The National Council

on

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Position Paper

on

Employment ©onsolidation Programs

THE NATIONAL COUNCIL ON INDEPENDENT LIVING (NCIL)

POSITION ON EMPLOYMENT CONSOLIDATION PROGRAMS

INTRODUCTION

The National Council on Independent Living (NCIL) is a national membership organization comprised of centers for independent living, persons with disabilities, independent living advocates, and organizations supporting the principles of independent living.

NCIL was founded in 1982 by a group of directors of centers for independent living and their supporters for the purpose of advocating for improved national policies affecting all persons with disabilities. These policies include housing, transportation, personal assistance, air travel, communication, architectural accessibility, and, most particularly, reform of the federal and state vocational rehabilitation systems.

NCIL has been an active grassroots organizer, advocating for passage of the Fair Housing Amendments Act, the Air Carriers Access Act, the Civil Rights Restoration Act, the Americans with Disabilities Act (ADA), and most recently, the Rehabilitation Act Amendments of 1992. NCIL's position on the reauthorization of the Rehabilitation Act demonstrated its continued commitment to placing the authority over disability-related programming into the hands of persons with disabilities.

The center for independent living network itself has experienced strong growth in recent years. Since the first federal funding for centers was appropriated in 1979, the number of centers has increased from the original 10 to over 300 federally and state funded centers meeting fixed standards of performance. Today, many view the independent living movement and its centers as the operating arm of the disability rights movement.

Working from a premise that society, <u>not</u> people with disabilities, needs to be fixed, independent living advocates have demanded that people with disabilities have control over both the options and methods which bring them the greatest

independence and control over their own lives. This includes greater authority over both administration and services designed to benefit people with disabilities. Centers for independent living became the first group of private, non-profit organizations to exemplify this principle, known as "consumer control."

In recent years, there have been several positive changes resulting from the actions of advocates for independent living. These actions have begun to make a difference in the policies used by the traditional rehabilitation system.

- Consumers have been given greater control of the services and programs designed to assist them.
- Employment programs are geared toward careers rather than toward entry-level positions.
- Consumers have a greater say in the planning processes which are intended to make the federal and state rehabilitation systems more responsive to the needs of local communities.
- Stronger linkages exist between the vocational rehabilitation programs in Title I and the independent living programs of Title VII, including shared resources, cross-over representation on various councils, and a greater respect for the role of the consumer in the oversight and peer review processes which guide development and implementation of both programs.

Recent exploration of voucher systems for purchasing services and the latest technical developments have also opened doors to a variety of individuals who have traditionally been excluded from vocational rehabilitation programs because they did not "fit" into the existing programs and services.

Yet, there continue to be problems. The federal government appears to have no clear vision of how substantial public and private sector resources could support this integration. In spite of the significant financial contribution which taxpayers make to the vocational rehabilitation system, the program has not succeeded at integrating participants into various employment programs at the federal, state, and local levels.

Consequently, surveys and reports consistently demonstrate that 70 to 80 percent of persons with disabilities are unemployed. In fact, recent statistical data show that unemployment among men and women with disabilities who are actively seeking employment has increased 3 and 5 percent respectively. Many advocates who were active in securing passage of the Americans with Disabilities Act of 1990 are frustrated. If the laws necessary for integration are there, why hasn't change occurred? Why are more people with disabilities unemployed now than before the ADA was law?

INDEPENDENT LIVING VALUES

NCIL believes that there are certain basic values which must be incorporated into any system that promotes integration of persons with disabilities into the mainstream of society. These values must include the following:

- 1. CONSUMER CONTROL: NCIL defines consumer control as vesting power and authority in consumers of a particular program or service. In a consumer-controlled organization, the planning and decision-making staff reflect the population eligible to receive services with regard to disability, ethnicity, and other characteristics.
 - THEREFORE, with regard to individuals, a consumer-controlled organization assumes that the individual knows best what he or she needs or wants, and that must include vocational rehabilitation services.
- CROSS-DISABILITY: The issues that persons with disabilities have in common override the issues that mark their differences. Single disability programs usurp the strength of the disability community and drive a wedge into efforts to advance disability issues.
 - THEREFORE, a responsive rehabilitation program would eliminate single disability programs in favor of an integrated approach. This integration will serve as a first step toward the full consolidation of persons with disabilities into federal employment programs.
- 3. EQUAL ACCESS: People with disabilities should have the same opportunities as other persons to participate in training and job

programs. All programs designed by and for people with disabilities must support the principles set forth in the Americans with Disabilities Act (ADA).

THEREFORE, employment programs must advance the independence and full inclusion and participation of persons with disabilities without regard to significance of disability, promote self-help and choice in the program's methodology, and require equal access to society for all persons with disabilities.

Equal access for persons with disabilities includes the availability of procurable services and products such as personal assistance, assistive technology, and job coaches to enable equal competition for opportunities in our society.

The challenge which faces Congress as it explores innovative methods for improving and consolidating existing programs lies in the imperative integration of these three values into whatever type of employment program evolves.

TRANSITION PLAN

In January 1991, the University of Southern California's Washington Public Affairs Center hosted a summit meeting of over 100 national leaders who reviewed the current vocational rehabilitation program and sought new directions for programs and services funded through the Rehabilitation Act. Recommendations from this meeting included:

- systematically redirecting existing funds toward career development;
- making service and resource options available to all people;
- developing the capacity of communities to provide full access and acceptance to all persons with disabilities;
- developing integrated programming among youth with and without

disabilities as a key piece of long-term planning; and

keeping access to technology an absolute necessity in order for persons with disabilities to sustain a career and independent lifestyle.

Also pointed out at the summit, were many of the pitfalls which inhibit full integration in America's work force. Among these are time-limited access to services and supports, complex and unnecessary eligibility determination processes, and statutory language and regulations which are the hallmarks of traditional vocational rehabilitation and stand in the way of the values promoted at the meeting.

Although a significant portion of meeting participants called for a complete rejection of vocational rehabilitation as set forth in the Rehabilitation Act, overall recommendations did not call for a disbanding of the program. Instead, it made recommendations for substantive change.

RECOMMENDATIONS

As the disability community began preparing for the reauthorization of the Rehabilitation Act of 1992, NCIL made its recommendations as well. The first of these recommendations was that Congress establish a commission to study major reform of the entire Act. This commission, to be composed of a majority of persons with disabilities, would study the Act over a three-year period in order to develop a detailed plan for change and reform.

This recommendation of a commission remains the centerpiece of our general recommendations for a smooth transition to a fully integrated employment program:

1. National Rehabilitation Commission: In response to the recommendations of NCIL and other disability advocates, Congress outlined a structure and responsibilities for a National Rehabilitation Commission. The commission's mission to study programs funded through the Rehabilitation Act and to make recommendations for substantive changes, is set out in Title VIII of the Rehabilitation Act.

NCIL recommends that Congress appropriate funds for the National Rehabilitation Commission to carry out its mission with an additional objective that the commission specifically develop a plan and timelines which would lead to integration of the vocational rehabilitation system into a consolidated employment program.

- 2. <u>Consolidation Reprieve</u>: NCIL recommends that Congress exclude the programs presently covered under the Rehabilitation Act from immediate efforts to consolidate federally-funded employment programs. Employment consolidation bills should include an automatic review after three years to determine whether or not satisfactory progress towards implementation of the National Rehabilitation Commission's plan has been made.
- 3. Private/Public Partnerships: NCIL recommends that Congress immediately amend the Rehabilitation Act to give greater authority and power to persons with disabilities over the Title I vocational rehabilitation programs which are designed to assist them. This could be accomplished by giving current members of the Rehabilitation Advisory Councils, including individuals with disabilities from the private sector, sole sign-off authority over the state plans which dictate how programs will be designed and monitored in each state. (A partial increase in authority over independent living programs since 1992 has demonstrated that, when given authority to go along with their advisory responsibility, councils made up of a majority of persons with disabilities will give thoughtful and innovative direction to the program. Attempts to put these new directions in effect, however, have been largely unsuccessful because of the lack of support and resistance to change on the part of many rehabilitation traditionalists.)
- 4. <u>Vouchers</u>: There are also several model voucher programs currently operating under demonstration grants which give greater control to consumers and cut through some of the bureaucratic nonsense which inhibits independence, rather than promoting it. NCIL recommends that amendments to the current Act mandate use of vouchers in each state.
- 5. <u>Begin Integration</u>: As a pre-cursor to full integration with all members of society, the rehabilitation and support services programs designed

specifically for persons with disabilities and funded through the Rehabilitation Act, must take steps toward full internal integration. NCIL recommends elimination of the costly, separate and unequal blind services programs which are currently funded through the Act. Created many years ago when persons who are blind were among those with the most significant disabilities served under the Act, these programs are now archaic and unnecessary, emphasizing differences rather than similarities among persons with significant disabilities. Full integration into America's work force is impossible until such programmatic distinctions are discontinued and all persons with disabilities are treated equally, yet according to individual need.

6. National Council on Disability: NCIL recommends that funding for the National Council on Disability be continued and increased. The NCD is the single government agency with the mission of overseeing implementation of the programs affecting the lives of citizens with disabilities, including the Rehabilitation Act and of assuring that the standards and spirit of the Americans with Disabilities Act (ADA) are carried into rehabilitation programs. In addition, subsequent to the report of the National Rehabilitation Commission, it will be necessary for the NCD to oversee the implementation of the commission's recommendations.

