards render the Chapman amendment unnecessary and superfluous.

Feel free to use this information when contacting the ADA Conference Committee. We must make the ADA strong; we are the ones who must live with it.

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page 3

Any U.S. Representative may be contacted as follows: Representative (Name) U.S. House of Representatives Washington DC 20515

Any U.S. Senator may be contacted as follows: Senator (Name) U.S. Senate Washington DC 20510

Telephone contacts can be made by dialing the congressional switchboard operator: 202-224-3121

\adacc3



Mike Hayden, Governor

July 7, 1990

Ray D. Siehndel, Secretary

ADA BULLETIN: RECENT SENATE ACTION

On June 6, 1990 the U.S. Senate voted 53-40 to instruct the Senate ADA Conference Committee members to <u>accept the Chapman</u> <u>amendment</u>. The instruction to the conference members is not binding, but a majority of senators (53) have expressed their intent to accept the amendment. It is <u>crucial</u> that as many calls as possible be made to the conference committee, demanding REJECTION OF THE CHAPMAN AMENDMENT.

We have seen the ADA being slowly eroded since it was introduced last year. If the Chapman amendment is accepted, I will recommend to my board that KCDC oppose the ADA and I will encourage all others to do likewise. If you agree, please let the conference committee know.

The insidiousness of the Chapman amendment lies in its endorsement of irrational public attitudes toward all people with disabilities. It perpetuates the damaging myth that disabled people are sick and that association with us will result in sickness for the general public. Please take action NOW.

page 2

Senator Dole's office has informed us that the senate did not vote to approve the Chapman Amendment; they voted to instruct the senate conference committee members to consider the amendment. Senator Dole voted for the committee to consider only to assure staunch opponents (eg. Senator Jessie Helms, R-NC et al.) that the amendment would receive due consideration, rather than be rejected out of hand. Further, if an up-or-down vote were to be taken on the Chapman Amendment, Senator Dole would vote against it. We must now demand that the conference committee drop the Chapman Amendment. They are not bound by the senate vote to accept it. I have informed Dole's office that I cannot support an ADA which includes the Chapman Amendment and have encouraged him to vote against it if it does. I hope that others will convey similar messages.



Advancing psychology as a science, a profession, and as a means of promoting human welfare

July 5, 1990

The Honorable Bob Dole United States Senate SH-141 HSOB Washington, DC 20510-1601

Dear Senator Dole:

As Executive Director of the Public Interest Directorate of the American Psychological Association, I am contacting you on behalf of 105,000 members and affiliates to urge you to vote for the final Conference Report of the Americans with Disabilities Act (ADA), thereby granting civil rights protections to 43 million Americans with disabilities.

Should the Senate vote on the Conference Report before the House, it is our understanding that Senator Helms will make a motion to recommit the bill in order to reinstate the Chapman amendment that was deleted in Conference. We strongly oppose this amendment and urge you to vote against the motion to recommit.

This amendment is not needed to protect the public health and was rightly dropped by the House and Senate conferees. The final Conference Report states clearly that any person with a communicable or infectious disease who poses a significant risk to the health or safety of others will not be covered. Therefore, a food handler with a disease that can be spread through food or beverages would not be protected by the ADA. The ADA clearly specifies that the determination of risk to others must be based on current objective public health standards. The Chapman amendment would substitute the fears and prejudices of an ignorant public for these standards.

The supporters of the Chapman Amendment admit there is no scientific evidence that HIV infection can be transmitted via food or beverages but state that persons with HIV infection should be excluded from food handling jobs because the public <u>believes</u> that they pose a risk.

Such reasoning ignores the intent of the ADA, which is to eliminate discrimination based on irrational fears and false beliefs. Rather than counteracting such ignorance and fear with facts and reassurance, passage of the ADA with the Chapman Amendment would send a message to the American people that their fears are justified. This message contradicts the information provided by our public health officials that you cannot get AIDS by casual contact--including eating food prepared by a person with HIV infection.

1200 Seventeenth Street, N.W. Washington, D.C. 20036 (202) 955-7600 ннинг

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American Association of University Affiliated Programs For Persons with Developmental Disabilities

Gerald Golden, M.D. President

Robert Stempfel, M.D. President-Elect

Terrence R. Dolan, Ph.D. Past President

Ansley Bacon, Ph.D. Past President

Stephen Schroeder, Ph.D. Secretary

Carl F. Calkins, Ph.D. Treasurci

Gary W. Goldstein, M.D. Vember at Large

Clydie K. Mitchell, M.Ed. Member at Large

David O'Hara, Ph.D. Member at Large

Vicki Pappas, Ph.D. Member at Large

Cecilia Rokusek, Ed.D., R.D. Vember at Large

Richard L. Schiefelbusch, Ph.D. Iember at Large

Deborah Spitalnik, Ph.D. Jember at Large

Iolinda Stoneman, Ph.D. Tember at Large

Villiam E. Jones, Ph.D. xecutive Director

FAX TRANSMISSION SHEET

DATE: JUN 7, 1990

NUMBER OF PAGES (Including cover sheet): }

MESSAGE: Mo-

100

AAUAP

June , 1990

The Honorable Tom Harkin Chairman Labor, Health and Human Services, Education and Related Agencies, Appropriation Subcommittee SD-186 Dirksen Dirksen Senate Office Bldg. Washington, D.C. 20510

Dear Tom:

I am writing you concerning the fiscal situation of both the Kansas Center for Mental Retardation and Human Development at Kansas University (KU) and the Eunice Kennedy Shriver Center for Mental Retardation affiliated with the Fernald State School in These two Mental Retardation Research Centers Waltham, Mass. (MRRCs) currently receive core administrative support through the National Institute of Child Health and Development (NICHD). Given your outstanding record of leadership on behalf of persons with mental retardation and other developmental disabilities, I feel confident we can count on your support.

I was recently informed that the Shriver Center and KU submitted applications to the Institute in this fiscal year, which fell into the "approved, but unfunded" category; these applications were required as part of a broader national competition initiated by NICHD some years ago. Consequently, if they do not compete successfully in the next peer review cycle, both of these centers will be phased out by the end of FY 1991.

Furthermore, as I understand it, the Shriver Center and the KU program will be competing directly against the MRRCs at both Boston Children's Hospital and the University of Wisconsin for only two funding slots in the FY 1991 competition (along with other prominent universities from across the United States).

I consider the loss of any of these existing centers to be unacceptable. It requires years of investment to develop a high quality research infrastructure, all of which would be lost without additional support. Moreover, the national network of MRRCs have made extraordinary contributions to our Nation's efforts to prevent mental retardation and other developmental disabilities. For example, their most well known research achievement was the discovery of Fetal Alcohol Syndrome in the mid-1970's and the development of techniques designed to prevent In addition, phenylketonuria (PKU), a metabolic disorder it. that previously caused irreversible mental retardation in thousands of Americans, is now entirely preventable with a simple dietary supplement. In fact, the vast majority of states (including Kansas, Iowa and Massachusetts) now require PKU testing at birth using a screening method also devised by the MRRCs.

In view of this outstanding record as well as the exciting new research that the Shriver Center and KU are now pursuing in the areas of gene therapy and molecular biology, I urge the creation of two additional MRRCs in FY 1991 at a total cost of \$1.5 million. Using this method, we dramatically increase the prospects of retaining all the centers now at risk. However, I do not favor earmarking federal dollars for the specific institutions. I have great respect for the quality of research conducted at KU and the Shriver Center. If the two additional funding slots are created for the upcoming competition, I am very confident that both these MRRCs will submit successful applications.

AAUAP

In closing, let me also point out that for the last three. consecutive fiscal years, NICHD has issued Professional Judgment Budgets calling for an increase in the number of these centers. Clearly the Institute itself acknowledges the interest of nationally recognized universities in mental retardation research and the scientific merit of the existing centers. In my view, federal policy should encourage both strong competition within as well as the growth of the MRRC network.

Because you are one of the Senate's leading voices on behalf of persons with developmental disabilities, I know that you will give this request every consideration.

Sincerely,

Bob Dole Minority Leader This document is from the collections at the Dole Archives, University of Kansas http://dolearchives.ku.edu



Leadership Conference on Civil Rights

2027 Massachusetts Ave., N.W., Washington, D.C. 20036 202/667-1780

June 6, 1990

Roy Wilkins* OFFICERS CHAIRPERSON Benjamin L. Hooks VICE CHAIRPERSONS Judith L. Lichtman Antonia Hernandez SECRETARY **Dorothy Height** TREASURER Gerald W. McEntee LEGISLATIVE CHAIRPERSON Jane O'Grady COUNSEL Joseph L. Rauh, Jr. HONORARY CHAIRPERSONS Marvin Caplan Clarence M. Mitchell, Jr.* EXECUTIVE COMMITTEE **Owen Bieber**

FOUNDERS Arnold Aronson A. Philip Randolph*

International Union of United Automobile Workers Kenyon C. Burke National Council of Churches Jacob Clayman National Council of Senior Citizens Jerome Ernst National Cathol lic Conference for Interracial Justice Keith Geiger National Education Association Morton Halperin American Civil Liberties Union Paul M. Igasaki Japanese Americans Citizens League John E. Jacob National Urban League Elaine Jones NAACP Legal Defense & Education Fund, Inc. Leon Lynch United Steelworkers of America Sharon Rodine National Women's Political Cau Nancy Neuman League of Women Voters of the U.S. Melanne Verveer People For The American Way **David Saperstein** Union of American Hebrew Congregations Molly Yard National Organization for Women Patrisha Wright Disability Rights Education and Defense Fund Kenneth Young

> Raul Yzaguirre National Council of La Raza COMPLIANCE/ENFORCEMENT COMMITTEE William Taylor, Chairperson

> > STAFF EXECUTIVE DIRECTOR Ralph G. Neas ADMINISTRATIVE ASSISTANT Lisa M. Haywood GRASSROOTS COORDINATOR Mimi Mager

> > > (*Deceased)

Dear Senator:

When the Americans with Disabilities Act comes before the Senate, it is expected that Senator Helms will move to instruct the conferees to accept a food handler AIDS amendment that was narrowly approved by the House of Representatives (the Chapman amendment). We urge you to oppose Sen. Helms' motion. The Chapman amendment would allow an employer to remove an individual suspected of having AIDS from any job involving food handling whether or not that person has AIDS. Your vote against the Helms motion will be an important vote against bigotry and irrational fear.

HHS Secretary Louis Sullivan, the Centers for Disease Control, and the American Medical Association all told Congress that this amendment is unnecessary and inappropriate. The ADA bill already explicitly provides that anyone who poses a direct threat to the health and safety of others is <u>not</u> protected under the bill.

As Congressman John Lewis, so eloquently argued on the House Floor, "The Chapman amendment seeks to divide us, to segregate us, to discriminate against us." A vote for the Helms motion to instruct would be a vote to foster the very type of irrational discrimination that the Americans with Disabilities Act is intended to eliminate.

On behalf of the Leadership Conference on Civil Rights, we urge you to vote against the Helms motion to instruct.

