


ADA File

MEMORANDUM

Date: January 19, 1995
To: Senator Dole
From: Alec Vachon 
RE: LETTER TO SENATOR FEINSTEIN

- * Responding to a memo (attached) that presented a different version of alleged ADA outrages described by Senator Feinstein during the unfunded mandates debate last Thursday, you asked for a letter to Senator Feinstein. LETTER ATTACHED FOR APPROVAL AND SIGNATURE.
- * The letter was written in a neutral, factual style, and concludes with an offer to provide future assistance on any ADA matter.

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COMMITTEES
AGRICULTURE, NUTRITION, AND FORESTRY
FINANCE
RULES

United States Senate

WASHINGTON, DC 20510-1601

January 19, 1995

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Dianne:

Last Thursday during the debate on unfunded mandates, you cited two examples from San Francisco of unreasonable costs or complexities of compliance with the Americans with Disabilities Act (ADA). As you know, I am a big supporter of ADA, but at the same time I am concerned about its proper implementation.

I checked with the Justice Department about the examples you cited, and they offered a different version of the facts in each case. In the first instance, you noted that Justice is forcing Candlestick Park in San Francisco to add 600 accessible seats--at a cost of \$5 million--to 7,000 existing accessible seats (which are often not filled).

Out of Candlestick's 70,000 seats, Justice claims there are only 89 accessible seats when configured for baseball, 103 for football. Following a complaint, Justice asked 300 accessible seats be added by 2000. This matter is under negotiation. As it happens, the Giants apparently have to add accessible seats to meet NFL standards for hosting the 1999 Super Bowl. The Giants are planning a \$20 million facelift of Candlestick Park for the 1999 Super Bowl; increasing accessible seating would be part of that facelift. The \$5 million figure is San Francisco's estimate of the cost of the additional accessible seats--contained in its bid for the 1999 Super Bowl. However, the bid apparently did not specify the methodology for making this estimate. Incidentally, if Candlestick Park were a new facility, 600 accessible seats would be required by ADA standards.

The second example you described involved an ADA requirement for grab bars on toilets in jail cells--which conflicted with Federal guidelines concerning design of safe jail cells for prisoners at suicide risk. Currently, Justice has no ADA standards for jails. Under design guidelines proposed by the Architectural and Transportation Barriers Compliance Board--which are strictly advisory and have no force of law until adopted by Justice--five percent of all jail cells would have to be accessible. The Board specifically examined the issue of whether grab bars posed a suicide risk--and found no credible evidence of

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hazard. In fact, some support for this conclusion came from the State of California following a request for comments on the proposed jail design standards--and reported in the Federal Register on June 20, 1994 (at 31709).

I hope this information is useful. If you learn that Justice's report is not accurate in any detail, I would appreciate knowing about this. Of course, if I can provide any help on this or any other ADA matter, please let me know.

Sincerely,

BOB DOLE
United States Senate

MEMORANDUM

Date: January 13, 1995
To: Senator Dole
From: Alec Vachon *AV*
RE: FEINSTEIN ON ADA--UNFUNDED MANDATES DEBATE

* As you know, Feinstein raised concerns about ADA on the floor last night (statement attached). She claimed:

1. Justice Department is forcing Candlestick Park in San Francisco to add 600 accessible seats--at a cost of \$5 million--to 7,000 existing accessible seats--which are generally not filled anyway.
2. ADA requirements for grab bars on toilets in jail cells conflicts with Federal guidelines concerning design of safe jail cells for prisoners at suicide risk.

* I checked with the Justice Department, and Feinstein is plain wrong on the facts. Justice's version:

CANDLESTICK PARK

Candlestick Park has 70,000 seats--with 89 accessible seats for baseball (Giants), 103 for football (49ers). Following a complaint, Justice asked 300 additional accessible seats by 2000. This matter is under negotiation. The Giants have to add more accessible seats anyway--the NFL told them to increase accessible seating if they want the 1999 SuperBowl (part of NFL SuperBowl standards). Giants are planning a \$20 million facelift for the 1999 Superbowl; increasing accessible seating would be part of the facelift. The \$5 million is San Francisco's estimate of the cost of the additional accessible seats (from its bid for the 1999 SuperBowl), but the bid did not specify the basis for the estimate. [N.B. If Candlestick Park were a new facility, 600 accessible seats would be required by ADA standards.]