SPECIFIC OUTCOMES EXPECTED

The National Council on Independent Living recommends that Congress - regardless of the outcome of the debate on whether or not to shift vocational rehabilitation into a consolidated employment program using federal funds - support consumer control, a cross-disability orientation, and equal access. An integration of these values into whatever program is developed would result in the following:

1. Consumer Control

Persons with disabilities make up a majority of all decision-making bodies which oversee programs designed specifically for persons with disabilities.

- Persons with disabilities are proportionally represented (15 to 20 percent) on all federal, state, and local governing bodies which oversee implementation of fully integrated programs.
- Grants and contracts for the provision of services and programs designed specifically for persons with disabilities are awarded to agencies and organizations which promote and practice consumer control.
- Systems designed to promote employment integration are based upon consumer choice.
- Programs include a voucher system which provides choice and cost-effectiveness.

2. Cross Disability

- Single access points and eligibility determination processes are established.
- Specialized services and programs are provided within a broader integrated environment (as opposed to a separate, segregated environment).
- Adequate funding is available for disability-specific training within an integrated environment.

3. Equal Access

- A guarantee that all employment facilities and materials are fully accessible to all persons with all types of disabilities.
- Congressional assurance that all programs and facilities have staff who are fully cognizant of services and programs which meet the specific needs of people with disabilities.
- A fluid, seamless system which promotes movement into integrated programs as well as reentry into career-oriented support systems.

■ Lifelong access to open technology-based resources are assured.

IMPACT OF SPECIFIC REQUIREMENTS ON THE REHABILITATION ACT

In the event that vocational rehabilitation programs remain under the Rehabilitation Act, NCIL recommends several changes which will be necessary in order to integrate the values outlined above into the current system. Minimally, they would include the following:

- 1. Require consumer control of the Research Advisory Council, National Council on Disability, and Business Advisory Councils.
- 2. Grant sign-off authority to the statewide rehabilitation advisory councils for the planning and oversight of the state plan under Title I.
- 3. Implement a voucher system for consumers receiving services under Title I.
- 4. Mandate consumer control into the peer review and contract compliance processes.
- 5. Integrate funding for the blind services agency into state-directed vocational rehabilitation programs.
- 6. Expand Title VII, Chapter 2 programs to include services provided by consumer-controlled organizations to all older persons with disabilities.
- 7. Eliminate or redirect all other disability-specific programs, making existing funding available through innovation and expansion or demonstration grants which are time-limited in nature.
- 8. Simplify existing eligibility determination processes to reduce costly and unnecessary assessments.
- 9. Eliminate mandatory individual planning systems which are often costly, time-consuming, and promote dependence rather than independence.

- 10. Direct current Title III (Research and Training) funds to educators grounded in independent living principles.
- 11. Eliminate sheltered workshop funding and reduce funding for evaluations, assessments, and administration in order to increase direct service funds.

IMPACT OF SPECIFIC REQUIREMENTS ON PROPOSED LEGISLATION

NCIL recommends that the following principles be made a requirement in establishment of any employment consolidation program:

- 1. An amount equal to the current Title I Part B allocation under the Rehabilitation Act must be set aside to underwrite those expenses which are unique to persons with significant disabilities who are participating in a consolidated employment program.
- 2. All federal, state, and local planning bodies, private industry councils, or similar entities must include at least 15-20 percent persons with disabilities, and persons with a broad range of disabilities.
- 3. Local programs must include a voucher system with sufficient financial support for persons with the most significant disabilities.
- 4. Determinations for eligibility must not be based upon the presence or absence of any one or more disabilities. Personnel engaged in making eligibility determinations must have resources and knowledge of where to secure additional support, such as auxiliary aids and services, when such are requested by an individual with a disability who is seeking entrance into a program.
- 5. Access to services will be provided on a first come, first served basis.
- 6. All facilities and materials must be fully accessible, and in compliance with ADA Accessibility Guidelines.

In addition, NCIL recommends that each state be required to report disability-specific data which would indicate the level to which persons with significant disabilities are participating in employment consolidation programs and that specific triggers be placed in such legislation that would require changes which would correct deficiencies, if necessary.

SUMMARY

The National Council on Independent Living (NCIL) fully supports the integration of persons with disabilities into the mainstream work force of America. NCIL recommends a transitional approach which will immediately make significant changes in the current rehabilitation program, while at the same time force step-by-step, substantive changes in vocational rehabilitation and support services programs. Whether Congress moves toward an integrated, consolidated employment program or determines that persons with disabilities are best assisted through the current Rehabilitation Act, NCIL recommends that Congress mandate policies and activities which demonstrate the values of consumer control, cross-disability, and equal access.

For more information about NCIL and NCIL's position related to employment consolidation, contact:

National Council on Independent Living 2111 Wilson Boulevard, Suite 405 Arlington, VA 22201 (703) 525-3406 (V) (703) 525-3407 (TTY) (703) 525-3409 (FAX)

Date: March 22, 1995

March 22, 1995

Memorandum

To: Interested Parties From: Pat Morrissey

Re: Suggested provisions for inclusion in Job Training Consolidation Act (S. 143)

Background

Senator Kassebaum introduced S. 143, the Job Training Consolidation Act, as a "place holder" bill January 4, 1995. It would consolidate several federal programs: multiple programs under the Job Training Partnership Act (Titles IIA, IIC, Title III -- Job Corps) the Carl Perkins Vocational and Applied Technical Education Act, and Title I of the Rehabilitation Act, as well as 7 other statutes (i.e., employment and training for food stamp recipients, adult education participants, homeless persons, refugees, eligible recipients of the JOBS program, Older Americans Program participants, and workers affected by the Trade Adjustment Assistance Act). Senator Kassebaum's staff is currently developing the first draft of the actual legislation.

I have discussed the legislation with Senator Frist. He has asked me to share the following list of provisions with you and obtain your reaction. If there is bipartisan support for these provisions, he intends to share them with Senator Kassebaum and suggest that the provisions be included in her bill, S.143.

Details of Senator Frist's Recommendations

Recommendations for general provisions

- Predictable funding for one-stop centers. In order to insure that a one-stop
 center does not exhaust funds prematurely, the legislation should require state
 plans to specify how service funds would be allocated on a per capita basis yearly.
- 2. First-come first-served. To level the playing field, to simplify the system, to remove incentives for creaming, and to make advocates and eligible recipients (economically disadvantaged, dislocated workers, individuals with disabilities, welfare recipients, migrant and older workers) engage the new system, require one-stop centers to assist individuals, including those with disabilities, on a first-come first-served basis.
- 3. Give priority to individuals whose needs have not been fully met in the previous year. Require that at the beginning of any service year a one-stop center give priority to those individuals, including those with disabilities, whose needs were not fully met in the preceding year.
- 4. Maintenance of a listing of certified vendors and programs. To ensure an individual's access to acceptable programs and vendors, require one-stop centers to maintain a list of such entities. This list should include entities that provide vocational rehabilitation services to individuals with disabilities.
- Access to mediation. Require the state to provide access to mediation in order for individuals, including individuals with disabilities, to have a mechanism to resolve disputes with one-stop centers.
- 6. Federal outcome standards. Require that outcome standards at a minimum include such things as the number of individuals assisted, number of individuals who obtained employment, number of individuals employed who are receiving income at intervals above a base standard (e.g., the minimum wage), number individuals employed who have benefits. Require that data on all individuals served be reported in the aggregate and by sub-population (e.g., economically disadvantaged, dislocated workers, individuals with disabilities, welfare recipients, migrant and older workers).

Recommendations for disability-specific provisions

- 1. **Presumption of disability.** Require that an individual be considered disabled if the individual offers evidence of a disability (e.g., through documentation of eligibility for a state or federal disability program, in the form of medical information, or through the person's physical presence).
- Presumption of employability. Require that an individual with a disability be considered employable.
- 3. Access to appropriate degrees of individualized assistance. Require that an individual with disability has access to the same type and amount of services that a one-stop center offers to other individuals, unless an individual with disability requests and needs additional or different services to achieve an employment goal. Require that access to additional or different services include access to individuals and entities which have expertise and certification or accreditation in vocational rehabilitation. Specify that if an individual with a disability requests it, the individual would participate in the development of an individualized employment assistance plan to achieve an employment goal. [It is assumed that such an opportunity would be requested most frequently when an individual requests and needs additional or different services connected to long-term planning.]
- 4. Funds to be expended on an individual with a disability. Specify an individual with a disability would first have access to services up to the per capita limit adopted by a state for a one-stop center (see #1 under recommendations for general provisions). If the cost of services for an individual's needs exceed the per capita amount for an individual served by a one-stop center, then funds from Title I of the Rehabilitation Act could be accessed.
- Choice. In selecting a vendor or program in pursuit of an employment goal, specify that an individual with disability may select any vendor on the approved list maintained by a one-stop center.
- 6. Retain an Amended Title I of the Rehabilitation Act. Amend Title I of the Rehabilitation Act to simplify requirements and to make it consistent with the revised S. 143. Specify a line item authorization of appropriations that would be used exclusively to meet the job training-related needs of individuals with disabilities.

WHITE PAPER ON DISABILITY POLICY

Passage of the Americans with Disabilities Act finally mandates equal rights for persons with disabilities. While earlier legislation, such as Section 504 of the Rehabilitation Act, Education for Handicapped Children Act and Fair Housing Act provided specific protections and access to specific programs for persons with disabilities, the ADA created a broad range of access in both the public and private sectors. Senate leaders on disability policy had this to say about the ADA:

Senator Tom Harkin:

"For million of Americans with disabilities, segregation, isolation and inequality are over. Today our nation says "no" to isolation and exclusion; and "no" to patronizing attitudes. Today, our nation says "yes" to empowering people with disabilities to make choices for themselves; "yes" to treating people with disabilities with dignity and respect; and "yes to judging people with disabilities on the basis of ability and not on the basis of fear, ignorance and prejudice."