Ralph G. Neas Executive Director

Sincerely,

Benjamin L. Hooks Chairperson This document is from the collections at the Dole Archives, University of Kansas http://dolearchives.ku.edu

July 5, 1990 Page 2

It would also send a message that discrimination against persons with HIV infection is acceptable despite the fact that the President's Commission on AIDS, and numerous scientific organizations and public health experts have all asserted that HIV related discrimination is impairing the nation's ability to limit the spread of the epidemic.

To codify discrimination within a bill whose main purpose is to end discrimination is sadly ironic. On behalf of psychologists around the country and in your district I strongly urge you pass the final Conference Report of the Americans with Disabilities Act and oppose the Chapman motion to recommit.

Sincerely,

James Jones, Ph.D. Executive Director Public Interest Directorate



Mike Hayden, Governor

July 2, 1990 ADA ACTION ALERT

Ray D. Siehndel, Secretary

The Americans with Disabilities Act is stalled in congress. All members of our congressional delegation are home for the July 4 recess. The National Restaurant Association and National Federation of Independent Businesses (traditional foes of civil rights) are continuing their campaign to defeat the ADA. We have approximately one week before congress convenes on July 10th to counteract the opponents' lobbying. Enclosed is information you can use to contact your representative and both senators. The message is simple: "ACCEPT THE CONFERENCE COMMITTEE REPORT ON THE ADA." Once again, we need hundreds of contacts to be effective. Please call, FAX, write, telegraph or personally meet with your representative and our senators. And, just as importantly, get everyone you can to do the same. We have waited long enough. We need the ADA passed as it was reported out of conference committee NOW!

Dear Sevator Dole ;

As a pavalegic (shot in 1946) Jam very much against this piece of legislation (That so much of my tar chi Pages

This document is from the collections at the Dole Archives, Upiversity of Kansas Ar His, Attp://dolearchives.ku.edu by by Ar His, As a hardicapped individual when We didn't have ramps, rehabilitet."on or 504 I realize how good we kow have it - (I an a postmester - in wheelcheir) Nove it - (an oil field contactor Please don't give the handicapped that feel as if they seed to punish society for their mistortune the tools (ADA) to do it. Opportunity is there for those that Will work, and work for the education they need (504), Place vote against this unrecessory legislation - and vote for the tarpayers that provide housing, food, recreation, education & core for these succionducts, Don Boumer Code 1/1 KS 67630

The Honorable Bob Dole Senate Minority Leader United States Senate Washington DC 20510

Dear Senator Dole:

Thank you for your unwavering support for the Americans with Disabilities Act (ADA). I am sure the last few weeks have been tough for you. On the one hand, in your position as Minority Leader, you have had to accommodate members of your party who are not advocates of a strong ADA. On the other hand, I know you have also received some harsh criticism from disability rights advocates who may not fully understand the intricacies of Senate rules and procedures (I must admit at times I find them are a bit confusing myself) as well as you do ,Senator. Throughout all this turmoil you have steadfastly stood in support of the ADA and I, for one, am extremely greatful that you are on our side.

Sincerely,

Sok

Kevin Siek R.R. 5, Box 181B Lonestar KS 66046

July 5, 1990

The Honorable Nancy Kassebaum United States Senate Washington DC 20510

Dear Senator Kassebaum:

When the conference report on the Americans with Disabilities Act (ADA) comes up for limited floor debate in the Senate next Tuesday (July 10, 1990) I urge you to limit your debate to the controversial Grassley Amendment. The majority of ADA advocates believe that the protection provided in the bill for congressional employees should be equal in both houses. We want only the recourse that is afforded other protected minorities. We are not asking for favoritism, but equality.

The main concern in the disability community is that the Chapman Amendment will once again rear it's monstrous head. In the words of Liz Savage, one of the leading lobbyists for the ADA, "We feel... that this amendment is so antithetical to the whole bill that the disability community couldn't support the bill with the amendment in it".

It would be a terrible waste for the president, members of Congress and disability rights activists to come this far only to lose it all because of this one amendment. Therefore, I urge you to work for swift resolution of the Grassley Amendment in the Senate and a compromise that will still have the support of the very people this bill was designed to protect.

Sincerely,

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Kevin Siek R.R. 5, Box 181B Lonestar KS 66046



July 6, 1990

The Honorable U.S. Senator Bob Dole 141 Hart Senate Office Bldg. Washington, DC 20510

Dear Senator Dole,

I am wanting to again express my appreciation of your continued work and effort to see the eventual passing of S.933, The Americans With Disabilities Act. Being the strongest disability related legislation ever prepared in this country, we find it to be a very volatile subject at times. I know that many disability organizations have chosen to force you into a very uncomfortable, and in my opinion, unwarranted position.

I want to make sure you know that there are many of out here that very much appreciate your strong but cautious approach to the passage of the ADA. After all, none of us wants the wrong piece of legislation passed either. In fact, the man who would put their name on a document without arguing its content or intent would be foolish.

We support your efforts to protect the ADA. Please keep it up.

Very respectfully yours,

Michael DonnetTy Executive Director

MD:1p

P.S. We sincerely hope to see you at the Second Kansas Disabilities Caucus in September. m.d.

Page 123 of 191



Mike Hayden, Governor

July 3, 1990

Ray D. Siehndel, Secretary

TO: Kansas Congressional Delegation FROM: Michael Lechner, Executive Diffector SUBJECT: Action on the Americans with Disabilities Act (ADA)

When Congress takes up the ADA (S.933), please support efforts to retain the bill in the Senate. If the House accepts the ADA Conference Committee Report first, it is extremely doubtful that the Senate will pass the ADA with the amendment that permits a private right of action for Senate employees. I believe the Senate will work to expedite a compromise which will reflect equal coverage for both legislative chambers <u>without</u> a private right of action.

Also, please oppose any attempts to reinstate the Chapman amendment. Thank you.

(Please see enclosed for additional information.)

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Mike Hayden, Governor

July 3, 1990

Ray D. Siehndel, Secretary

TO: ADA Advocates

FROM: Michael Lechner, Executive Director SUBJECT: ADA Killer Amendment

I spoke to Senator Dole's office and recommended that the ADA be held back from the House in order that the coverage of the Senate and House under the Grassley amendment can be made equal through limited debate on the Senate floor. I intend to make that recommendation to the Kansas congressional delegation and the leadership of both chambers. I do not believe Dole is delaying the ADA as do advocates in Washington DC; I think he is saving it. Read the congressional record. If you do not have a copy, contact me at the address or phone # above.

Whether intentional or not, the fact is the Grassley amendment will prove to be the "Killer Amendment" for the ADA. The private right of action for Senate staff was included in the coverage for the Senate, even though such a provision has NEVER been allowed by the Senate in its entire history. Can we seriously think that the Senate is willing to dump its sacrosanct

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immunity for a "bunch of gimps" when they have never afforded such protection to other, better organized, better financed and politically more powerful groups? (If so, would you like to buy a little seaside property in Utah?)

Then, Orrin Hatch signed off on the conference committee report, complete with the Grassley amendment. After that, Hatch opposed the provision for the private right of action, claiming a staff member had misinformed him. He is now adamantly refusing to move the bill until some solution is worked out.

Several questions arise out of this scenario: (1) Was Grassley really seeking to protect disabled employees of the Senate or was he grandstanding while sabotaging the ADA? (2) Did Orrin Hatch really sign onto the report without knowing what he was doing? [It worked for Reagan.] (3) Why doesn't the democrat Majority Leader George Mitchell, do something?

Most Iowans know Grassley has a continuing feud with Tom Harkins. Both are Senators from Iowa. Grassley uses every opportunity to try to make Harkins look bad. I believe Grassley knew the effect of his amendment. He certainly knew that it was previously rejected when S. 933 was being considered in the Senate. Did he really expect the Senate to change its mind? -3/4-

Did Hatch really sign off on the conference committee report without knowing what was in it? I think Hatch knew what he was doing. He's has been around long enough to know what he is signing, particularly if he was taking part in discussions on the ADA as a conference committee member. Further, despite his conservative bent, Hatch is a pretty smart cookie, as witnessed in his debates of other topics on "McNeil-Leherer" for instance. By his action, he has placed Senator Dole in an untenable situation. Dole must either release the report to the house and, by so doing, guarantee bipartisan rejection of the ADA in the Senate if the house approves the conference report.

Why isn't Mitchell doing something? Maybe he would if he weren't getting a free ride on this one. I would be interested in knowing if any of his constituents have contacted him to ask his position on the ADA conference committee report and the Grassley amendment. If he supports the report, then he should be moving the bill. I'll bet he's not. No senatorial majority, regardless of party affiliation, truly wants the private right of action. It's easier to blame the opposing party.

-4/4-

Regardless of this scenario's validity, the effect will be the same: ADA becomes, not the Americans with Disabilities Act, just Another Dead Act.

If this makes sense to you, I invite you to contact the leadership in both chambers and request the ADA be acted upon by the Senate first. It is possible that Chapman will be again discussed, but it's easier for us to use our limited resources to defeat it again than to start over again. I assure you that Grassley will make that option our only other choice.

/d

July 9, 1990

THE CHAPMAN AMENDMENT TO THE AMERICANS WITH DISABILITIES ACT

"FOOD HANDLING JOBS.--It shall not be a violation of this Act for an employer to refuse to assign or continue to assign any employee with an infectious or communicable disease of public health significance 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 <u>for which the employee would sustain</u> no economic damage."

Dear Senator:

On Tuesday, the conference report on the Americans With Disabilities Act is expected to be considered. At that time, a motion to recommit the conference report with instructions to accept the Chapman Foodhandling Amendment will be offered. The conference committee stripped the Chapman Amendment from its report less than three weeks after the full Senate voted to instruct them to accept the language. We urge you to support the motion to recommit with instructions.

The Chapman Amendment was narrowly drafted to enable employers--not require employers--the flexibility to assign or reassign employees with infectious and communicable diseases, such as AIDS, to nonfoodhandling positions. It makes it clear that the employer must make an offer of an alternative employment opportunity for which the employee is qualified and FOR WHICH THE EMPLOYEE WOULD SUSTAIN NO ECONOMIC DAMAGE.

We feel the Chapman Amendment strikes a balance for food industry operators who must respond to current public health concerns while allowing those with infectious and communicable diseases the opportunity to continue their employment and maintain their standard of living.

The Senate has already cast its vote in support of including the Chapman language as has the House of Representatives. On behalf of the millions of employers and employees we represent, we ask that you allow the democratic process to take its course and support the motion to recommit with instructions to retain this critical amendment.

Sincerely,

National Restaurant Association National Federation of Independent Business Foodservice and Lodging Institute National Association of Convenience Stores International Foodservice Distributors Association National Licensed Beverage Association National Turkey Federation National Association of Meat Purveyors American Meat Institute National Broiler Council National Pork Producers Association Leading the Foodservice/Hospitality Industry

1200 SEVENTEENTH STREET, N.W., WASHINGTON, DC 20036-3097 202/331-5900 FAX: 202/331-2429



July 9, 1990

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Dear Senator:

On behalf of the National Restaurant Association, I want to again stress the importance of the Chapman Amendment to the Americans With Disabilities Act to our industry. We urge you to support all efforts to include this language in the conference report before enacting this sweeping legislation.

