

June 27, 1990

TO: Senator Dole
FROM: Mo West
SUBJECT: Chapman Amendment

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

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

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

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

During House consideration of the ADA bill, Rep. Chapman described the purpose of his amendment as giving employers needed flexibility to deal with employees who are "diagnosed as having an infectious disease such as "AIDS". Rep. Chapman did not seek to claim that his amendment was necessary to protect the public from infection; he explained "the purpose of the amendment was to protect food handling business from loss of customers who would

refuse to patronize any food establishment if an employer were known to have a communicable disease." He noted that "there is a perceived risk from AIDS."

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

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

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

Yes_____ No_____ Undecided_____