Senator Dob Dole:

"Our message to America today is that inequality and prejudice will no longer be tolerated. Our message to people with disabilities is that your time has come."

To ensure that the time has come and to translate these rights and goals into realities people with disabilities will require improvements in numerous federal programs, as well as improved linkages between these programs to create real opportunities. Currently, these federal programs are under the jurisdiction of various Congressional committees, and many are broad social programs designed to meet the need of many populations, not only persons with disabilities.

To clarify the issues, this briefing paper lays out principles for federal policy, and explains the relevance of federal programs to persons with disabilities. More specific recommendations on each of these policy areas have been submitted to the Congress over the last few years in a number of Congressionally-mandated studies. The Consortium for Citizens with Disabilities is preparing a report (for which this document serves as an Introduction) for the Senate Bipartisan Working Group on Disability Policy which summarizes and analyzes these Congressionally mandated studies.

WHY SHOULD DISABILITY ISSUES BE ON THE POLICY AGENDA?

- 43 million Americans have disabilities, some of which occur at birth or early in life, while others occur in adulthood. Disabilities include conditions such as mental retardation, sensory impairments of hearing or vision, paralysis, cerebral palsy, mental illness, epilepsy, autism, traumatic brain injury, spina bifida, HIV infection and many others.
- While many people with disabilities need only the opportunity to become full citizens, others need supports and services as well as access to be part of the mainstream of life. The Americans with Disabilities Act and other major civil rights laws have opened many doors but some people with disabilities need assistance to enable them to reach these open doors.
- Statistics indicate the gaps. The U.S. Census reports that the unemployment rate among people with disabilities is almost three times higher than the national average. The recent National Consumer Survey of People with Developmental Disabilities shows that nearly 25 percent of the sample need transportation services but do not get this critical support. The school dropout rate for students with disabilities is 26%, which is 10% higher than even the highest regular education drop-out estimate.
- The issues facing people with disabilities affect not only themselves but their families, their neighbors and their communities.

WHAT ARE THE PRINCIPLES THAT SHOULD GUIDE POLICY?

- Policy must encourage the inclusion of people with disabilities in all parts of our society.
- Policy for individuals with disabilities must be linked to the more general policies for the society as a whole. Policy should take into account the role of families and the general community in meeting and needs of people with disabilities.
- Policy must be organized to be consistent, to be coordinated, and to be most efficient.
- Policy must be outcome oriented and the outcomes should be directed toward services and supports which nurture independence, integration and productivity.
- Policy must assure accountability and quality.
- Policy must take advantage of new ideas and new opportunities, such as technological advances, and early intervention strategies which have been proven successful, and make them available and accessible.

WHAT ARE THE CURRENT AND FUTURE DIRECTIONS FOR DISABILITY POLICY?

All aspects of a person's life are affected by federal policy. Federal policy should be outcome oriented and should be directed toward positive goals: integration, independence and productivity.

All federal programs ultimately impact on each other, either directly or indirectly. The interaction of federal policies and programs, for instance the impact of transportation on housing, on education on employment, must also be examined as policy is developed and refined.

EDUCATION

Nearly 5 million students receive federally-assisted special education services annually. This represents a wise decision in public policy. Unfortunately, a large number of students with disabilities are not yet receiving appropriate services. Many students continue to be inappropriately segreated from their peers without disabilities.

Further efforts and resources should focus on providing schools with the resources to provide quality services to meet the special needs of all students with disabilities. Quality education will much better prepare a student for a productive and independent life in the community.

Policies should also focus on better educational beginnings and endings. There are large numbers of infants and toddlers who need but do not have access to early intervention services and full implementation of Part H for infants and toddlers is essential to meet their needs. For older students, there need to be stronger linkages between the schools and community vocational training, transportation, housing and other supports necessary for adult life.

Federal leadership has resulted in more than 200,000 students exiting special education each year. However, these individuals find few resources such as vocational training, transportation and housing options to assist them to live independently, to work or to make a contribution to their communities. Improved linkage between special education and other federal programs is needed.

HOUSING AND SUPPORTS, FAMILIES AND COMMUNITIES

More and more people with disabilities are living in their communities. Studies have consistently shown that people learn and develop more of their potential outside of institutional settings. Over the past 20 years the number of people residing in institutions for persons with developmental disabilities has decreased by 50 percent

1990 POLICY ANALYSIS Seven Life Functioning Areas

- 1. Income
- 2. Employment
- 3. Education
- 4. Housing
- 5. Health Care
- 6. Individual and Family Supports
- 7. Civil Rights

INCOME

- o Average SSDI Is \$251, while Poverty Level was \$481,50
- o Belief that Persons with DD
 Prefer "Welfare" Is Inconsistent
 With All Findings
- o Eligibility Requirements Operate
 At Cross Purposes

EMPLOYMENT

- o School to Work Transition
 Is a Critical Issue
- o Average Work Week is 11 Hours
- o Average Pay is \$51 Per Week
- o Only 20% Have Full Time Employment

EMPLOYMENT

"For 37 Years, Jesse Lived In an Institution for persons with developmental disabilities. To say that getting a job in the Community and making real wages for the First Time in his Life

Was A Major Step Is To Put It Mildly."

EMPLOYMENT

"Denise Was Considered a Basket Case
When She Lived in the Institution.
She is Disproving Everything
That Was Said About Her.
She is Working at GA State
and Has Been For 2 1/2 Years.
We Must Believe In People."

EDUCATION

o Only 27% Are Mainstreamed

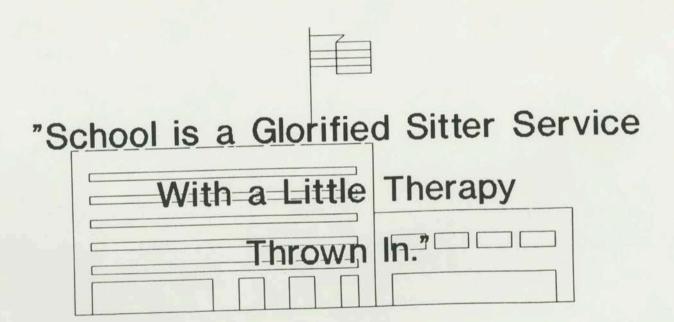
o Higher Dropout Rate Than Non-DD

o Systems Do Not Prepare

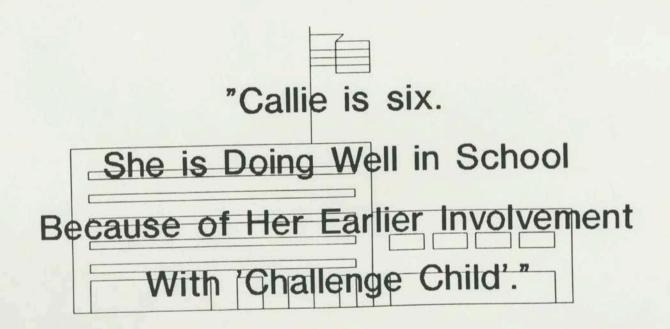
Persons With DD To Be

Productive Citizens

EDUCATION



EDUCATION



HOUSING

- o Vision Is Community Integration Not Segregation in Institutions
- o Need for Arrangements That Promote Interaction With Neighbors
- o Lack of Individual Supports
- o Need for Accessible Housing
- o Lack of Choices
- o Lack of Personal Responsibility

HOUSING

"We Made a Gommitment to have
Our Son Live At Home. It is impossible
To Go Forever Like We Are.
We Are in Our 60's.
He Will Need a Place to Live.
He Wouldn't Last In an Institution."

HOUSING

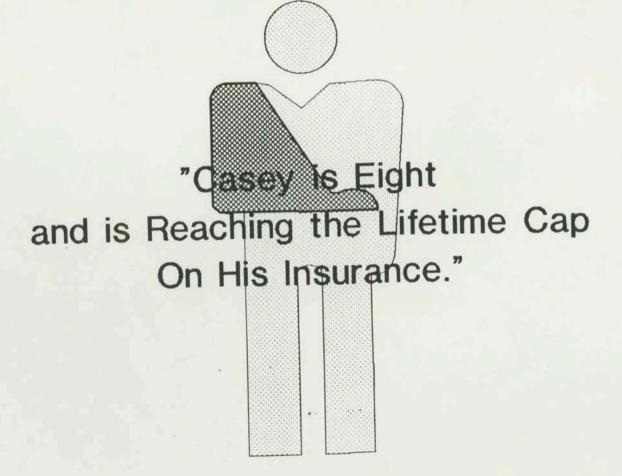
"I'm Frustrated Still Being at Home
At Age 24.

I Want to Live With Friends.
We Could Help Each Other
and Share Expenses."