When the Senate convenes today, it is expected to consider the ADA conference report. At that time, a motion to recommit with instructions to accept the Chapman Amendment will be offered. This action is necessary because the conference committee stripped the Chapman Amendment from its report less than three weeks after the full Senate voted to instruct its conference to accept the language and after the House approved the measure by a vote of 199-187.

The Chapman Amendment addresses the issue of employees with infectious or communicable diseases who work in foodservice establishments. Specifically, the amendment would allow employers to move workers with communicable or infectious diseases, like AIDS, out of positions where they are handling food into alternative positions within the establishment. It makes clear that the position must be one for which the employee is qualified and FOR WHICH THE EMPLOYEE SHALL SUSTAIN NO ECONOMIC DAMAGE.

Without this addition to the Americans with Disabilities Act, foodservice establishments throughout he nation would be faced with an impossible choice. They could either violate the Act in an effort to reassure the public about food safety, or comply with the Act and risk a dramatic loss of business that may result in bankruptcy. When bankruptcy occurs, everybody losses--the business owner, all of the employees, and particularly, the disabled individual who will no longer be able to maintain his or her standard of living.

The Senate has already cast its vote in support of including the Chapman language as has the House. We urge you to let the democratic process take its course and let the Chapman Amendment become law.

Sincerely ark Orman

Mark A. Gorman Senior Director

Enclosures 2

Leading the Foodservice/Hospitality Industry

1200 SEVENTEENTH STREET. N.W., WASHINGTON, DC 20036-3097 202/331-5900 FAX: 202/331-2429

WHAT IS THE CHAPMAN FOOD-HANDLING AMENDMENT?



The Chapman food-handling amendment would allow employers to move an employee with a communicable or infectious disease of public health significance out of a food-handling position while making a reasonable accommodation of an offer of reassignment to another position for which the individual is qualified and for which the employee would sustain no economic damage.

DOESN'T THE BILL ALREADY ADDRESS THIS PROBLEM?

The way the bill is presently drafted, an employer could only move an employee out of a food-handling position if that employee posed a significant risk to the health and safety of others. In the case of AIDS for example, the employee would not pose a significant risk to the health and safety of others because you can not get AIDS from food, drink or casual contact.

THEN WHY IS THIS AMENDMENT NECESSARY?

A restaurateur's livelihood depends largely on public perception. If the public perceives a health risk -- rightly or wrongly, whether or not based on ignorance or irrational fears -- the damage to a business could be severe.

The unfortunate reality is that there are Americans who panic at the mention of the word AIDS and would refuse to patronize any foodservice establishment if an employee were known to have the disease. For the restaurant with an employee known to have AIDS, it could very well translate into business failure -- all customers would need to do is go to another establishment down the street.

WHAT ABOUT OTHER COMMUNICABLE OR INFECTIOUS DISEASES SUCH AS HEPATITIS, DIPHTHERIA, MENINGITIS, ETC.?

These diseases are covered under most state and/or local sanitation ordinances, most of which are based on the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration manual.

They require the foodservice establishment to remove that person because they pose a "direct threat" or "significant risk" to others.

DOESN'T THIS AMENDMENT CONTRADICT THE GOALS OF THE ADA IN TERMS OF PROTECTING WORKERS AGAINST DISCRIMINATION BASED ON AN IRRATIONAL FEAR?

Inasmuch as AIDS is not a foodborne illness, this amendment would contradict the legislation. This is, however, a time when tremendous emphasis is being placed on the safety of our food. Everyday there are articles in the newspaper telling us about pesticide residues in food, what the nutrition content of our food is, and basically what is good for us and what is not. Unfortunately, there are many Americans who panic at the mention of the word AIDS and would refuse to patronize any food establishment if an employee were known to have the disease.

Equal access to all is a laudable goal. There are some exceptions that have to be made, however. We must limit the number of casualties -- not only the businesses themselves, but all their employees who will lose their salary and benefits if the business closes.

WHAT BUSINESS GROUPS SUPPORT THIS AMENDMENT?

National Restaurant Association National Federation of Independent Business Foodservice and Lodging Institute National Association of Convenience Stores International Foodservice Distributors Association National Licensed Beverage Association

National Turkey Federation National Association of Meat Purveyors American Meat Institute National Broiler Council National Pork Producers Association

July 9, 1990

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Federal	Bureau	of	Pri
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Number	181-89(6100)
Date	November 30, 1989
Subject	Human Immunodeficiency Virus (Treatment/Prevention)

X

Operations Memorandum

Cancellation Date September 30, 1990

I. PURPOSE:

To affect changes in Operations Memorandum 99-88(6100), September 28, 1988, Human Immunodeficiency Virus (HIV).

II. OPERATIONS MEMORANDA RESCINDED:

O.M. 99-88 (6100) Human Immunodeficiency Virus

- III. DIRECTIVES REFERENCED:
 - P.S. 5214.3 Procedures for Handling of HIV Positive Inmates Who Pose a Danger to Others.
 - P.S. 5050.41 Procedures for the Implementation of Title 18, Section 4205 (g).

Rules cited in this Operations Memorandum are contained in 28 CFR 541.60 through 541.68 and 549.10 through 549.18.

IX. WORK ASSIGNMENTS:

HIV antibody screening shall not be performed as a criterion for work detail assignments. However, <u>known</u> <u>HIV positive inmates shall not be assigned to Food</u> <u>Service or the Hospital. This policy is established to</u> <u>paintain order within the institution. Under normal</u> circumstances, (casual, work place) there is no possibility of viral transmission.

This document is from the collections at the Dole Archives, University of Kansas http://dolearchives.ku.edu

Consortium for Citizens with Disabilities

June 6, 1990

Dear Senator:

The Consortium for Citizens with Disabilities (CCD) urges you to oppose a motion to instruct on the "foodhandlers amendment" to the Americans with Disabilities Act (ADA). Contrary to the claims of the National Restaurant Association, the foodhandlers amendment wholly contradicts the spirit of the ADA by undermining the protections of the bill and perpetuating needless discrimination.

The foodhandlers amendment is based on irrational fears and misperceptions about people with AIDS and HIV disease. People with disabilities are all too familiar with such prejudicial attitudes because they have been similarly shunned by the same kinds of stereotypes.

For instance, people with mental retardation have often been institutionalized based on numerous misperceptions, including the unfounded fear that this condition is contagious. In the same vein, people with polio, in other generations, were subjected to panic-induced discrimination even though this viral disease has a limited contagion period of two weeks. Because massive misperceptions about the disease persisted, individuals with the disease were isolated and segregated. Even decades after the epidemic, children with polio were separated from other children in schools and adults were denied employment.

Although it's hard to believe today, the fear of epilepsy was once so great that people with this disease were believed to be possessed by the devil and were shut out of schools and the workforce. Even cancer was once thought to be contagious and resulted in discrimination.

The foodhandling amendment reinforces misperceptions about diseases that do not pose a risk to the public. It will send a message to the public that AIDS can be transmitted through food, even though this is not true. This is irresponsible. It undercuts all the public education efforts that have been spear-headed by the government over the last five years to teach people the facts about the disease.

If Members of the Senate have concerns about diseases that do pose a direct threat to the health and safety of the public, they should rest assured that this has already been addressed by the legislation. The Senate-passed version of the ADA (S. 933) already explicitly states that any individual with a contagious disease would not receive protections under the Act if they pose a direct threat to the health and safety of other that cannot be removed by reasonable accommodation. The Senate voted to incorporate this language in the Civil Rights Restoration Act and Fair Housing Amendments Act to allay fears about the contagiousness of the disease.

Proponents of the foodhandlers amendment contend that it is needed because of perceptions that HIV disease can be transmitted through the handling of food, even though they themselves admit that these perceptions are false. The ADA is intended to prohibit employment discrimination based on irrational fears and stereotypical perceptions.

We strongly disagree with the National Restaurant Association's assertion that this amendment is "fully in the spirit" of the Americans with Disabilities Act. Persons with disabilities and their friends and families believe that the spirit of the ADA is to end discrimination based on ignorance and prejudice, not to foster it.

For people with disabilities, including those with HIV disease and AIDS, the ADA offers promise that they will no longer be shunned and isolated because of the ignorance of others. We strongly urge you, on behalf of millions of citizens with disabilities, to oppose any motion to instruct on the foodhandlers amendment. Thank you.

Sincerely,

Affiliated Leadership League of and for the Blind Alexander Graham Bell Association for the Deaf American Academy of Child and Adolescent Psychiatry American Academy of Otolaryngology Head and Neck Surgery American Academy of Physical Medicine and Rehabilitation American Association for Counseling and Development American Association of the Deaf-Blind American Association on Mental Retardation American Association of University Affiliated Programs American Congress of Rehabilitation Medicine American Deafness and Rehabilitation Association American Diabetes Association American Diabetes Association American Occupational Therapy Association American Psychiatric Association American Psychological Association American Society for Deaf Children American Speech-Language-Hearing Association Association for the Education and Rehabilitation of the Blind and Visually Impaired Association for the Education of Rehabilitation Facility Personnel Association for Retarded Citizens of the United States Autism Society of America Child Welfare League of America Chronic Fatigue Syndrome Information Institute, Inc. Conference of Educational Administrators Serving the Deaf Council for Exceptional Children Convention of American Instructors of the Deaf Dearfness Research Foundation Disabled But Able to Vote Disability Focus, Inc. Disability Rights Education and Defense Fund, Inc. Epilepsy Foundation of America Gallaudet University Alumni Association Gazette International Networking Institute Goodwill Industries of America, Inc. International Association of Parents of the Deaf International Polio Network International Ventilator User Network Juvenile Diabetes Foundation Learning, How, Inc. Mental Health Law Project National Alliance for the Mentally Ill National Association of the Deaf National Association of Developmental Disabilities Councils National Association of Private Residential Resources National Association of Protection and Advocacy Systems National Association of Rehabilitation Facilities National Association of Rehabilitation Professionals in the Private Sector National Association of State Mental Retardation Program Directors National Center for Law and the Deaf National Coalition for Cancer Survivorship National Council on Independent Living National Council on Rehabilitation Education National Down Syndrome Congress National Easter Seal Society National Federation of the Blind National Fraternal Society of the Deaf

National Handicapped Sports and Recreation Association National Head Injury Foundation National Industries for the Severely Handicapped, Inc. National Mental Health Association National Mental Health Consumers' Association National Multiple Sclerosis Society National Network of Learning Disabled Adults Ngtional Organization for Rare Disorders National Organization on Disability National Ostomy Association National Rehabilitation Association National Spinal Cord Injury Association Paralyzed Veterans of America People First International Self-Help for Hard of Hearing People, Inc. Spina Bifida Association of America The Association for Persons with Severe Handicaps Tourette Syndrome Association United Cerebral Palsy Associations, Inc. World Institute on Disability



OFFICE OF THE WASHINGTON REPRESENTATIVE, 2027 Massachusetts Avenue, NW, Washington, D.C. 20036 (202) 265-2000

June 26, 1990

Dear Senator:

The American Jewish Committee (AJC) strongly urges you to support the Conference Report on S. 933, the Americans with Disabilities Act (ADA), when it comes for a vote on the Senate floor. We also urge you to oppose any procedural motion which would delay civil rights protection to over 43 million Americans with disabilities. The disabled community has waited too long for the same guaranteed rights other minorities enjoy. We cannot allow them to wait any longer. It is at this crucial point that the ADA needs your full support.