JAIL CELLS

Currently, Justice has no standards for jails. Under criteria proposed by the ACCESS Board, 5% of all jail cells would have to be accessible. The ACCESS Board did consider grab bars as a suicide risk--but there was no credible evidence of hazard. In fact, support for this conclusion came from information supplied by the State of California--and reported in the Federal Register on June 20, 1994.

* Undoubtedly, there are excesses in ADA enforcement, but in every "outrageous" instance I have looked into the facts have been inaccurately reported.

- * As I have written you, state and local governments are supposed to have completed all architectural and structural changes to make their services accessible by January 26th. You have responded that there are problems--and I am now checking with various associations: U.S. Conference of Mayors, National League of Cities, etc. So far, I am not aware that you have received any letters from any national associations or even individual communities requesting any relief. (You have received requests for assistance from Kansas, which I have supplied.) Justice has not received any requests for extension of this deadline.

cc: David Taylor

Feinstein

January 12, 1995

CONGRESSIONAL RECORD — SENATE

S 889

Let's talk about some specific California cities.

Let us take, for example, a city of about 120,000 people known as Sunnyvale, California. The city has identified a total of 202 mandates that they must meet. It has incurred costs for 103 of these mandates during the last 5 fiscal years. The total cost of these mandates has been approximately \$77 million, representing 18 percent of Sunnyvale's total operating budget.

For example, Sunnyvale's compliance with environmental mandates accounted for 62.4 percent of the total costs of these mandates.

The general and other nonutility funds of Sunnyvale were impacted by a total of \$7 million in the 1993 budget. This represents in excess of 10 percent of the total operating costs of the city government, roughly equivalent to the costs of operating the library plus half of the parks in a given year, or roughly equivalent to 70 percent of fire services for that community.

Again, the community cannot raise taxes to pay for it. The city estimates that one-third of the total single-family residence utility bills this year will be earmarked for compliance with State and Federal mandates.

Mr President, let me take the city of Los Angeles. Unfunded mandates again have placed a recent burden on that city. Federal mandates will cost Los Angeles \$4.2 billion over the next 5 years. For example, the Federal underground storage tank regulations require leak detection systems and corrective action affecting 206 sites and 431 storage tanks in Los Angeles. Corrective action will cost in excess of \$31 million over the next 5 years.

Compliance with the Safe Drinking Water Act will cost the city in excess of \$245 million over the 5-year period. Costs to comply with the Americans with Disabilities Act are estimated to exceed \$30 million. This includes costs for curb cuts, ramps, special bathrooms in public buildings, whether or not they are actually used.

Federal law now requires all highway projects financed with Federal gas tax funds be designed and constructed in metric measurements starting September 30, 1996. Revisions to all city standards, manuals, standard plans, ordinances, and other documents will be required. Also, new drafting and design equipment will be needed, along with some training. The Los Angeles Department of Transportation will have to replace 14,000 speed zone signs at a one-time cost of \$1.2 million. The total cost to comply with this program—that is, just changing to a metric system—is \$2.6 million. And this is just one small change.

Did anyone ever add up or, again, even know the cost when this bill was promulgated? I doubt it.

Let us take Los Angeles County. To meet Federal mandates and still balance its budget, the county of Los Angeles has to significantly curtail other programs. For example, this year, Los

Angeles County employees will have to forego cost-of-living and other wage adjustments, and aid to indigents will be substantially reduced. Several libraries are being closed and all others will be open for a reduced number of hours. Recipients of welfare and public health services will face longer waits due to minimal county staffing levels.