HEALTH CARE

- o 30% Lack Private Insurance
- o More Than 10% of Family Income On Medical Costs.
- o Increasing Prevalence of Medically Fragile Infants.
- o Health Care Providers Insensitive To Dignity and Independence Of Persons With DD

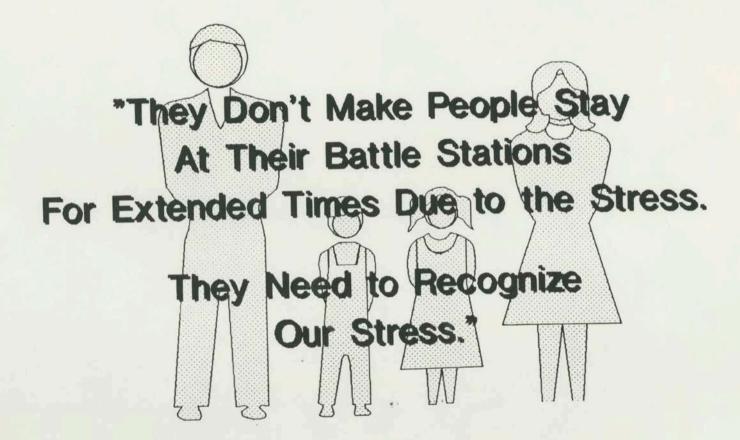
HEALTH CARE



INDIVIDUAL & FAMILY SUPPORTS

- o Lack of Child Care & Respite Services
- o Case Management of Poor Quality Families Are On Their Own
- O Lack of Accessible \ Affordable Transportation Limits Access to Employment
- o 79% Have Strong Need for Leisure Activities
- o Community Support to Fight Ignorance Major Barrier in All Areas

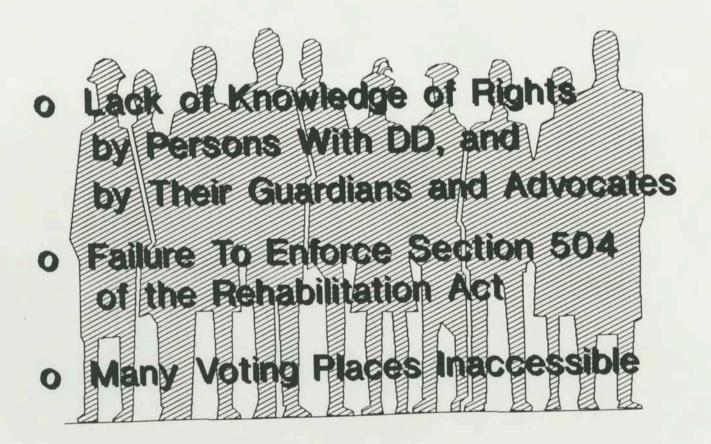
INDIVIDUAL & FAMILY SUPPORTS



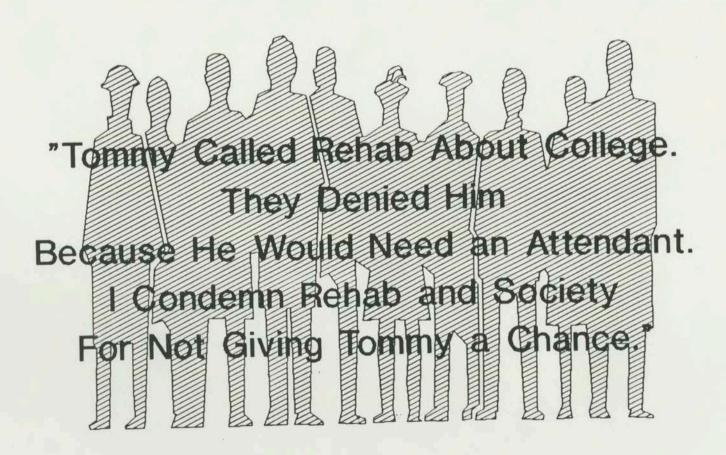
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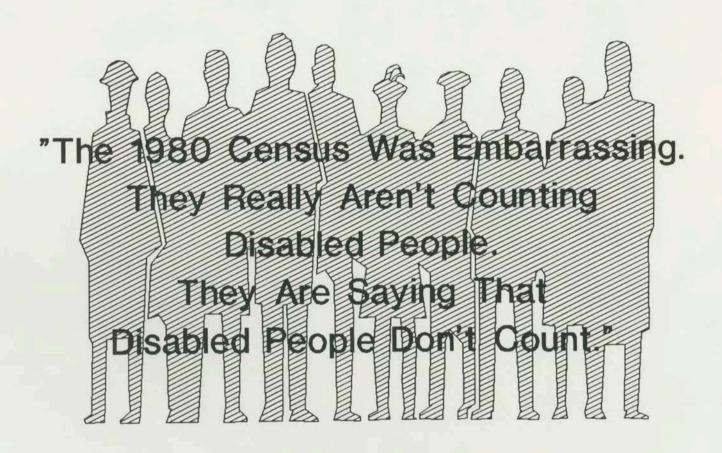
CIVIL RIGHTS



CIVIL RIGHTS



CIVIL RIGHTS



May 5, 1989

DRAFT WITNESS LIST
HEARING ON THE AMERICANS WITH DISABILITIES ACT OF 1989
May 9, 1989

PANEL I

Dr. I King Jordan President, Gallaudet College Washington, D.C.

Justin Dart Chairman Congressional Task Force on the Rights and Empowerment of Americans with Disabilities Washington, D.C.

PANEL 2

Administration

PANEL 3

Mary Disapio Wall Street Financial Analyst New York, New York

Joe Danowsky Attorney New York, New York

Two other witnesses

PANEL 4

Jay Rochlin
Executive Director
President's Council on Employment
of People with Disabilities
Washington, D.C.

Edward Berkowitz Professor of History and Public Policy, George Washington University Washington, D.C.

Zack Fasman Attorney Paul, Hastings, Janofsky and Walker (representing Chamber of Commerce) Washington, D.C. Lawrence Lorber
Attorney
Kelley, Drye, and Warren
(representing American Society of Personnel Administrators)
Washington, D.C.

Arlene Mayerson Disability Rights Education and Defense Fund Berkeley, California XEROX TELECOPIER 295 ; 5- 8-89; 3:12 PM; 2024662883 > SENT BY: Xerox Telecopier 7020 5- 8-89 : 16:30 : 2024562883- 2022243168:# 2

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DISABILITY

Issues Needing Answers

Costs and Benefits

What are the costs and benefits associated with the Americans with Disabilities Act (ADA)? Many provisions have costs. There does not now exist an analytic base for understanding the size of those costs and how the costs could be most efficiently allocated.

ATAT has estimated that its costs for complying with the telecommunications provisions of ADA would be \$200 million per year. Operating both lift-equipped buses and paratransit could cost public transit authorities \$270 million per year. How could these costs be mitigated consistent with ADA's goals? Who will ultimately pay these costs? Also, what are the gains to society that offset these costs? Where do these gains occur in relationship to the costs? What can be done to mitigate the most extreme costs?

Scope of Provisions 2.

How widely should ADA's net be thrown? The public accommodations section seems to suggest that every office building in America would have to be accessible. Another reading suggests every doctor's and dentist's office would have to be accessible.

What provision should be made for small entities? Large employers and large firms can spread costs over a large base. Small firms and small organizations would find themselves with costs that threaten viability or ability to fulfill a principal mission. What provision should be made for these entities? Total exemption? Case by case good faith effort? What size entities should be exempted? ADA does not allow cost as a defense, and so an organization would have to comply no matter what the cost.

Remember the example that bedeviled Joe Califano when implementing Section 504 of the Rehabilitation Act. A library in a farming town in Iowa, population under a thousand, thought the federal government (actually it was the State librarian) was requiring it to install a ramp allowing for wheelchair access of the library. The ramp would have cost about \$7,000, close to the library's operating budget. And the town had no residents who used a wheelchair, making the proposed ramp a monument to useless regulation.

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3. Implementation and the Courts

ADA contains many ambiguities that should be resolved in the statutory language. Because ADA is silent on many points, definitive elaboration would be left to the courts. For example, are transvestites protected? In effect, the real meaning of ADA would not be known for years until a number of cases move through the courts applying "undue hardship" and other vague concepts to specific fact patterns.

How can implementation be handled most smoothly? A law that took effect on enactment or shortly thereafter would expose many entities to litigation risks of which they are not aware.

Also, the uniform requirement for promulgating regulations in 180 days does not consider the comparative difficulty of regulating new areas as compared to altering existing regulatory schemes. For example, the Department of Transportation is asked to undertake a new area in the regulation of private transit.

What flexibility can offered to encourage nonconfrontational dispute resolution and prevention as opposed to litigation and administrative processes?

4. Persons Covered and Implications

What is to be done where ADA overlaps the current structure of civil rights law? The Rehabilitation Act of 1973 and the Fair Housing Act of 1988 cover some of the same populations as ADA, have different compliance standards and different remedies. Absent specific instruction from the statute, resolution will be turned over to the courts and will entail significant litigation costs.

The potential for covering drug and alcohol abusers within the protection offered those with disabilities deserves long and hard consideration. On its face, such a move would appear to end the "drug free workplace" concept.

With respect to accessibility, does an emphasis on removing barriers exclude assistance to those for whom affirmative action is required, e.g., the sight and hearing impaired?

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PROPOSED GUIDELINES FOR THE WHITE HOUSE WORKING GROUP ON THE IMPACT OF THE AMERICANS WITH DISABILITIES ACT OF 1989

THE POLICY CONTEXT

"America has no disability policy. It maintains a set of disparate programs, many emanating from policies designed for other groups, that work at cross-purposes." (Disabled Policy, p.1 1987)

Historian Edward Berkowitz in his book <u>Disabled Policy</u> provides an excellent overview of the inconsistency and evolution of the two existing paths of disability policy and programs in the United States. One path, income/maintenance programs, has evolved through two generations. The first generation, the workers' compensation program model, was designed to provide cash and services through state governments to persons who became physically disabled because of accidents in the work place. Social Security Disability Insurance, the second generation program model, provides uniform national coverage to all physically and mentally disabled persons who are unable to hold a job.