Every American deserves equal treatment under the law and must not be denied access to employment, transportation, telecommunications or public accommodations based simply on a disability. Demonstrate your commitment to ensuring the rights of the disabled by supporting the ADA.

Thank you for your attention to our views.

Sincerely,

Sholom D. Comay President

his document is from the collections at the Dole Archives, University of Kansa CONGRESSION Attp://dole.profit/gs/dyueptie RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES

> Justin W. Dart Chairperson

907 6th Street, S.W. Suite 516C Washington, D.C. 20024

(202) 488-7684 Voice Page 1\$803) 191-1370 TDD This document is from the collections at the Dole Archives, University of Kansas http://dolearchives.ku.edu JUSTIN DART, JR.

> 907 6TH STREET, S.W., APT. 516C WASHINGTON, D.C. 20024 202-488-7684 (H) 202-732-1282 (O)

June 26, 1990

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TASK FORCE ON THE RIGHTS AND EMPOWERMENT OF AMERICANS WITH DISABILITIES

907 6th Street, S.W., Suite 516C, Washington, D.C. 20024 (202) 863-0010 FAX (202) 484-1370 TDD (202) 488-7684 Voice

Appointed by Congressman Major R. Owens, Chairman, House Subcommittee on Select Education

MEMBERS

Justin Dart Chairperson

Elizabeth Boggs, Ph.D. Co-Chairperson

Lex Frieden Coordinator

Elmer Bartels Wade Blank David Bodenstein Frank Bowe, Ph.D. Marca Bristo Dale Brown Philip B. Calkins, Ph.D. David M. Capozzi, Esq. Julie Clay Susan Daniels, Ph.D. James DeJong Eliot Dober Don Galloway Keith Gann James Havel I. King Jordan, Ph.D. Paul Marchand **Connie Martinez** Celane McWhorter Oral Miller Gary Olsen Mary Jane Owen Sandra S. Parrino **Ed Roberts** Joseph Rogers Liz Savage William A. Spencer, M.D. 4 Marilyn Price Spivack Ann Vinup Sylvia Walker, Ed.D. Patrisha Wright **Tony Young**

VOLUNTEER STAFF Douglas Burleigh, Ph.D. **Gwyneth Rochlin**

SUBCOMMITTEE LIAISONS Maria Cuprill Robert Tate Patricia Laird

26, 1990

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Page 141 of 191

Consortium for Citizens with Disabilities

June 25, 1990

Dear Senator,

At long last, the civil rights of 43 million Americans with disabilities are about to be realized. Following overwhelming votes of support from the U.S. Senate last September (76 to 8 in favor) and the House of Representatives in May (403 to 20 in favor), House and Senate conferees have resolved the differences between the two bills and you will soon be voting on the Conference Report.

It is again time to vote to end discrimination based on fear, myths and stereotypes. We urge you to oppose any and all procedural actions that might come before the Senate which are aimed at delaying, weakening or killing ADA. Finally, we also urge you to vote for final passage of the Americans with Disabilities Act to guarantee the rights of our nation's citizens with disabilities. Passing the Americans with Disabilities Act just before all Americans celebrate Independence Day would bring about a real declaration of independence.

Please support the Americans with Disabilities Act. Forty-three million Americans deserve and need your vote. Thank you again for supporting our cause.

Sincerely,

This document is from the collections at the Dole Archives, University of Kansas National Organizations a Supporting the Americans with Disabilities Act of 1989

Affiliated Leadership League of and for the Blind of America AIDS Action Council AIDS National Interfaith Network Alexander Graham Bell Association for the Deaf American Academy of Child and Adolescent Psychiatry American Academy of Otolaryngology Head and Neck Surgery American Academy of Physical Medicine and Rehabilitation American Association for Counseling and Development American Association for Marriage and Family Therapy American Association of the Deaf-Blind American Association on Mental Retardation American Association of University Affiliated Programs American Baptist Churches U.S.A. American Cancer Society American Civil Liberties Union American College Health Association American Council of the Blind American Congress of Rehabilitation Medicine American Deafness and Rehabilitation Association American Diabetes Association American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) American Federation of State, County and Municipal Employees American Foundation for AIDS Research American Foundation for the Blind American Hospital Association American Jewish Committee American Nurses Association American Occupational Therapy Association American Physical Therapy Association American Psychiatric Association American Psychological Association American Public Health Association American Social Health Association American Society for Deaf Children American Speech-Language-Hearing Association Americans for Democratic Action Arthritis Foundation Association of Junior Leagues International, Inc. Association for Education and Rehabilitation of the Blind and Visually Impaired Association for the Education of Rehabilitation Facility Personnel Association for Retarded Citizens of the United States Autism Society of America Blinded Veterans Association B'nai B'rith Women Center for Population Options Center for Women's Policy Studies Child Welfare League of America Christian Church (Disciples of Christ) Chronic Fatigue Syndrome Information Institute, Inc. Church of the Brethren Church Women United Committee for Children Common Cause

page 2

Conference of Educational Administrators Serving the Deaf Convention of American Instructors of the Deaf Council of State Administrators of Vocational Rehabilitation Council for Exceptional Children **Deafness Research Foundation** Disabled But Able to Vote **Disability Focus Disability Rights Education and Defense Fund Epilepsy Foundation of America** Episcopal Awareness Center on the Handicapped The Lutheran Office for Governmental Affairs, Evangelical Lutheran Church in America Federally Employed Women Friends Committee on National Legislation Gallaudet University Alumni Association Gazette International Networking Institute General Federation of Women's Clubs Goodwill Industries of America Human Rights Campaign Fund Huntington's Disease Society of America International Association of Parents of the Deaf International Ladies' Garment Worker's Union of America International Polio Network International Union, United Automobile Workers of America International Ventilator Users Network **Juvenile Diabetes Foundation** Lamda Legal Defense and Education Fund Leadership Conference on Civil Rights Learning Disabilities Association of America Learning How, Inc. Mental Health Law Project National AIDS Network National Alliance for the Mentally III National Association of Counties National Association for Music Therapy National Association of the Deaf National Association of Commissions for Women National Association of Developmental Disabilities Councils National Association of People with AIDS National Association of Private Residential Resources National Association of Protection and Advocacy Systems National Association of Rehabilitation Facilities National Association of Rehabilitation Professionals in the Private Sector National Association of Social Workers National Association of State Alcohol and Drug Abuse Directors National Association of State Mental Retardation Program Directors National Center for Law and the Deaf National Coalition for Cancer Survivorship National Council on Alcoholism National Council of Churches National Council of Community Mental Health Centers National Council on Disability National Council on Independent Living National Council of Jewish Women National Council on La Raza

National Council on Rehabilitation Education
page 3

National Council on the Aging National Down Syndrome Congress National Easter Seal Society National Education Association National Family Planning and Reproductive Health Association National Fraternal Society of the Deaf National Gay and Lesbian Task Force National Handicapped Sports and Recreation Association National Head Injury Foundation National Hospice Organization National Industries for the Severely Handicapped National Mental Health Association National Mental Health Consumers' Association National Minority AIDS Council National Multiple Sclerosis Society National Network of Learning Disabled Adults National Network of Runaway and Youth Services National Organization for Rare Disorders National Organization on Disability National Organization for Women National Ostomy Association, Inc. National Puerto Rican Coalition National Recreation and Park Association National Rehabilitation Association National Spinal Cord Injury Association National Urban League National Women's Law Center National Women's Political Caucus NOW Legal Defense and Education Fund Older Women's League 9 to 5 - National Association of Working Women Paralyzed Veterans of America People First International People for the American Way Presbyterian Church (U.S.A.) Rainbow Lobby Self Help for Hard of Hearing People, Inc. Spina Bifida Association of America Synagogue Council of America Telecommunications for the Deaf, Inc. The Association for Persons with Severe Handicaps The Episcopal Church The Gray Panthers The National Federation of Business and Professional Women's Clubs, Inc. **Tourette Syndrome Association** Union of American Hebrew Congregations Unitarian Universalist Association of Congregations United Cerebral Palsy Associations, Inc. United Church Board for Homeland Ministries United Church of Christ, Office for Church in Society United States Student Association Issue Development and Advocacy Unit, General Board of Church and Society, The United Methodist Church Women's Equity Action League Women's Legal Defense Fund World Institute on Disability

Leading the Foodservice/Hospitality Industry

1200 SEVENTEENTH STREET, N.W., WASHINGTON, DC 20036-3097 202/331-5900 FAX: 202/331-2429



MEMORANDUM

- TO: Disability/Health L.A.s
- FROM: Mark Gorman Senior Director for Government Affairs National Restaurant Association
- RE: The Chapman amendment to the Americans with Disabilities Act.

The House of Representatives recently passed the Americans with Disabilities Act (ADA) by a 403-20 margin. During House floor consideration of the ADA bill, a number of vital improvements were made to the Committee bill. These improvements add an essential degree of flexibility and sensitivity to the ADA legislation.

Of special importance to the restaurant industry is the Chapman amendment, which was offered by Democratic representative Jim Chapman of Texas. The Chapman foodhandling amendment was approved -- with bipartisan support -- in a very close vote.

Because the vote in the House was close, and because the Chapman amendment is so important to the foodservice industry, it is expected that a "motion to instruct" the conferees to accept the Chapman language will be made on the Senate floor this week. This motion is one of several that may be offered on outstanding issues relative to the ADA bill.

The National Restaurant Association strongly urges a "yes" vote on the motion to instruct the conferees to accept the Chapman amendment.

The Chapman amendment addresses the sensitive question of employees in the foodservice industry who have contagious or infectious diseases and who directly handle food. Specifically, the Chapman amendment modifies the previous language of the ADA bill, which prohibited employers from moving employees with certain infectious diseases out of a foodhandling position and into some other job within the establishment.

Under the Chapman amendment, an employer has the option of moving an employee with an infectious or communicable disease of public health significance out of a foodhandling position and into another job within the establishment. The employee must be qualified for the position, and the employee can sustain no economic damage from the change. The Chapman amendment strikes a sensitive balance in response to a real public health concern. It provides employers with the flexibility necessary to respond to these concerns, while protecting the economic and job security of employees.

It should be pointed out that the restaurant industry is one of the most highly competitive industries in America. Profit margins are low, and eating alternatives are plentiful. Local consumer reactions to perceived public health risks can be swift and devastating.