Looking at the impact of immigration, Los Angeles County found that in 1991-1992, net county costs for services provided to legal immigrants, amnesty aliens, and illegal aliens and their citizen children were about \$947 million, while county revenues received from this segment accounted for only \$139 million.

Another example. The city of Fresno is required under the Safe Drinking Water Act to fit each of its 217 wells with expensive radon filtration systems. The city estimates the total capital costs of the system in the Fresno metropolitan area at \$191 million and an annual operating cost of \$26 million.

Considering the city currently has a \$567 million budget with a very small percentage of discretionary dollars, the initial outlay and annual costs to comply with the radon standards could have a significant impact on Fresno.

According to the city, the cost of compliance with the proposed radon regulation would force water systems to drop more compelling programs with greater public health and environmental benefits.

For Stockton, CA, a city of 215,000 people, compliance with Federal mandated stormwater provisions of the Clean Water Act will cost the city approximately \$1.2 million per year over the next 5 years or \$15 to \$20 per home. The city has the choice of either decreasing park and recreation, library services, or police services if the public will not accept the addition of a fee increase.

The Clean Air Act requires Stockton to spend approximately \$2.2 million in capital costs and \$100,000 in annual operating expenses to control landfill gas. Again, the city must either increase user fees or shift funding from parks and recreation, library services or public safety.

The Fair Labor Standards Act requires Stockton to pay overtime to firefighters who work more than 53 hours a week. As a result, the overtime costs Stockton an additional \$400,000 a year and affects the city's ability to add public safety officers.

Let me give what I think are rather egregious examples from my own city, San Francisco.

The City of San Francisco is required under the Safe Drinking Water Act to comply with filtration mandates. The city would prefer to put more funds into watershed protection, which is cheaper and would make filtration unnecessary. But instead it is forced by Federal regulations to the more costly expenditure. Building a filtration plant would cost the city \$500 to \$700 million,

while the cost for nonfiltration options range from \$40 to \$60 million.

Let me give another example. Candlestick Park, this weekend, will be sold out—a major NFL game.

A while back one person sued the City saying she did not have a seat as a disabled person at a game. The city came together and formed an agreement. But under the Americans with Disabilities Act, the Department of Justice is now saying that the agreement is not good enough. The city will have to spend \$5 million to build another 600 seats for disabled at Candlestick Park.

What is the rub? The stadium is sold out this weekend. There are 7,000 seats for disabled already, and they are not filled. Yet someone in Justice is saying the city must build another 600 seats.

I submit, the real problem is that once the bills are passed and the regulations are drafted by someone in a department, there is no telling what can happen.

While I was Mayor we would engage in consent decrees with all parties and someone in the Federal Government would say no, that is not acceptable to us. You must spend more money and to it our way. I think this is what is happening throughout the United States. It certainly is throughout the State of California.

Compliance with the Americans with Disabilities Act will cost San Francisco \$8.2 million in fiscal year 1995 in spite of conflicts with other code requirements. For example, safety cells for suicidal inmates in the new jail built to meet strict Federal codes say there should be no hard objects, such as bars, inside, and that there must be a lip on the floor by the door to keep fluids inside. However, the Americans with Disabilities Act requires bars by the toilet and a floor that a wheelchair can roll into.

San Francisco faces other costs in fiscal year 1995 arising from unfunded mandates—\$149.1 million for sewage treatment facilities required by the Clean Water Act; \$830,000 for scrubbers and boiler retrofit to comply with the Clean Air Act; \$3,090,000 to remove asbestos; \$2,910,000 to test for lead, and \$500,000 to implement drug and alcohol testing programs for employees responsible for operating certain vehicles as a condition of receiving Federal transportation funds.

Mr. President, I believe it is unfair for the Federal Government to impose mandatory regulations on localities without providing the necessary funding to implement them. I feel very strongly that Congress must be responsive to the fiscal constraints under which local and State governments operate.

Mr. President, S. 1 provides the kind of relief which State and local governments want and need.

It requires:

Any bill or amendment imposing a Federal mandate of more than \$50 million on a State or local government