The second evolutionary path, rehabilitation/integration, has also evolved through two generations. The first generation model, vocational rehabilitation, was designed to provide state programs to return disabled people to the workforce. Civil rights, architectural and transportation laws, and independent living programs reflect the second generation of efforts to integrate disabled people into society. The civil rights/integration programs emerged during the past two decades in reaction to the limitations of the first generation vocational rehabilitation and income/maintenance models.

THE SOCIAL POLICY GOAL: INTEGRATION

THE PRESIDENT

"Our society cannot ignore the needs of this excluded population. We must develop programs and policies that promote independence, freedom of choice and productive involvement in the social and economic mainstream. This does not merely mean employment. It also means access to the mainstream educational system, to public accommodations, to public transportation - in other words, meaningful access to all aspects of society."
(Statement by Vice President Bush on Disabled Americans, March 31, 1988)

"The Reagan-Bush Administration has been on the right track in opposing the discrimination of the past that has kept too many people with disabilities out of the American mainstream."

"Disabled people do not have the same civil rights protections as women and minorities. However, an enactment of the Americans with Disabilities Act of 1988 ...or similar legislation -- would remedy this situation."

(Press Release - Statement of Vice President Bush at the swearing-in of the Executive Director of the National Council on Disability, August 10, 1988)

"... I said during the campaign that disabled people had been excluded for far too long from the mainstream of American life, and I still believe that that is an accurate statement, and I want to do what I can, working with those of you in this room that care to. I want to do what I can to correct all of that."

"One step that I've discussed will be action on the American with Disabilities Act, in order ...to provide the disabled with the same rights afforded ...other minorities. And I share your dreams for full participation, not only because it's the right thing to do, but because we need your talents and energy to meet the global economic challenges ahead." (Remarks of President-Elect Bush at the Access to Opportunity Inaugural Event, January 18, 1989)

"I share your goal of integrating disabled Americans fully and equally into the mainstream of American life....We are working to increase the economic and personal independence of disabled Americans." (George Bush, Building a Better America, February 9, 1989)

"To those 37 million Americans with some form of disability: you belong in the economic mainstream...Disabled Americans must became full partners in America's opportunity society."

(Text of President Bush's Speech to Congress on February 9, 1989, reprinted in The Washington Post, February 10, 1989)

THE CONGRESS

"The Congress finds that... it is essential... to assure that all individuals with handicaps are able to live lives independently and with dignity, and that the complete integration of all individuals with handicaps into normal community living, working and service patterns be held as the final objective." (29 U.S.C. Section 701)

(See also: Architectural Barriers Act of 1978, 42 U.S.C. Section 4151 et seq.; The Rehabilitation Act of 1973, 29 U.S.C. Section 702 and the civil rights provisions therein, 29 U.S.C.

Sections 791, 792, 793, 794, 795; The Education of the Handicapped Act, 20 U.S.C. Section 1232, 1400 et seq.; Developmentally Disabled Assistance and Bill of Rights Act of 1975, 42 U.S.C. Section 6001 et seq.; Fair Housing Amendment Act of 1988, P.L. 100-430; and, Telecommunications Accessibility Enhancement Act of 1988, P.L. 100-542)

THE COURT

"Davis then struck a balance between the statutory rights of the handicapped to be integrated into society and the legitimate interests of federal grantees in preserving the integrity of their programs..." (Alexander v. Choate, 107 S.Ct. 712, 720 (1985)

POLITICAL ANALYSIS

"Fifty-two percent of the disabled are registered as Democrats, as compared to 40% of non-disabled voters." (Harris Poll p.8 1988)

'During that speech [Acceptance speech at the Republican National Convention] Bush said: "I'm going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out, but they're not going to be left out anymore." This was the first time a candidate for national office had addressed the nation's disabled citizens directly; on at least two other occasions before major audiences, the Vice President repeated his pledge. Although Governor Dukakis also had a very strong position in support of the disabled, he made no clear statement of support during his acceptance or in any national forum afterward.' (Harris Poll p.14

"Here's the calculation: at the beginning of the campaign only one out of three disabled voters, representing just under four and a half million people, said that they would vote for George Bush. By the end of the campaign, however, about half of all disabled people [who voted] -- some six and one half million voters -- said that they would cast their vote for Bush, an increase of over two million, or half of the swing vote that would have been necessary to elect Michael Dukakis." (L. Genevie, Vice President, Louis Harris & Associates, Letter to Edward M. Rogers, Jr., November 29, 1988)

¹ For the complete citation to this and all following authorities, please see the attached list of References.

THE ECONOMIC REALITY

"...businesses will be able to satisfy their labor needs only if they successfully confront ... barriers and empower individuals presently outside the economic mainstream to take advantage of meaningful employment opportunities." (Opportunity 2000 p.1 1986)

"The chance of being disabled increases with age. ...adults between the ages of 55 and 64 are 3 times more likely than those between 35 and 44... and 10 times more likely than those between 18 and 34 to be severely disabled...." (Spectrum p.14 1983)

"...the number of workers in the disability support system will increase 50.5% between 1985 and 2020." (The Relationship p.x 1986)

"In fiscal year 1970, total disability expenditures [public and private sources] amounted to \$19.3 billion dollars. By 1986, these expenditures had increased cumulatively by 779 percent." [to 169.4 billion dollars]. (Enhanced p.ix 1988) (using the CPI adjusted-1970 base year still results in an increase of 211 percent, see Enhanced p.II-42 1988)

"In 1970, transfer payments accounted for 61% of the disability dollar; medical care 38%; and direct services [rehabilitation, veterans and employment assistance programs] 5%. By 1986, the direct services share ... had shrunk to 2%" (Enhanced p.ix 1988)

WHAT IS INTEGRATION FOR DISABLED PEOPLE?

Several terms, mainstreaming, full participation and integration, are used interchangeably to describe the same social

Traditionally "mainstreaming" involved the integration of disabled children into the regular classroom and education system to the greatest degree possible. In this context, mainstreaming is: providing the most appropriate education for each child in the least restrictive environment; looking at the educational needs of the individual child as opposed to focusing on the diagnostic labels; looking for and creating alternatives that will help general and special educators serve disabled children and to ensure all children have an equal educational opportunity. Mainstreaming is not the wholesale placement of all handicapped children in the regular classroom without the necessary services; nor does it ignore the need of some handicapped children for a more specialized program outside the regular classroom.

goal - the inclusion of disabled people into society. The fundamental intent underlying the vast majority of federal disability legislation enacted the past two decades has been to integrate people with disabilities into community, work, educational, social and recreational lifestyles appropriate to individual's dreams and abilities. (See Spectrum p.67-86 1983, Disability Rights p.23-28 1986 and Toward Independence 1986).

For disabled people, integration or mainstreaming means permitting each individual the freedom of choice, control and participation in all aspects of society that are appropriate to the individual's desires, skills and potential. This means the ability to use regular public transportation when we need to go to work or want to go to a restaurant and not having to call a special van 24 hours in advance and hoping it arrives on time. It means being able to go to school in our communities with our neighborhood friends. It means having the opportunity to obtain an education that develops our abilities so we can get a job that uses our skills. It means being able to apply for a job so we can pay for rent, new clothes, a movie or a night out with our friends. It means the ability for a hearing impaired person to call a hearing friend across the country to tell him President Bush appointed a deaf man to a high government post. It means feeling that we belong and can make a difference.

Mainstreaming/Integration is the mandate. The debate is limited to the alternative methods of achieving it.

CIVIL RIGHTS/INTEGRATION LAW AND PEOPLE WITH DISABILITIES

'Disability as a protected class presents unique conceptual problems for the authors of legislation, regulatory policy and judicial decisions. The "handicapped" are conceptually a minority class of persons who suffer similar isolation and categorical discrimination based upon their membership in the class. However, disabled people do not constitute a homogeneous minority group who share the characteristics that bring about discrimination the same way that members of racial or ethnic groups or women share discriminative characteristics. There is a continuum of severity and visibility of the handicap and stigmatization among disabled people that determines the nature and the intensity of the discrimination by organized society." (Disability Rights p.25 1986)

Laws that prohibit discrimination on the basis of handicap are analogous to laws prohibiting discrimination on the basis of race. (See, e.g., Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794) There exists a class of persons, the handicapped, who suffer similar discrimination and prejudicial treatment because they are members of that class. However, these laws are,

because of the very nature of the class being protected, distinct from traditional civil rights laws. They are both "more and less" than traditional civil rights laws.

There are three keys to understanding disability in the context of civil rights. They are: (1) the discrimination is largely unintentional; (2) the goal is integration; and, (3) the remedies are individualized.

Recognizing the nature of the discrimination against disabled people is the first key to understanding disability and civil rights. "Discrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference of benign neglect." Alexander v. Choate, 105 s.Ct. 712, 718 (1988).

Second, social policy and disabled people strive toward integration. Disabled people want to be treated with dignity and respect and given the opportunity to make choices and to succeed or fail. The purpose of civil rights legislation is to assist disabled people in achieving a normal life experience as a citizen, and not to create a normal person. This is not a guarantee of equal results nor does it mean society must ignore the differences. It is providing the means (e.g., accommodations, equipment, transportation, services and training) to ensure a meaningful opportunity to achieve the level of integration that is appropriate to individual ambition, abilities and potential.

Integration and discrimination are the two factors that make people with disabilities a social and a political class. People with spinal cord injuries may differ with deaf people about the methods of achieving integration in education, but each group strives toward the single goal of becoming a part of the mainstream upon graduation.

The third key to understanding disability in the context of civil rights is the necessity of individualized remedies to address differences among individual members of the protected class.