The Chapman amendment came about in response to the fact that numerous foodservice establishments have been forced out of business because of public reactions to health rumors -- both ill and well-founded. A policy which would force restaurants to close their doors to business and let go all of their employees because of a rigid determination of the job options of one employee simply does not make sense.

We at the National Restaurant Association wish that the Chapman amendment was not needed. Because, in its definition, it includes diseases which have not been proven to be transmittable through food -- like AIDS. The National Restaurant Association has long been a leader in the effort to differentiate between the facts and the fallacies of food safety. We have committed significant financial resources to this effort. The foodservice industry also has taken the lead in employing the disabled, with a greater number of disabled Americans working in the hospitality industry than in any other sector of the economy. But the fight to end ignorance and fear is far from over. While that fight continues, it is essential that protections for both employers and employees of the foodservice industry be maintained.

Opponents of the Chapman amendment raise a number of points which should be addressed. First is the question of whether or not this language is redundant within the context of the ADA bill, as there are already exclusions from coverage for individuals with contagious diseases which pose a direct threat to the health or safety of others. For some diseases the Chapman language is redundant but for others, like AIDS, it is not.

The second point opponents of the amendment make is that the Chapman amendment caters to fear, and that "leadership and education" are required, not this amendment. The National Restaurant Association strongly agrees that continued leadership and education are needed, and we remain committed to that goal. But to reject an amendment which allows an afflicted individual to maintain his or her job, income, and dignity to avoid "catering to fear" is foolish. Rejecting this amendment, removing flexibility from the system, and limiting the options of employers will ultimately harm those that the amendment's opponents are seeking to help.

The third point made by opponents of this amendment draws parallels to earlier civil rights debates. Forty years ago, the argument goes, blacks were denied jobs in sales and retail establishments because of the fear that people would not shop at these stores. This type of discrimination was not right then and it is not right now. There are three big differences today. First, the Chapman amendment is about re-assigning workers, not denying them jobs. Second, people die from AIDS, so the fear is much more real. And third, a retail establishment with black clerks could stay in business, a restaurant with a chef with AIDS cannot.

A final argument against the Chapman amendment is that we should be legislating based on reality, not perception. The fact is that in the restaurant industry perception is reality. Perception is also reality in other areas of public law. For example, airline pilots are subject to arbitrary, mandatory retirement ages. This is not because an older, more experienced pilot necessarily jeopardizes air safety, but because the public, rightly or wrongly, perceives that to be the case. Laws are enacted to address this current public perception. Similarly, ethics laws for both federal workers and members of Congress are regularly approved because of the need to avoid even the suggestion of impropriety. This is another area where Congress has responded to a current, strongly-held public perception. It cannot be argued that laws are not or should not be enacted based on perception. It can, however, be argued that there are instances where public perception relating to an issue, like food safety, is so important that federal policies which are sensitive to perception are needed.

The Chapman amendment is a tightly crafted legislative product which will affect relatively few workers. Its enactment will not derail the ADA bill, but it will provide foodservice employers with the flexibility they need to survive. It is a sensitive approach to a delicate issue. We strongly urge a "yes" vote on the motion to instruct.

A list of groups supporting the Chapman amendment, together representing over 750,000 small and independent businesses, is enclosed for review. I have also an article making clear the type of unfortunate incidents which could continue to happen if the Chapman amendment is not agreed to. Please vote "yes" on this crucial motion.

GROUPS WHICH SUPPORT THE MOTION TO INSTRUCT

ON THE CHAPMAN AMENMDENT

National Restaurant Association National Federation of Independent Business Foodservice and Lodging Institute National Association of Convenience Stores International Foodservice Distributors Association National Licensed Beverage Association American Hotel Motel Association

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AIDS rumors hurt restaurant business

SUG δ -MILWAUKEE (AP)-Res-taurant operators and tavern owners say AIDS poses special problems for those in the food aervice industry because suc-cess relies heavily on reputa-tion and a rumor of disease can be devastating. Bill Kindt, owner of the Wreck Room, a Milwaukeg gay bar, asid he almost lost his business after the former owner, the manager and an-ther employee died of AIDS

cess relies heavily on reputa-tion and a rumor of disease can be devastating. Bill Kindt, owner of the Wreck Room, a Milwaukee gay bar, aaid he almost lost his business after the former owner, the manager and an-other employee died of AIDS in 1987. People were either embar-rassed or frightened," Kindt said "We went from being one of the most popular bars in Milwaukee to close to zero. There were times when I wan't are we were going to make it, but we did" Kindt's problem is not iso-lated in Wisconsin. Other examples include: Then of the Four Sea-sons in Eagle shut its doors ahruptly last month. Owners ad customers began staying away more than two years ago, when a false but persistent rumor spread that the owners had AIDS. —Employee health insurance

had AIDS. -Employee health insurance rates tripied for a near South Side Milwaukee restaurant and bar after two of its seven employees were diagnosed with AIDS-related complex, which

AIDS-related complex, which usually progresses into full-blown AIDS. -Complaints pending before the U.S. Equal Employment Opportunity Commission al-lege that three restaurants dislege that three restaurants dis-criminated against food serv-ice workers because of AIDS. Acquired immune deficiency syndrome is a fatal disease that weakens the immune system, leaving the body defenseleas against infections. Officials say the disease is spread mainly through sexual contact or through sexual contact or through contaminated syr-inges. Homoserual males and intravenous drug users are most at risk of contracting the

most at risk of contracting the disease._____ Elenteny and Polito said the

Elenteny and Polito said the Four Seasons succumbed to a particularity vicious and long-lasting rumor campaign. They closed the restaurant Aug. 13 after telling employes that fur telling employes that profits had plunged by more than a a third and business was down by half because of false rumors, that they had AIDS. There is no evidence to show

AIDS. There is no evidence to show AIDS can be transmitted in the process of handling food. Such a case has never been found among more than 102,000 AIDS cases reported since the U.S. Centers for Disease Control in Atlanta began keeping records in June 1981, asid Doug Nelson, direc-tor of the Milwaukee AIDS Project. The virus that causes AIDS cannot survive the high tem-

cannot survive the high tem-peratures required to cook food peratures required to cost tool and cannot survive outside the human body for longer than a few seconds, according to the Centers for Disease Control. The virus that causes ALDS is known as HIV, or human im-winded friences price

There's too much hysteria that surrounds AIDS," Neison said.

- 4



National Federation of Independent Business July 9, 1990

Honorable Robert Dole United States Senate Washington, D.C. 20510

Dear Bob:

The intent behind the ADA bill is to provide equal access to the disabled -- a worthwhile goal. While NFIB still has serious reservations about specific provisions in the bill, we will do everything possible to insure that NFIB members know their obligations under the law. However, we are deeply concerned about efforts by Congress to exempt itself from the full requirements of the ADA bill.

Over the last few decades, Congress has enacted more than a dozen major statutes that have had a serious impact on American business. However, it has exempted itself from these same provisions.

Until Congress has to live by the rules that it makes for others, it will never fully understand their implications. It seems particularly ironic that Congress believes businesses should be subject to penalty for not providing access to disabled customers and workers, but many members of Congress do not believe that disabled citizens should have the same access to remedies from legislators. Such a double standard is simply unacceptable.

On behalf of the 500,000 members of the National Federation of Independent Business, I urge you to support Sen. Grassley's efforts to fully apply the provisions of the Americans with Disabilities Act (ADA) to Congress. Furthermore, I urge you to vote to defeat any points of order made against Congressional coverage -- any such vote will be considered a <u>Key Small Business Vote</u> for the 101st Congress.

Sincerely,

John J. Motley III Vice President Federal Governmental Relations

Suite 700 600 Maryland Ave. S.W. Washington, DC 20024 (202) 554-9000 FAX (202) 554-0496

1325G



The Guardian of Small Business

MEMORANDUM OF CALL	
TO: Marci	il
YOU WERE CALLED BY-	, D, YOU WERE VISITED BY-
Rick	Harmon
OF (Organization)	Restauranteer
	PHONE NO. 9/3 37/699/
WILL CALL AGAIN	IS WAITING TO SEE YOU
RETURNED YOUR CALL	WISHES AN APPOINTMENT

MESSAGE

RECEIVED BY DATE GPO: 1990 27-947 Rage 152 of 191

BOB DOLE KANSAS

United States Senate

OFFICE OF THE REPUBLICAN LEADER

WASHINGTON, DC 20510-7020

ADA - Chapman Amundumt

Chip-AIDS issue - Rist. induction Cannot Reduce Pay

Amall community.

Can move. But cannot takes away benefits.

Out of conferma - send

back to confirmer.

High impact ou restamant undisty

James Canaday 1330 New Jersey st. Lawrence, KS 66044

006488

June 19, 1990

U.S. Senator-Kansas Robert Dole Washington, DC 20510

Dear Senator:

I am enclosing this letter addressed to AMTRAK's customer Services' Manager. This is for your information. I hope that you will sincerely consider the very serious problem highlighted in this letter.

James Canaday

James Canaday 1330 New Jersey st. Lawrence, KS 66044

June 13, 1990

Mr. Alex T. Langston Jr. Manager, Customer Relations AMTRAK

Mr. Langston:

I have just finished reading some of your correspondence exchanged earlier this year with Mrs. Becky Skinner of Garden City, Kansas. This correspondence was wholly reproduced in the May 1990 <u>Braille Monitor</u>, the publication of the National Federation of the Blind. I write to you now because I frequently travel via AMTRAK (even on the same Southwest Chief route) and because I too am blind; I am incensed that your letter of January 26, 1990 implicates blindness as a causal factor in Mrs. Skinner's boarding problem! In fact, I have traveled on AMTRAK for over thirteen years (since I was sixteen), being blind for all of those years.

In your second paragraph for example, you begin (quite commendably) with a direct apology. However, at the end of the very same paragraph you state: "Should you travel with us again, provision of such advance notice should eliminate the possibility of any repetition of the incident you described." This highly offensive passage precedes an admission that the conductor should have inspected the side of the train before clearing it to move. The comments preceding and including this quoted sentence are absolutely spurious and imply that blindness

somehow impairs train-boarding ability. No assistance of any kind could have resolved the problem Mrs. Skinner described, short of keeping the train from moving. This disregards th e fact that any

one has trouble boarding a moving train, bus or auto! You should have simply left the possible blame or fault to the Conductor or other culpable crew members. Furthermore, my lengthy and varied AMTRAK experience completely disproves the suggestion that blindness by itself impairs train boarding

An abbreviated description of my railroad passenger experience will clearly demonstrate this, beyond the dictate of common sense. I have accumulated over thirty thousand miles of AMTRAK travel, to destinations such as Lawrence, Ft. Madison (Iowa), Chicago, Sacramento, San Francisco and Salinas (California). I have ridden your Coast Starlight, Southwest Chief, Zephyr and San Joaquin routes. All of this travel has certainly included at least seventy train boardings and detrainings (your own PMGR165 of 191 word). On several occasions, I also carried heavy carry-on baggage. Some

and later a Guide Dog for independent travel. In all of my train travels, I have had absolutely no problem with boarding or detraining, but the trains always remained stationary until car doors firmly closed behind me.

