

May 3, 1989

TO: Senator Dole
FROM: Mo West
SUBJECT: Major Statutory Language Problems with ADA

1. Definition of disability -- Includes a provision which would allow an individual "regarded as having an impairment" to be considered an individual with a disability.

2. General standards for judging whether discrimination has occurred -- requires that equal and as effective means be applied and the same result/outcome be achieved in the case of the individual, including one with a disability, not comparable means and outcomes. (comparable would give flexibility)

3. Coverage extended to individuals with contagious disease or infection -- unless such an individual, including one with AIDS, poses a direct threat to the health and safety of others he/she could not be excluded based on qualification standards. (let Helms & Humphrey carry the opposition on this - it's inconsistent with 504/AIDS Commission/Arline Supreme Court case view on contagious disease) *don't touch*

4. Anticipated discrimination -- Under Title II pertaining to employment, an individual, based on disability, could pursue a private cause of action if he/she believed the he/she is about to be discriminated against on the basis of a disability. (reasonable point hard to prove in employment but not so in construction i.e. bldg. blueprint)

5. Access to multiple remedies -- Under Title II an individual pursuing a private cause of action may use Title VII of the Civil Rights Act of 1964 and section 1981 of the Civil Rights Act of 1866. Such options would give access to injunctive relief, compensatory and punitive damages.

6. Use of failure standard in employment -- An individual with a disability, can pursue a private cause of action in several titles (II and III primarily which are transportation related) if a covered entity fails to provide/accomodate etc. This would allow an individual to sue in both cases of intentional and unitentional discrimination. (put in refusal only - for intentional cases of dicrimination can one sue)

7. Inclusion of 504 -- In several provisions pertaining to transportation, the ADA includes not only a reference to the ADA itself but also section 504, possibly changing the standards that now apply to section 504. (take out 504 - if it changes why include it?)

8. Use of failure standard in public services and accommodations offered by a private entity -- An individual, on the basis of a disability, could pursue a private rights of action in a case of discrimination, and if successful receive actual costs, punitive damage, and attorney's fees. This option, like #6 would cover intentional and unintentional discrimination. *← Replace refusal?*

9. Use of different remedies in different titles -- Each Title uses differing combinations of remedies and procedures in cases of private causes of action. - *consistency?*

10. Burden of proof -- Under this statute burden of proof is placed on the defendant, while most laws place burden of proof on plaintiff. There should be consistency in approach.

11. "15" *Exemption for sm. bus.*