THE ISSUE FOR THE WORKING GROUP

"The degree to which cost-benefit analysis may be applied appropriately to governmental programs for handicapped people has been the subject of controversy. Many authorities agree the analysis of financial costs and benefits is an important consideration in selecting the most efficient alternatives among

several choices for reaching a particular goal." (Spectrum p.72 1983; see also Spectrum p.69-74 for full discussion of cost-benefit issues and disability policy).

ISSUE

Whether there are more effective and less costly options available to President Bush within the context of a comprehensive civil rights bill that will further the goal of enabling people with disabilities to move into the American mainstream.

ANALYSIS OF METHODS OF INTEGRATING DISABLED PEOPLE PURSUANT TO THE AMERICANS WITH DISABILITIES ACT OF 1989

Certain factors must be considered in evaluating cost/benefits and alternative methods of integrating disabled people into society in the context of the Americans with Disabilities Act of 1989 (ADA). These factors can be found in prior evaluations and studies conducted by Federal agencies on the regulatory impact of similar legislation under the Rehabilitation Act of 1973 (See 29 U.S.C. 793 and 794). These factors should be reviewed prior to any evaluation of the ADA. They include the following:

1. DON'T DOUBLECOUNT THE COSTS

"... special feature of the regulation's requirements duplicate the provisions of pre-existing federal or state law or court decree. In such instances, the effect of the section 504 [29 U.S.C. 794] regulations is to impose an additional sanction in order to hasten and to help enforce compliance. The policy decision in these cases is not whether to incur a set of costs and benefits, but whether or not to increase the rapidity with which they materialize. Thus where the regulations duplicate or strengthen existing mandates, it will not be possible to distinguish separately the costs and benefits of 504 as opposed to existing regulations and laws. However, some part of any projected increases in costs (and benefits) should be attributed to these other provisions. Indeed, for some sub-parts perhaps even the major part should be attributed to them."

(Discrimination Against Handicapped Persons p.2 1976)

2. DON'T OVERESTIMATE THE COSTS

"The major finding is that recipients tended to overestimate the costs required by section 504. This was particularly true for estimates of costs associated with the structural modification of existing facilities. Many institutions mistakenly believed that section 504 requires substantial renovation of inaccessible existing facilities. Renovation of existing facilities to meet an accessibility standard such as

that developed by the American National Standards Institute (ANSI) could indeed be very expensive. LJA [Lawrence Johnson and Associates] discovered widespread misunderstanding of the requirements of the regulation. While this misunderstanding led some institutions to underestimate the costs which could be required by section 504, many more institutions tended to overestimate the required costs. The major misunderstanding was that the regulation required far more structural modification that it actually does. (An Interim Evaluation p.6 1979)

AMERICANS WITH DISABILITIES ACT OF 1989 SPECIFIC COST/BENEFIT ISSUES

There are four titles in the Americans with Disabilities Act of 1989 that can be evaluated for cost-benefit impact and consideration of alternative approaches. These four titles cover specific public and private entities. The titles are: Title II Employment; Title III Public Services; Title IV Public Accommodations and Services Operated by Private Entities; and Title V Telecommunications. Enclosed as a separate memorandum is a review of issues that should be considered in an impact evaluation of the employment section of the bill.

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IMPACT ANALYSIS OF EMPLOYMENT UNDER ADA

- I. Current Employment Status of People with Disabilities: high unemployment costs public and private sector billions of dollars: Employment of people with disabilities is more cost-effective.
 - A. People with disabilities have the highest rate of unemployment of any demographic group in American society and are twice as likely to be poor.
 - According to the 1980 Census, 22.7 million or 13.3% of the 170 million people who are age 16 and above reported a "work disability" which limited the kind or amount of work they could perform. 1
 - A 1986 Louis Harris survey of 1,000 people with disabilities found that two-thirds were not working, one in four work full-time and another 10% work parttime.²
 - o Two-thirds of the 66% of unemployed disabled people indicated that they wanted to work, according to the Harris Survey.³
 - As a result of this high rate of unemployment and underemployment, one-third of people with disabilities are on Social Security or other public assistance benefits. More than 20% of disabled persons between ages 16 to 64 have family incomes below the Federal poverty level, a poverty rate that is more than double that of the general population. 5
 - B. The high unemployment rate of persons with disabilities imposes a heavy financial burden on the Federal budget and on the private sector.
 - One study estimated that 1986 private and public sector disability expenditures (transfer program payments, medical care payments and direct services) totalled \$169.4 billion.
 - The National Council on Disability estimated that FY 1986 Federal expenditures on disability benefits and programs exceeded \$60 billion. This figure includes the following income maintenance programs: Social Security (\$19.566 billion); Medicare (\$9 billion); Medicaid (\$8.820 billion); Veterans Compensation For Service Connected Disabilities (\$8.210 billion); and Supplemental Security Income (\$6.4 billion).

- C. Managing employee sickness and accident expenses has become increasingly important to private employers as the disability component of personnel costs continues to rise. Employer provided programs to promote the return to work of employees who become disabled are very cost-effective and are consistent with the ADA's nondiscrimination requirements for hiring, retaining and promoting disabled workers.
 - For every million dollars of payroll costs, long and short term disability benefits cost an employer \$50,000. The projected cost increases in disability benefit plans range from 6% to 10% annually. The average injury costs a company \$19,000.9
 - "According to Douglas Langham, administrator of rehabilitation for the Michigan State Bureau of Workers' Compensation, short-term disability costs alone frequently run from 2 to 4 percent of total payroll, while long-term disability adds another 1 to 5 percent. A company with 1000 employees can expect to have 27 lost work day injuries each year on average. With a 4.5 percent profit margin, this company must realize \$11.3 million in sales just to offset these costs."
 - Lee Iaccoco reported that Chrysler spent more on health benefits than it did on steel. Similarly, in 1969, sickness and accident payments at General Motors exceeded \$100 million for the first time. The company began an aggressive disability management policy. As a result, General Motors has saved \$140 million in disability costs, and is continuing to add \$180 million annually to that figure.11
 - company given size, workforce structure and other factors. Common strategies include: company commitment to returning injured or sick employees to work, early intervention in the rehabilitation process, and belief in appropriate placement of disabled returning workers in productive positions. 12
 - D. Rehabilitation and other programs fostering employment of people with disabilities have high benefit to cost ratios.
 - Numerous studies document the success of vocational rehabilitation programs in providing training to enable people with disabilities to achieve independence. These studies find very high benefit to cost ratios, ranging from a low of 2 to 1 to as high as 86 to 1.13

Private sector placement programs also report impressive benefit to cost ratios for returning people with disabilities to productive employment. The Sensory Aids Foundation (SAF) is a nonprofit corporation which places people with vision and hearing impairments in competitive employment through the use of technology such as talking computers, electronic devices to enlarge print, reading machines, electronic braille devices and telephone communication devices. SAF's employment project assists at least 50 blind, visually-impaired, deaf, and hearing-impaired persons each year. SAF reports the following dollar costs and benefits for its employment program from October 1, 1987 to September 30, 1988:

Total cost of SAF Employment Program: \$170,718
Total cost of specialized equipment used: \$137,612
Total annual earnings of all placements: \$876,158
Average annual salary per person assisted: \$21,369
Potential total annual welfare savings: \$105,963
Annual Federal taxes to be paid (no FICA): \$136,032
Total annual State taxes to be paid: \$32,540
SAF's Return on Investment: \$9.0%

- "Consider the hypothetical example of 100 spinal cord injured patients who were rehabilitated successfully, returned to their communities and were gainfully employed. Given an average of \$62,500, their rehabilitation would cost \$6.25 million. At the minimum wage of \$3.50 an hour, the 100 injured persons will have earned \$728,000. The government receives taxes on their earnings totaling about \$72,800. Meanwhile, federal and private insurance programs will save about \$1.14 million [per year] in disability benefits."
- E. Employment discrimination as well as architectural, communication and transportation barriers are significant obstacles to employment for people with disabilities.
 - employment discrimination against people with disabilities takes many forms including attitudinal barriers, non-job-related employment criteria and the denial of reasonable accommodation.
 - A 1983 U.S. Commission on Civil Rights study concluded that: "The majority of unemployed handicapped people, if given the chance, are quite capable of taking their places in the job market. Numerous studies indicate that handicapped workers, when assigned appropriate positions, perform as well or better than their nonhandicapped fellow workers." (citations omitted) 15

- The Civil Rights Commission report also noted: "Those handicapped workers who are able to find a job are more than twice as likely as non-handicapped persons to work part-time, in spite of the fact that most handicapped individuals are able to work a full, standard, 8-hour work-day and a normal 5-day workweek. Handicapped employees also tend to be underpaid. Studies have demonstrated that, for every educational level, the average wage rate of disabled people is below that of the non-disabled population. For handicapped people with 12 years of education or less, the average wage rate is below minimum wage. Even among those who have attended college, the differences are large. Among full-time, full-year workers, handicapped persons earn less than their non-handicapped counterparts within each sex, educational and racial grouping." (citations omitted) 16
- One out of four working-age disabled persons say that they have encountered employment discrimination because of their disability. The Moreover, 47% of those polled indicated that employers don't recognize their capability of doing a full-time job because of a disability or health problem. Twenty-eight percent stated they did not work because of the unavailability of affordable, convenient or accessible transportation to and from work and housing near work. Twenty-three percent of disabled people stated they were not working because they need special equipment or devices to do work. 18
- According to a 1987 Harris Survey of employers, a large majority of top managers (72%), EEO officers (76%), department heads/line managers (80%), and small business managers (70%) feel that people with disabilities often encounter employment discrimination. 19
- II. The ADA would eliminate many of the employment, architectural and transportation barriers identified by people with disabilities as key reasons for their exclusion from the labor force. However, assessing the impact of Title II of the ADA on employers and people with disabilities is difficult.
 - A. Number and percentage of employers and employees covered by the ADA.