Though I have experienced generally excellent service and conditions on AMTRAK, please do not mistake this letter for a testimonial. A personal concern prods me to write to you: conceivably I could suffer a similar AMTRAK service calamity and find my blindness blamed for it, as Mrs. Skinner found in your correspondence. In this, you truly "add insult to injury."

I hope that this problem does not recur. Much more, I expect greater professionalism from the AMTRAK staff regarding the proper view of blind persons. My extensive experience riding AMTRAK should certainly debunk your belief in diminished train-boarding ability among the independent blind. If you desire further information on the strengths and capacities of the blind, please feel free to write to me or the National Federation of the Blind (NFB) at this address:

> the National Federation of the Blind 1800 Johnson st. Baltimore, MD 21230

This address also serves <u>the Braille Monitor</u>, should you wish to request a subscription. This publication is available in print, cassette or Braille. I look forward to tangeable signs of AMTRAK's improving attitude toward the blind.

Yours very truly,

cc: <u>the Braille Monitor</u> cc: Robert Dole, U.S. Senator from Kansas

P.02/02



KANSAS RESTAURANT ASSOCIATION

359 SOUTH HYDRAULIC . P.O. BOX 235 . WICHITA. KANSAS 67201 . (316) 267-8383

June 28, 1990

The Honorable Bob Dole 141 Hart Senate Office Building Washington, D.C. 20510

Dear Senator Dole:

Yesterday at noon, the House/Senate conferees met on the Americans with Disabilities Act and stripped the Chapman "Foodhandlers" Amendment from the bill. KRA is very grateful to Kansas Congressman Bob Whittaker, a member of the Conference Committee, who voted to keep the Chapman Amendment in the ADA bill. The Kansas Restaurant Association also urges your support of an expected "motion to recommit" the ADA to conference committee so that the Chapman Amendment can be put back in.

The amendment language is as follows:

"It shall not be a violation of this Act for an employer to refuse to assign or continue to assign any employee with an infectious or communicable disease of public health significance 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 damage."

Your continued support of the Chapman Amendment is urgently needed and appreciated. Thank you very much.

Spacerely,

George Puckett, Executive Vice President KANSAS RESTAURANT ASSOCIATION

cc: Brad Streeter, President, Kansas Restaurant Association Colette Coleman, State Relations Director, National Restaurant Association

". . . Promoting Excellence in the Foodservice and Hospitality Industry Since 1933"



June 19, 1990

Bob Dole United States Senate Washington, DC 20510

Dear Senator Dole:

Although no longer a constituent I am hoping my time served as a Republican precinct committeeman in Johnson County will afford me a moment of your time.

I am writing to inform you of my support of Representative Jim Chapman's amendment to The Americans with Disabilities Act.

Without this amendment hotel and restaurant owners and operators will undoubtedly lose the flexibility to transfer workers with infectious diseases out of food-handling positions. It is certain that customers will refuse to patronize establishments where it is known that employees who prepare and serve food are inflicted with such an illness.

We as an industry are concerned about protecting the rights of all Americans. We can best do that by providing jobs and benefits to those in our communities. Thank you for your time and consideration.

Sincerely,

My Al

Greg A. Jones Food and Beverage Director

GJ/msp



HALLMARK CARDS INCORPORATED KANSAS CITY, MISSOURI 64141

March 21, 1990

Maureen West Legislative Assistant to Senator Bob Dole 141 Hart Senate Office Building Washington, D.C. 20510

Dear Mo:

Hopefully you won't be too surprised to hear from me again asking for your help on the Americans With Disabilities Act. The whirlwind of the new session, new legislation (i.e. the Civil Rights Act of 1990!), and other pressing business has prevented me from contacting you sooner as the bill was making its way through the House committees. Now that it is closer to a final package, I thought it would be useful to assess what if anything has been done to the provisions/issues of interest to Hallmark.

The analysis and reference you provided to us last December regarding the Senate's bill was very helpful. We have added a few more questions to the list and any clarification or explanation you have been able to glean from the House version on these matters will be welcomed. I would suggest we get the key Hallmark people to speak with you on the phone at a convenient time if that is possible.

Thank you so much for your assistance.

Simperely,

rbara Burchett

enclosure

cc: Jim Wholey

Page 159 of 191

Americans with Disabilities Act

1. Definition of "Reasonable Accommodation" as it applies to existing facilities, i.e. hotel, retail, parking

This term is not defined in S.933; the statute only lists some examples of types of accommodation that might be reasonable. Is the term expressly defined in the House legislation?

2. Modifications to Existing Facilities

The language of Title I of S. 933 does not make clear the "maximum extent feasible" language of Title II as it applies to employment. Will the House version state this clearly?

3. Definition of "Undue Hardship"

The definition of "undue hardship" is extremely vague in the Senate bill. Will the ranges of costs that employers are expected to endure before the hardship becomes "undue" be specified in the House bill?

4. Definition of "Essential Functions of the Job"

Again, this area is extremely vague. Will it be presumed that the employer has divided the workplace tasks in a reasonable manner and that all functions in existing jobs are essential?

5. Definition of "Major Life Activities"

This term is not currently defined in the statutory language. Does the House bill have a definition and does the definition preclude minor disabilities from being covered by the legislation such as a temporary disability, i.e. a broken leg?

6. Application to Drug and Alcohol Abusers

Is there a provision that clearly states that current drug and alcohol abusers would not be protected by the statute, regardless of their other disabilities, or until the drug or alcohol abuse has stopped?

7. Definition of "Renovation"

What degree of "renovation" triggers compliance with these bills?

8. Definition of "Providing a Service"

What is the definition of "providing a service"? Could they include such activities as dentist, doctor, travel agent, bank, attorney, accounting, etc.?

9. Impact on Existing Codes

How do the proposed requirements impact existing Kansas City, Missouri's Building Codes? How will the inconsistencies between local building codes and ADA requirements be rectified?

10. Accommodations for the Blind and Deaf

The language of the ADA is broad in the area of blind and deaf accommodations. Does the bill require caption strips and other business signing to be provided in braille? Must every business have someone who can interpret sign language?

11. All Service Accommodations

Will <u>all</u> business services have to be accessible to persons in wheelchairs or with other handicaps?

12. Effective Dates

What will be the effective dates? Will that include grandfather/threshold provisions?

Mo-These issues & pager correspond to Senate Report. They have been incorporated in list of questions for House.

The following are questions we have regarding the Disability Act:

- 1) What is the definition of "reasonable accomodations" as it applies to existing facilities, i.e. hotels, retail, restaurants, parking, green/open space (parks) and offices?
 - 2) What degree of "renovation" triggers 54 page: 66:67 compliance with these bills?
 - 3) What is the definition of "providing a service"? Could they include such activities as dentist, doctor, travel Suppr:58 agent, bank, attorney, accounting, etc.?
 - 4) How do the proposed requirements impact existing Kansas City, Suppy: 70 Missouri's Building Codes?
 - 5) Dates? Grandfather/threshold See page: 77

Page 162 of 191

202/331-5913



Robert A. Gifford Legislative Representative

1200 SEVENTEENTH STREET, N.W., WASHINGTON, DC 20036-3097

Leading the Foodservice/Hospitality Industry

1200 SEVENTEENTH STREET, N.W., WASHINGTON, DC 20036-3097 202/331-5900 FAX: 202/331-2429



June 19, 1990

Maureen West Office of the Honorable Robert Dole 141 Hart Senate Office Building Washington, DC 20510

Dear Maureen:

Just a short note to thank you for taking the time to meet with George Puckett and myself regarding the Chapman foodhandling amendment to the Americans with Disabilities Act.

We deeply appreciate your support for the amendment and hope you will continue to be supportive should it have to be revisited. The Chapman amendment is a sensitive approach to a delicate issue -- an issue of vital importance to the restaurant industry.

Again, thank you for your time and attention. If I or this Association can be of help to you in any way, please let me know.

Best regards,

Robert A. Gifford Legislative Representative

AL SIMPSON WYOMING

Whip Notice

United States Senate

OFFICE OF THE ASSISTANT REPUBLICAN LEADER WASHINGTON, DC 20510-7022

July 9, 1990

Dear Colleague: The schedule for the Senate is as follows:

Monday, July 9:

The Senate will not be in session.

Tuesday, July 10:

The Senate will convene at 9:30. After a period for morning business (not to extend beyond 10:00), the Majority Leader has expressed his intention to move to proceed to S. 2104, a bill to amend the Civil Rights Act of 1964. It is also possible that he may move to consider the Conference Report on the Americans with Disabilities Act. The Senate will recess from 12:30 until 2:15 in order to accomodate party policy lunches.

Wednesday, July 11:

The Senate is expected to resume consideration of S. 1970, the crime bill. A vote on final passage has been ordered for 8:00 pm.

Balance of the week:

The Majority Leader has announced that the following measures might be expected to be considered prior to the August recess: campaign finance reform, farm bill, debt limit extension, defense authorization, and any available appropriations bill. If you have questions, please call 224-2708.



Al Simpson Assistant Republican Leader Statement on Final Passage of the Americans with Disabilities Act

Senator Bob Dole June 27, 1990

Mr. President, I rise today in support of final passage of the Conference Report on the Americans with Disabilities Act.

Yesterday this body listened as Nelson Mandella challenged us to show our support for the South African struggle for equality. Today we come to the Senate floor to consider another struggle for equality -- a struggle that has challenged Americans with disabilities over the life of our nation.

I have supported the ADA because I believe it is a just and fair bill which will bring equality to the lives of all Americans with disabilities. Our message to America today is that inequality and predjudice will no longer be tolerated. Our message to people with disabilities is that "your time has come."

The Americans With Disabilities Act will empower 43 million Americans with disabilities to exercise their rights and participate in the mainstream of American life. The <u>Americans</u> with Disabilities Act will enrich our nation by supporting the talents, skills and abilities of a minority group which has up until now been on the sidelines. We are all winners as we stand in support of this legislation.

I am optimistic that this legislation will set a tone as we

enter a new decade. Just as we have seen the walls go down in Eastern Europe, we are now witnessing some of our own walls crumbling--the walls of prejudice, isolation, discrimination and segregation. We have paid dearly for our policies of the past-discrimination costs both in human terms and financial terms. Keeping people with disabilities out of the workforce and dependent on government subsidies is a policy of the past.

Let's consider what this legislation will yield in terms of opportunities for persons with disabilities. In terms of employment -- it will offer accessible environments and reasonable accomodations to empower persons with disabilities to utilize their full potential in strengthening the workforce. Transportation is the critical link to employment. This bill will result in accessible public transportation to and from the work site.

Living independently and with dignity means opportunity to participate fully in every activity of daily life, be it going to the movies, dining in a resaturant, cheering at a baseball game, communicating by phone or going to the doctor. The <u>ADA</u> offers such opportunity to persons with disabilities.

The tough but fair enforcement remedies of <u>ADA</u>, which parallel the Civil Rights Act of 1964, are time-tested incentives for compliance and disincentives for discrimination. The technical assistance efforts mandated in ADA will support two efforts critical to the mission of ADA: 1) they will inform persons with disabilities about their rights under the law and 2)

provide the necessary support to business and industry as they undertake the important job of implementing the law.

In this legislation we have not made exceptions for any specific disability. We have included persons with mental retardation and persons with cerebral palsy, even though many people fear and misunderstand those disabilities. We have included persons who are deaf and persons who are blind, even though many people misundersatnd those disabilities. We have also included people with AIDS and other diseases, even though there is a lot of fear and misunderstanding surrounding many diseases.

We have included all people with all disabilities because that's what this bill is about -- replacing misunderstanding with understanding. We have not said that you have to employ a person in a job they really cannot do, or in a setting where they will pose a danger to the health or safety of other people. What we have said is that these decisions must be made about individuals, not groups and must be based on facts, not fears.

We have had a patch work quilt up until now -- an inconsistent and piecemeal approach to disability policy. Today we move to embrace the most comprehensive civil rights legislation our nation has ever seen. Today we move to put old stereotypes and attitudes behind us -- where they belong.

And I might add that I am especially pleased to note that for the first time in the history of this body, we are actually applying a law that we pass to ourselves! Sen. Grassley's

amendment which makes the <u>Americans With Disabilities Act</u> applicable to the U.S. Congress, is an important component of this legislation. It sends a message to the small business community, the transportaion industry and other entities covered by the requirements of ADA, that we are accountable to the same standards we have set for the rest of the nation.

I would like to note that this legislation is the result of hours, days and months of hard work and negotiations on both sides of the aisle and within the disability and business communitites. These negotiations represent the beginning of the important work that lies ahead as persons with disabilities join forces with business and industry to strengthen our nation's productivity and commitment to a society of equal opportunity.

No individual in America embodies a commitment to equal opportunity more than President Bush. His unflagging support of the ADA and his continued eagerness to sign this legislation into law are evidence of unparalled leadership in the White House on behalf of persons with disabilities. Mr. President, we are proud that we have reached this juncture, and confidently send this legislation to your desk.

In 1964 this body declared discrimination illegal and laid a civil rights foundation which we build upon today. I am reminded of Martin Luther King's challenge to our nation when he said: "Let us not judge a man by the color of his skin, but rather by the content of his character." If he were alive today, I imagine he would be pleased with our efforts. Perhaps he would amend his

challenge and ask that we not judge people on the nature of their attributes, but rather judge our society on its ability to embrace the unique contributions of each of its citizens.

MEMBERSHIP OF THE NATIONAL COMMISSION ON THE AMERICANS WITH DISABILITIES ACT

In order to lend credence and visibility to the Commission, The Council recommends that Members of the Commission be appointed from among the ranks of the most successful and visible in the various fields. A list of potential appointees follows. This list is intended as examples of the types of people who would be appropriate on the Commission. It is not a recommendation or endorsement for the appointment of the particular individuals listed.

> The Honorable Robert Dole Minority Leader U.S. Senate Chairman

Beno Schmidt, President Yale University

The Reverend Billy Graham Minister

The Honorable Elizabeth Dole Secretary of Labor

Lane Kirkland, President AFL-CIO

Mr. Scully, CEO Apple Computer

Russell Redenbaugh Commissioner U.S. Commission on Civil Rights

Sandra Swift Parrino, Chairperson National Council on Disability

Mr. J.W. Marriott, President Marriott Corporation

The Honorable Steve Bartlett U.S. House of Representatives

Henry Betts, M.D., CEO Rehabilitation Institute of Chicago The Honorable Louis Sullivan secretary of Health and Human Services

A White House Representative

Mr. David Kearns, CEO Xerox Corporation

I. King Jordan, President Gallaudet University

Woman with a physical disability

The Honorable James Watkins Secretary of Energy

Representatives of Local Government

Mr. Akers, CEO IBM

President of AT&T

Representatives of Small Business

Fay Vincent Commissioner of Baseball

90 7/11 Date :___

TO: Mo 224-8952

From: Jane West FAX # 301-277-7883 Phone # 301-699-8594 Jane West 5104 42nd Avenue Hyattsville, Md. 20781

Page of

the new ast Message: Attached are the ADA Commissio. 0 have a complete OD 0 WP when Gr you the. 15 hed. Ha Nancy Jone Her to C IP DA MDU 6

ESTABLISHMENT OF THE COMMISSION ON THE AMERICANS WITH DISABILITIES ACT

The Commission could be established in one of two ways, either by executive order of the President or by a law passed by Congress. There is precedent for both types of Commissions. The Presidential Commission on the HIV Epidemic (chaired by Admiral James Watkins, ret.) was established by an executive order issued by President Reagan. The National Commission on Children (chaired by Sen. Rockefeller) was initiated by Congress and established by law.

The Commission should be made up of approximately 24 members. If the Commission was established by executive order, the President would appoint all commissioners. If the Commision was established by law, one third should be appointed by the President, one third appointed by the Senate and one third appointed by the House. Of the House and Senate appointees, half should be appointed by the majority leadership and half by the minority leadership. All appointments should be made in consultation with the National Council on Disability.

In addition to persons with disabilities and family members of persons with disabilities, the Commission should include representatives from labor and management of a range of businesses, such as the hotel and restaurant industry, sports complexes, the communications industry, the transportation industry, physicians and medical facilities, state and local governments, colleges and universities and the media.

The Commission should be established as soon as possible after the enactment of ADA. Commission members should be appointed promptly. The Commission should be fully operational within 90 days of the enactment of ADA.

The Commission will meet at least four times a year and conduct site visits and hearings. The Commission will function for two years, with an option for renewal at the end of the two year period. The Commission shall issue an initial report six months after it is established and again in one year. The final report of the Commission will be issued two years after its establishment.

The recommended appropriation level for the Commission is \$2 million per year. These funds would be used to compensate Commission members at a daily rate specified for a GS 18 of the General Schedule, for travel and meeting expenses, for general operations and for a small staff. Staff should be comprised of an executive director, six to eight professional staff and the necessary support staff.

P.04

Dr. James Billington Librarian of Congress Library of Congress Washington, D.C. 20540

July --, 1990

Dear Dr. Billington:

The Americans with Disabilities Act, the most important piece of civil rights legislation in the past 25 years, has just passed the U.S. Congress after years of complex and difficult study and negotiations in which I have been deeply involved. I would like to take this opportunity to recognize the contribution made by one of your staff, Nancy Lee Jones of the American Law Division, Congressional Research Service.

My staff and I have made extensive use of Ms. Jones' expertise in the area of disability law during all aspects of this process. In addition to extensive consultations with my staff, she prepared a scholarly analysis of the major legal issues presented by the Act for our use prior to Senate debate on the bill. Ms. Jones helped prepare my statement when I testified at hearings on the ADA on May 10, 1989, and was present with me at the hearings. Her work was often performed under very tight deadlines. It was a great help to me to have this impartial and unbiased expertise available during the course of this legislation. Ms. Jones has helped significantly in the enactment of the ADA and you are to be commended for having her on your staff.

Sincerely,

CALL WHEN RECEIVED: YES OF NO



FACSIMILE COVER SHEET

KANSAS DEPARTMENT OF HUMAN RESOURCES

71.3-254-2485-cale

FAX #: (913)296-4065 FROM: Ks. Commission on Disability Concerns 1430 S. Topeka lopeka KS 66612-1877 COST CENTER #: 3500 Den. Dole's Office TO: ATTN: Mo Wes-ADDRESS: PHONE: FAX #: 202 - 224. 8952 101 nolopendence Day lave a lapping COMMENTS: DATE: 2:00 TIME: COVER SHEET + NUMBER OF PAGES: CONFIDENTIAL: YES OF NO



Mike Hayden, Governor

ALAVA ILLUUTILA

July 3, 1990 ADA ALERT: UPDATE

Due to information recently brought to light by contacts in Washington DC, the message to congressional representatives & senators should be, "Hold the ADA in the Senate in order to work out the Grassley Amendment; continue to oppose Chapman!" If the House passes the ADA with Grassley first, it is doomed in the Senate. [See enclosure which was sent to our two electronic mail networks.]

334 ;

Ray D. Siehndel, Secretary

http://dolearchives.ku.edu

PARTMENT OF HUMAN RESOURCES

COMMISSION ON DISABILITY CONCERNS 1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877 913-296-1722 (Voice) 913-296-5044 (TDD) 9561-1722 (KANS-A-N)

Mike Hayden, Governor

ANSAS

July 3, 1990

Ray D. Siehndel, Secretary

TO: ADA Advocates

FROM: Michael Lechner, Executive Director SUBJECT: ADA Killer Amendment

I spoke to Senator Dole's office and recommended that the ADA be held back from the House in order that the coverage of the Senate and House under the Grassley amendment can be made equal through limited debate on the Senate floor. I intend to make that recommendation to the Kansas congressional delegation and the leadership of both chambers. I do not believe Dole is delaying the ADA as do advocates in Washington DC; I think he is saving it. Read the congressional record. If you do not have a copy, contact me at the address or phone # above.

Whether intentional or not, the fact is the Grassley amendment will prove to be the "Killer Amendment" for the ADA. The private right of action for Senate staff was included in the coverage for the Senate, even though such a provision has NEVER been allowed by the Senate in its entire history. Can we seriously think that the Senate is willing to dump its sacrosanct immunity for a "bunch of gimps" when they have never afforded such protection to other, better organized, better financed and politically more powerful groups? (If so, would you like to buy a little seaside property in Utah?)

Then, Orrin Hatch signed off on the conference committee report, complete with the Grassley amendment. After that, Hatch opposed the provision for the private right of action, claiming a staff member had misinformed him. He is now adamantly refusing to move the bill until some solution is worked out.

Several questions arise out of this scenario: (1) Was Grassley really seeking to protect disabled employees of the Senate or was he grandstanding while sabotaging the ADA? (2) Did Orrin Hatch really sign onto the report without knowing what he was doing? [It worked for Reagan.] (3) Why doesn't the democrat Majority Leader George Mitchell, do something?

Most Iowans know Grassley has a continuing feud with Tom Harkins. Both are Senators from Iowa. Grassley uses every opportunity to try to make Harkins look bad. I believe Grassley knew the effect of his amendment. He certainly knew that it was previously rejected when S. 933 was being considered in the Senate. Did he really expect the Senate to change its mind?

-3/4-

Did Hatch really sign off on the conference committee report without knowing what was in it? I think Hatch knew what he was doing. He's has been around long enough to know what he is signing, particularly if he was taking part in discussions on the ADA as a conference committee member. Further, despite his conservative bent, Hatch is a pretty smart cookie, as witnessed in his debates of other topics on "McNeil-Leherer" for instance. By his action, he has placed Senator Dole in an untenable situation. Dole must either release the report to the house and, by so doing, guarantee bipartisan rejection of the ADA in the Senate if the house approves the conference report.

Why isn't Mitchell doing something? Maybe he would if he weren't getting a free ride on this one. I would be interested in knowing if any of his constituents have contacted him to ask his position on the ADA conference committee report and the Grassley amendment. If he supports the report, then he should be moving the bill. I'll bet he's not. No senatorial majority, regardless of party affiliation, truly wants the private right of action. It's easier to blame the opposing party.