The ADA incorporates the definition of "employer" and "employee" used in Title VII of the Civil Rights Act of 1964. In 1985, the Equal Employment Opportunity Commission estimated that Title VII of the Civil Rights Act of 1964

covers 666,000 employers or approximately 15% of all employers. Total employment by those covered employers represented approximately 71.2 million workers or 87% of all employment. More than half of the employees (38.1 million) protected by Title VII worked for employers with 250 or more employees. Another 29 million workers were employed by entities with 15-99 employees. These figures suggest that the small "mom and pop" establishments will not be covered by the ADA and will not be subject to the ADA's reasonable accommodation requirement. Indeed, most of the workers covered will be employed by larger companies even though these companies represent a small slice of the employer community.

Note, however, that employers who are Federal grantees and Federal contractors are already subject to parallel handicap nondiscrimination obligations pursuant to \$5 503. and 504 of the Rehabilitation Act of 1973, as amended.

- B. Benefits and costs of eliminating employment discrimination.
 - It is very difficult to assess either the benefits or costs of eliminating handicap employment discrimination. While it is reasonable to assume that a reduction in discrimination should have some positive effect on the employment rate and wages earned of people with disabilities, it is difficult to calculate that benefit. The relationship between employment discrimination, low wages and high unemployment is a complicated one and depends in part upon factors not within the scope of the ADA. Even though all but a tiny percentage of disabled people can work²⁰ and two-thirds of those not working want to work,²¹ many people with disabilities are unfamiliar with medical, rehabilitation and community services available that would enable them to gain employment and most have not used such services. For example, while 60% of disabled people were familiar with vocational rehabilitation, only 13% had actually used the services, according to a 1986 Harris survey. 22 Moreover, 53% of disabled people reported that it was somewhat hard to almost impossible for people who need such services to find out about them. 23 It is little wonder, therefore, that most unemployed people with disabilities are not looking for work and believe that their employment opportunities are limited. 24
 - A 1977 study commissioned by the Department of Health Education and Welfare's Office For Civil Rights estimated that eliminating discrimination against handicapped people in HEW-funded grant programs would

yield \$1 billion annually in increased employment and earnings for people with disabilities. In addition to increasing the Gross National Product, it has been estimated that such an earnings increase by workers with disabilities would result in some \$58 million in additional tax revenues to Federal, State and local governments. Statistics indicate that funds generated by eliminating handicap discrimination would return more than \$3 for every \$1 spent. 25

- C. Specific areas of employer costs that might be increased by the ADA include costs for reasonable accommodation, health insurance and workers' compensation.
 - Reasonable accommodation of employees with disabilities will cause employers increased costs for some accommodations, but such costs are limited by the ADA's "undue hardship" defense.
 - o Some accommodations cost nothing, <u>e.g.</u>, reassignment or modifying rules, while others are more expensive, <u>e.g.</u>, making a facility accessible, providing qualified interpreters or readers.
 - Accommodation costs are frequently overestimated because of a failure to consider less expensive but equally effective alternatives. An employer spent thousands of dollars to lower the control buttons on an elevator when, for a few dollars, a pointer on a chain could have been installed that would have achieved the same result.
 - o Often persons with disabilities need no accommodation at all or only inexpensive accommodations. A 1982 survey of Federal contractors covered by \$ 503 of the Rehabilitation Act estimated that people with disabilities were 3.5 percent of the overall workforce of the contractors surveyed. Of these handicapped workers, only 22% received some form of accommodation and these were generally inexpensive. The study concluded that 51% of the accommodations reported had no cost, another 30% of the reported accommodations cost less than \$500. Only 8% of the accommodations were reported as costing more than \$2000. The data suggests that larger firms were more likely to employ people with disabilities and were more likely to make more expensive accommodations. 26

- o An employer may be required to make structural changes to an existing facility in order to facilitate access by employees with disabilities including persons using wheelchairs. Over time, employer costs for accessibility should decline because facilities that may become places of employment constitute public accommodations that must be designed and constructed to be accessible pursuant to \$ 402(b)(6) of the ADA. Designing for accessibility from the beginning adds less than 1% to the total construction cost of a new facility. 27
- Structural modifications to existing facilities are more expensive than accessibility features incorporated into the design of new facilities. Such structural changes include the installation of elevators, ramps, and modifications to bathrooms. These costs will vary greatly according to the employer's facilities. One study concluded that renovating existing buildings (convention center, retail shopping mall, public library, town hall) increased costs over original construction costs from approximately 0.1% to 16%.28 The 16% figure was based upon the installation of an elevator in a branch public library. Elevators are potentially the most expensive retrofit item. It must be questioned, however, whether the installation of an elevator can be charged exclusively as an accessibility cost.
- O Section 190 of the Internal Revenue Code provides for a Federal tax deduction of up to \$35,000 for the costs of structural renovations to achieve accessibility.
- Because the ADA does not provide standards for reasonable accommodation and undue hardship, it is unclear whether enactment of the ADA would result in a greater or lesser accommodation burden than is currently imposed under theeRehabilitation Act's comparable requirements. The President could insist that standards for reasonable accommodation and undue hardship be explicitly established in the bill.
- o Although some accommodations may be paid for by vocational rehabilitation agencies, an employer is obligated under the ADA to provide the necessary accommodation(s) subject to the undue hardship defense. For this reason, and because external

Workers' Compensation.

As long as the employer is operating in a jurisdiction with a second injury fund, the employer of disabled people should not pay higher costs because of a pre-existing disability, even if the disabled person has a subsequent work-related injury aggravating his disability or creating a second disability.

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- 28. Estimated Cost of Accessible Buildings, p. 143.

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DISABILITY

Issues Needing Answers

Costs and Benefits

What are the costs and benefits associated with the Americans with Disabilities Act (ADA)? Many provisions have costs. There does not now exist an analytic base for understanding the size of those costs and how the costs could be most efficiently allocated.

AT&T has estimated that its costs for complying with the telecommunications provisions of ADA would be \$200 million per year. Operating both lift-equipped buses and paratransit could cost public transit authorities \$270 million per year. How could these costs be mitigated consistent with ADA's goals? Who will ultimately pay these costs? Also, what are the gains to society that offset these costs? Where do these gains occur in relationship to the costs? What can be done to mitigate the most extreme costs? extreme costs?

Scope of Provisions

How widely should ADA's not be thrown? The public accommodations section seems to suggest that every office building in America would have to be accessible. Another reading suggests every doctor's and dentist's office would have to be accessible.

What provision should be made for small entities? Large employers and large firms can spread costs over a large base. Small firms and small organizations would find themselves with costs that threaten viability or ability to fulfill a principal mission. What provision should be made for these entities? Total exemption? Case by case good faith effort? What size entities should be exempted? ADA does not allow cost as a defense, and so an organization would have to comply no matter what the cost.

Remember the example that bedeviled Joe Califano when implementing Section 504 of the Rehabilitation Act. A library in a farming town in Iowa, population under a thousand, thought the federal government (actually it was the State librarian) was requiring it to install a ramp allowing for wheelchair access of the library. The ramp would have cost about \$7,000, close to the library's operating budget. And the town had no residents who used a wheelchair, making the proposed ramp a monument to useless regulation.

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3. Implementation and the Courts

ADA contains many ambiguities that should be resolved in the statutory language. Because ADA is silent on many points, definitive elaboration would be left to the courts. For example, are transvestites protected? In effect, the real meaning of ADA would not be known for years until a number of cases move through the courts applying "undue hardship" and other vague concepts to specific fact patterns.

How can implementation be handled most smoothly? A law that took effect on enactment or shortly thereafter would expose many entities to litigation risks of which they are not aware.

Also, the uniform requirement for promulgating regulations in 180 days does not consider the comparative difficulty of regulating new areas as compared to altering existing regulatory schemes. For example, the Department of Transportation is asked to undertake a new area in the regulation of private transit.

What flexibility can offered to encourage non-confrontational dispute resolution and prevention as opposed to litigation and administrative processes?

Persons Covered and Implications

What is to be done where ADA overlaps the current structure of civil rights law? The Rehabilitation Act of 1973 and the Fair Housing Act of 1988 cover some of the same populations as ADA, have different compliance standards and different remedies. Absent specific instruction from the statute, resolution will be turned over to the courts and will entail significant litigation costs.

The potential for covering drug and alcohol abusers within the protection offered those with disabilities deserves long and hard consideration. On its face, such a move would appear to end the "drug free workplace" concept.

With respect to accessibility, does an emphasis on removing barriers exclude assistance to those for whom affirmative action is required, e.g., the sight and hearing impaired?

THE IMPACT OF VOTERS WITH DISABILITIES ON THE 1988 PRESIDENTIAL ELECTION

- o Forty-three million or one out of six Americans have a disability. People with disabilities are the largest minority in the U.S.
- A series of polls were conducted by Louis Harris and Associates for the National Organization on Disability during the 1988 Presidential election comparing the voting intentions of Americans with disabilities with non-disabled voters. (1538 disabled voters and 19,440 non disabled voters were surveyed)

EARLY DUKAKIS LEAD

- During the primary season Dukakis held a 21 point lead over Bush among disabled voters, a much larger lead than shown among voters in general.
- Dukakis's lead increased to 33 points following the Democratic convention. (64% vs. 31%)
- Disabled voters felt that Dukakis would do a better job on most domestic policy issues such as education, health care and the environment.