-4/4-

Regardless of this scenario's validity, the effect will be the same: ADA becomes, not the Americans with Disabilities Act, just Another Dead Act.

If this makes sense to you, I invite you to contact the leadership in both chambers and request the ADA be acted upon by the Senate first. It is possible that Chapman will be again discussed, but it's easier for us to use our limited resources to defeat it again than to start over again. I assure you that Grassley will make that option our only other choice.

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Page 179 of 191

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FACSIMILE COVER SHEET

KANSAS DEPARTMENT OF HUMAN RESOURCES

FROM: Ks. Commission on Disability Concerns 1430 S. Topeka Topeka KS 66612-1877	FAX #: (913)296-4065 COST CENTER #:55(X2)
TO: Sen. Dole's Office ADDRESS: ATTN: Mo West	
PHONE:	
COMMENTS:	
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Mike Hayden, Governor

July 3, 1990 ADA ALERT: UPDATE

Due to information recently brought to light by contacts in Washington DC, the message to congressional representatives & conatoro chould bo, "Wold the ADA in the Senate in order to work out the Grassley Amendment; continue to oppose Chapman!" If the House passes the ADA with Grassley first, it is doomed in the Senate. [See enclosure which was sent to our two electronic mail networks.]

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DEPARTMENT OF HUMAN RESOURCES

COMMISSION ON DISABILITY CONCERNS 1430 S.W. Topeka Boulevard, Topeka, Kansas 66612-1877 913-296-1722 (Voide) @913-296-5044 (TDD) @561-1722 (KANS A N)

Mike Hayden, Governor

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NSA

July 3, 1990

Ray D. Siehndel, Secretary

TO: ADA Advocates FROM: Nichael Lochnor, Everytive Director

SUBJECT: ADA Killer Amendment

I SPOKE to Senator vole's office and recommended that the ADA BL Hald bash from the House in order that the commended that the the senate and House under the Brassley amendment van be MAde equal through limited debate on the Senate floor. I intend to make that recommendation to the Kansas congressional delegation and the leadership of both chambers. I do not believe Dole is delaying the ADA as do advocates in Washington DC; I think he is saving it. Read the congressional record. If you do not have a copy, contact me at the address or phone # above.

Whether intentional or not, the fact is the Grassley amendment will prove to be the "Killer Amendment" for the ADA. The private right of action for Senate staff was included in the coverage for the Senate, even though such a provision has NEVER been allowed by the Senate in its entire history. Can we seriously think that the Senate is willing to dump its sacrosanct

-2/4-

immunity for a "bunch of gimps" when they have never afforded such protection to other, better organized, better financed and politically more powerful groups? (If so, would you like to buy a little seaside property in Utah?)

Then, Orrin Hatch signed off on the conference committee report, complete with the Grassley amendment. After that, Hatch opposed the provision for the private right of action, claiming a staff member had misinformed him. He is now adamantly refusing to move the bill until some solution is worked out.

Several questions arise out of this scenario: (1) Was Grassley really seeking to protect disabled employees of the Senate or was he grandstanding while sabotaging the ADA? (2) Did Orrin Hatch really sign onto the report without knowing what he was doing? [It worked for Reagan.] (3) Why doesn't the democrat Majority Leader George Mitchell, do something?

Most Iowans know Grassley has a continuing feud with Tom Harkins. Both are Senators from Iowa. Grassley uses every opportunity to try to make Harkins look bad. I believe Grassley knew the effect of his amendment. He certainly knew that it was previously rejected when S. 933 was being considered in the Senate. Did he really expect the Senate to change its mind?

-3/4-

Did Hatch really sign off on the conference committee report without knowing what was in it? I think Hatch knew what he was doing. He's has been around long enough to know what he is signing, particularly if he was taking part in discussions on the ADA as a conference committee member. Further, despite his conservative bent, Hatch is a pretty smart cookie, as witnessed in his debates of other topics on "McNeil-Leherer" for instance. By his action, he has placed Senator Dole in an untenable situation. Dole must either release the report to the house and, by so doing, guarantee bipartisan rejection of the ADA in the Senate if the house approves the conference report.

Why isn't Mitchell doing something? Maybe he would if he weren't getting a free ride on this one. I would be interested in knowing if any of his constituents have contacted him to ask his position on the ADA conference committee report and the Grassley amendment. If he supports the report, then he should be moving the bill. I'll bet he's not. No senatorial majority, regardless of party affiliation, truly wants the private right of action. It's easier to blame the opposing party.

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Rogardlocc of thic cconario'c validity, tho offoct will be the same: ADA becomes, not the Americans with Disabilities Act, just Another Dead Act.

If this makes sense to you, I invite you to contact the leadership in both chambers and request the ADA be acted upon by the Senate first. It is possible that Chapman will be again discussed, but it's easier for us to use our limited resources to defeat it again than to start over again. I assure you that Grassley will make that option our only other choice.

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UNITED CEREBRAL PALSY OF OKLAHOMA

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1917 S. Harvard Ave., Oklahoma City, Oklahoma 73128 <u>Please reply to</u>: 3941 Warwick Drive, Norman, OK 73072

June 12, 1990 To: Pettidut

The Honorable David L. Boren U.S. Senate 453 Russell Senate Office Building Washington, DC 20510-3601

Dear David:

We were surprised and disappointed that you supported Senator Helms initiative to incorporate the Chapman amendment in the instructions to the Senate ADA conferees.

The Chapman amendment is unnecessary, probably unenforceable, and morally indefensible.

- (1) HHS Secretary Sullivan, CDC-Atlanta, and the AMA have all stated in writing that the Chapman amendment adds nothing to the control of infectious diseases. Under terms of the existing bill, food handlers and others who pose any disease risks to the public can already be reassigned, terminated, or denied initial employment.
- (2) The Chapman amendment attempts to legitimatize discrimination in the workplace based upon diagnoses of diseases even when the individuals with these diseases pose no health risk to others. For example, one of your constituents who had contracted Rocky Mountain spotted fever could be terminated from a local restaurant job even though that disease can not be transmitted to other people except by ticks. Would that stand up in a test of law? Indeed, the amendment is so fuzzy--critical classifications of "communicable disease" and "of public health significance" are introduced without medical definition--that the only certain beneficiaries will be the lawyers.
- (3) The Chapman amendment sanctions the most facile and pernicious form of discrimination--the self-excuplatory: "We know these people are o.k.; it's just that others might be offended." Consider a parallel example. At a recent fund raising activity at a large mall complex, a young man who is severely affected by cerebral palsy had stopped in his wheelchair at the end of the UCP booth next to the entrance of a women's lingerie shop. After a few moments the owner came out and asked one of the UCP

The Honorable David L. Boren Page two

> volunteers to move this young man to the other end of the booth because she thought his appearance might be upsetting to her potential customers. Wrong? Of course, but that is no less offensive than the rationale that the National Restaurant Association invoked in support of the Chapman amendment. Would you have us pander to the delicate sensitivities of lingerie shop owners and the latent fear and hostility that she and the National Restaurant Association feel toward anyone who looks, acts, or may, in some hidden way, be different? The Chapman amendment which you endorsed says it is all right to discriminate and to exclude people from food handling and food product jobs when there is no health reason for that exclusion.

I'm not surprised that the restaurateurs are willing to sacrifice the civil rights of others to their concern with profit. I had hoped for better from the U.S. Senate.

There is still some hope that the ADA Conference Committee will report a final bill that sustains the basic commitment of guaranteeing the rights of persons with disabilities against any irrelevant and functionally unjustifiable discrimination. If that happens, there will almost certainly be renewed efforts to weaken and restrict this bill. Final passage of a strong ADA, indeed passage of ADA in any form, may depend upon the success of the Congressional leadership in bringing a Conference Committee bill to vote without further amendments. With this in mind, we ask two things. First, please reconsider your vote on the Chapman amendment instructions, and let the Senate conferees know that you would welcome a bill without this unnecessary baggage. Second, be prepared to give your support to a timely, amendment-free passage of a restrengthened Conference Committee Report and Bill.

Please let us know your current thoughts and plans regarding these important matters.

Sincerely,

Wm. R. Upthegrove Chairman, UCD-OK Governmental Activities Committee

Chairman, Legislation & Advocacy Committee of the Oklahoma Planning Council for Developmental Disabilities

WRU/kdp

cc: Jim Rankin, Executive Director, UCP-OK Robert Woolsey, Chairman, OPCDD S. 933, the Americans With Disabilities Act THE HELMS MOTION TO INSTRUCT CONFEREES

Senator Helms will attempt to have the Senate put on record in support of the Chapman Amendment which the House agreed to on May 17, 1990 by a vote of 199-to-187. The Chapman amendment (which added subsection 103(d) to the House bill, H.R. 2273) gives an employer a defense against a charge of discrimination "for an employer to refuse to assign or continue to assign any employee with an infectious or communicable disease of public health significance 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 damage."

The debate will probably focus on AIDS, but the amendment applies to any infectious or communicable disease.

In the House, the debate made a critical distinction between facts and appearances. Even the amendment's advocates did not assert that AIDS can be spread by food handlers. They did assert that restaurants could be driven out of business by fears that their food handlers had AIDS. (Other diseases can certainly be spread by food handlers, of course.)

(((Note to RPC: This appears to be the only instruction on which a vote will be requested.))) S. 933, the Americans With Disabilities Act THE GRASSLEY MOTION TO INSTRUCT CONFEREES

The Senate-passed version of ADA (S. 933, adopted Sept. 7, 1989 by a vote of 76-to-8) contained a Grassley amendment that extended the provisions of the ADA "in their entirety" to each House of Congress and any instrumentality of Congress. The amendment was adopted on a division vote. 135 Cong. Rec. S 10780-82 (daily ed. Sept. 7, 1989).

The Grassley amendment became section 509 of the Senate bill.

The House made substantial changes in the Grassley amendment. See, section 509 of H.R. 2273, 136 Cong. REc. H 2652 (daily ed. May 22, 1990). In brief, the chief thrust of the House amendment seems to be that the ADA will be enforced in the House, the Capitol grounds and office buildings, and in instrumentalities of Congress by congressional officials and not through the regular administrative (i.e. executive branch) proceedings that private entities are subject to. Senator Grassley is likely to argue that by making ADA applicable to Congress but having Congress enforce the provisions of the Act against itself that Congress is once again exempting itself from the same rules that apply to everyone else in the country. All the other entities that will be covered by the Act will be subject to administrative and judicial enforcement mechanisms that will not apply to Congress.

Senator Grassley will move to instruct the SEnate conferees to adopt a provision allowing aggrieved persons to sue Senators. His motion will not incorporate his original amendment but will provide a more comprehensive remedy than in the House version.

(((NOTE TO RPC: Grassley will likely introduce his motion then withdraw it and have a chatty colloquy with Harkin)))

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Senator Boschwitz's office informs us that he will not offer a motion to instruct.

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