SHIFT TO BUSH

- After the Republican convention Dukakis's substantial lead declined sharply (only 10 points) among disabled voters.
- By October, Bush had closed the gap and two out of the last three polls showed him ahead of Dukakis. Harris concludes that the change in the disabled vote accounted for 1% - 3% of President Bush's margin of victory.
- O Harris attributes the significant change in disabled voters' intentions to the fact that George Bush mentioned his support for persons with disabilities in his acceptance speech at the Republican National Convention, and on at least two other occasions before national audiences. During the Convention speech Bush said,

"I'm going to do whatever it takes to make sure the disabled are included in the mainstream. For too long they've been left out, but they're not going to be left out anymore."

This was the first time a candidate for national office had addressed the nation's disabled citizens directly and its impact should not be overlooked.

o President Bush is well aware of his support from this community and included the following statement in his "State of the Union" address.

"A better America...Where every one of us enjoys the same opportunities to live, to work and to contribute to society. And where, for the first time, the American mainstream includes all of our disabled citizens."

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	AMENDMENT NO Ex Calendar No
	Purpose:
	IN THE SENATE OF THE UNITED STATES Cong., Sess.
	S
	H.R AMENDMENT NO. 2115
	(title)
-	Bill/Res. No. 40 And 2114
-	4 pages
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	() Ordered to lie on the table and to be printed
1	INTENDED to be promosed by Mr. Kennedy, Ch Page 18, Dirike the mendment (No. 2118) proposed by Mr. Kennedy, Ch Page 18, Dirike
an	the ic 12 milian ery of section 10 and upon of the
	1 (c) PERIOD OF LINGTATIONS.—The period of limita-
	2 tions for the filing of a claim or charge shall be tolled from
	3 the applicable effective date described in subsection (a)
	Or or any different time.
	until the date of enactment of this Act, on a showing that
	the claim or charge was not filed because of a rule or deci-
ć	S stor, altered by the amendments made by sections 4. 5.
7	7 7(a, (2), or 12.
8	B SEC. 16. RIGHTS AND PEMEDIES IN THE SENATE.
5	(a) Commitment of the Senate The Senate restitions its
10) commitment to Rule XIII of the Standing Rules of the Senate
11	vilot provides as follows:
12	"'No member, dificer, or employee of the Senate shall, with
13	sespect to employment by the Sanate of any office thereof
14	"'(a) dall or refuce to nice an includeus);
15	
16	"(b) discharge an individual; or
17	"(c) otherwise discriminate against an individual
18	with respect to promotion, compensation, or terms,
	conditions, or privileges of employment
19	on the Dasis of Such inciviousl's race, color, religion, sex,
20	or state of physical handloap.".
21	(b) Application to Senate Employment The rights and
20	protections provided pursuant to the Civil Rights Act of 1990 's

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Pur	pose:
TN	J TUP SENATE OF TUP INTER STATES
**	THE SENATE OF THE UNITED STATES Cong., Sess.
	H.R. (or Treaty)
(title	e)
	() Referred to the Committee on
	and ordered to be printed () Ordered to lie on the table and to be printed
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INTE	NDED to be proposed by
Viz:	
1	2104, 101st Congress), the Americans with Disabilities Act (S.
2	933, 101st Congress), the Civil Rights Act of 1964, the Age
3	Discrimination in Employment Act of 1967, and the Rehabilitation
4	Act of 1973 shall apply with respect to employment by the United
5	States Senate.
6	(c) Investigation and Adjudication of Claims All claims
7	raised by any individual with respect to Senate employment,
8	pursuant to the Acts referred to in subsection (b), shall be
9	investigated and adjudicated by the Select Committee on Ethics,
10	pursuant to S.Res.338, 88th Congress, as amended, or such other
11	entity as the Senate may designate.
12	(d) Rights of Employees The Committee on Rules and
13	Administration shall ensure that Senate employees are informed of
14	their rights under the Acts referred to in subsection (b).
15	(e) Applicable RemediesWhen assigning remedies to
	individuals found to have a valid claim under the Acts referred
16	to in subsection (b), the Select Committee on Ethios, or such
17	other entity as the Senate may designate, should to the extent
18	practicable apply the same remedies applicable to all other
19	employees covered by the Acts referred to in subsection (b).
20	
21	(f) Matters Other Than Employment
22	(1) In General The rights and protections under the

A	MENDMENT NO Ex Calendar No
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	IN THE SENATE OF THE UNITED STATES- Cong., Sess.
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ĪN	TENDED to be proposed by
Vi	z:
1	Americans with Disabilities Act (S. 933, 101st Congress) sh
2	subject to paragraph (2), apply with respect to the conduct
3	the Senate regarding matters other than employment.
4	(2) Remedies The Architect of the Capitol shall
5	establish remedies and procedures to be utilized with respe
ô	the rights and protections as ovided pursuant to paragraph (
7	(3) For purposes of paragraph (2), the Architect of the
8	Capitol shall submit proposed remedies and procedures to the
9	Senate Committee on Rules and Administration. The remedies and
10	procedures shall be effective upon the approval of the Committee
11	on Rules and Administration.
12	The
13	provisions of subsections (a), (c): (d), (e), (f)(2), and (f)(3)
14	are enacted by the Senate as an exercise of the rulemaking power
15	of the Senate, with full recognition of the right of the Senate
16	to change its rules, in the same manner, and to the same extent,
17	as in the case of any other rule of the Senate.
	the Enate.
18	SEC. 17. APPLICATION TO CONCRESS.
19	(a) Civil Rights Act of 1964 Notwithstanding any other
20	provision of law, the rights, protections, and remedies made
21	available under the civil Rights Act of 1964 with regards to
22	employment_shall_extend to the employees and prospective

Page 66 of 70

AMENDMENT NO Ex Calendar No	
Purpose:	
IN THE SENATE OF THE UNITED STATES Cong., Sess.	
S(or Treaty	,
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(title)	
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1 of the Senate or the instrumentalities of thereof. Such employees or prospective employees who are full profit for the instrumentalities A corp. The Cul profit for the instrumentalities	_
aggrieved by a violation of such hot shall have a private sector of offer processors, according to the cause of action against the individual or entity that has	4084
2 cause of action against the individual or entity that has	5
engaged in the violation of such employees rights under s	such
Act in the appropriate district court of the United State	es.
(b) Americans with Disabilities Act Notwithstanding	any
other provision of law, the rights, protections, and reme	edies
made available under the Americans with Disabilities Act	
regard to employment and number accommodation shall exter	id-tə-
the employees and prospective employees of members of t	he
Senate or the instrumentalities thereof. Such employees,	or
1 prospective employees, who are aggrieved by a violation of	ディ
12 such act shall have a private cause of action against the senter of the supercrument is under the senter. 18 individual or entity that has engaged in the violation of	
14 such employees, rights under such Act in the appropriate	
15 district court of the United States.	
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IN THE SENATE OF THE UNITED STATES Cong., Sess.	
S AMENDMENT NO. 2114 FITTLE By SENTSLEY	
Bill/Res. No. to first 2/10 4 pages	
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and ordered to be printed	
() Ordered to lie on the table and to be printed	
INTENDED to be proposed by Mr. Grassley to the amendment (No. 2118) proposed by Mr. Kennedy. On Page 18, Direct of from line 12 things and of Section 16 and insert the Following: 1 (c) PERIOD OF LIMITATIONS.—The period of limita-	5
2 tions for the filing of a claim or charge shall be tolled from	
3 the applicable effective date described in subsection (a)	
4 until the date of enactment of this Act, on a showing that	
5 the claim or charge was not filed because of a rule or deci-	
6 sion altered by the amendments made by sections 4, 5.	
7 T(a)(2), or 12.	
THE SENATE.	
9 (a) Commitment of the Senate The Senate reaffirms its	
10 commitment to Rule XLII of the Standing Rules of the Senate	
11 which provides as follows:	
12 'No member, officer, or employee of the Senate shall, with	
13 respect to employment by the Sanate or any office thereof-	
''(a) fail or refuse to hire an individual;	
15	
"(b) discharge an individual; or	
"(c) otherwise discriminate against an individual	
with respect to promotion, compensation, or terms, Conditions or privileges of employment	
conditions, or privileges of employment on the basis of such individual/s race colors.	
on the basis of such individual's race, color, religion, sex, national origin, age, or state of physical handicap.".	
(b) Application to Senate Employment The rights and	
protections provided pursuant to the Civil Rights Act of 1990 (S.	
of the civil alghes are of 1990 /S.	

This document is from the collections at the Dole Archives, University of Kansas http://dolearchives.ku.edu AMENDMENT NO. ---- Calendar No. ---- Calendar No. ----_____ IN THE SENATE OF THE UNITED STATES- Cong. Sess. S. _____(or Treaty_____) () Referred to the Committee on ----and ordered to be printed () Ordered to lie on the table and to be printed INTENDED to be proposed by Viz: employees of members of the Senate or the instrumentalities 1 thereof. Such employees or prospective employees who are 2 aggrieved by a violation of such Act shall have a private cause of action against the individual or entity that has 2 engaged in the violation of such employees rights under such 3 Act in the appropriate district court of the United States. (b) Americans with Disabilities Act .-- Notwithstanding any 5 other provision of law, the rights, protections, and remedies 6 made available under the Americans with Disabilities Act With 7 regard to employment and public accommodation shall extend to the employees, and prospective employees, of members of the 9 Senate or the instrumentalities thereof. Such employees, or 10 prospective employees, who are aggrieved by a violation of 11 such Act shall have a private cause of action against the 12 individual or entity that has engaged in the violation of such employees rights under such Act in the appropriate district court of the United States. 17 18 19 20 21 22